

UNITED STATES DEPARTMENT OF EDUCATION

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PUBLIC HEARING ON REGULATION REFORM

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WEDNESDAY,
OCTOBER 4, 2017

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The public hearing met in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C., at 9:00 a.m., Kathleen Smith, Acting Assistant Secretary for Postsecondary Education, presiding.

PRESENT:

KATHLEEN SMITH, Acting Assistant Secretary for
Postsecondary Education, Office of
Postsecondary Education
SOPHIA MCARDLE, Policy Analyst, Office of
Postsecondary Education
GAIL MCLARNON, Deputy Assistant Secretary for
Policy, Planning, and Innovation, Office
of the Assistant Secretary for
Postsecondary Education

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ALSO PRESENT

RAYMOND ALVES

TANYA ANG, Veterans Education Success

JONATHAN ANDREWS

GISELA ARIZA, The Leadership Conference on Civil
and Human RightsDAVID BAIME, American Association of Community
CollegesDAVID BOUSQUET, International Association of
Campus Law Enforcement AdministratorsKEN BROOKER LANGSTON, Disciples Center for
Public WitnessMELISSA BRYANT, Iraq and Afghanistan Veterans of
AmericaQUINTIN B. BULLOCK, Community College of
Allegheny County

GAYLYNN BURROUGHS, Feminist Majority Foundation

CHRISTOPHER CHAPMAN, AccessLex Institute

NEENA CHAUDHRY, National Women's Law Center

ANNIE E. CLARK, End Rape on Campus

EDWARD COLEMAN, parent

JENNIFER COLEMAN, parent

AMELIA COLLINS, UnidosUS

LESLIE COPELAND-TUNE, Ecumenical Poverty
InitiativeJILL CREIGHTON, Association for Student Conduct
Administration

CHERYL DOWD, WCET State Authorization Network

DANIEL ELKINS, Enlisted Association of the
National Guard of the United States

FAITH FERBER, American University

SARA GARCIA, Center for American Progress

LINDSEY GARDNER, Ivy Tech Community College

CYNTHIA GARRETT, Families Advocating for Campus
Equality

EMILY GARRETT, Feminist Majority Foundation

MARY GILMORE

ALEXIS GOLDSTEIN, Americans for Financial Reform

STEVE GUNDERSON, Career Education Colleges &
Universities

PATRICIA HAMILL, Conrad O'Brien

CHARLOTTE HANCOCK, Center for American Progress

NEAL HELLER, American Association of Cosmetology
Schools**NEAL R. GROSS**

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MONICA HERK, Committee for Economic Development
TAMARA HILER, Third Way
WILLIAM HUBBARD, Student Veterans of America
BETHANY KEIRANS, Vietnam Veterans of America
ALISON KISS, Clery Center
PAM LIGHTFOOT, Parent
JULIANNE MALVEAUX, Bennett College
SEAN MARVIN, Veterans Education Success
KAREN MCCARTHY, National Association of Student
Financial Aid Administrators
JOHN MCDONALD, American Federation of Teachers,
AFL-CIO
ALEX MOREY, Foundation for Individual Rights in
Education
CHRISTOPHER MUHA, KaiserDillon, PLLC
JULIE PELLER, Higher Learning Advocates
CHRISTOPHER J. PERRY, Stop Abusive and Violent
Environments
ELIZABETH RAMSY, American Federation of
Teachers, AFL-CIO
ASHLEY REICH, Liberty University
JAMEY RORISON, Institute for Higher Education
Policy
ERIC ROSENBERG, Rosenberg & Ball Co., LPA
TOM ROSSLEY, Parent
JEFF SCHRADE, Paul Mitchell Schools Franchise
Association
REID SETZER, Young Invincibles
JOSEPH SHAW, Council for Education
AARON SHENCK, PAPSA
NELSON E. SOTO, Union Institute and University
KAREN STRICKLAND, American Federation of
Teachers, AFL-CIO
ALISON STUART
KATHELEEN SULLIVAN, Attorney
HARPER JEAN TOBIN, National Center for
Transgender Equality
KAITLYN VITEZ, U.S. PIRG
HARRISON M. WADSWORTH, III, International
Education Council
RANDI WEINGARTEN, American Federation of
Teachers, AFL-CIO

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

2 9:05 a.m.

3 MS. SMITH: Good morning.

4 ALL: Good morning.

5 MS. SMITH: Everybody's so serious.

6 It's going to be a great day.

7 (Laughter.)

8 MS. SMITH: All right. That's better.

9 Good morning, everyone. My name is Kathleen Smith
10 and I am the Acting Assistant Secretary for the
11 Office of Postsecondary Education and I am actually
12 very pleased to welcome you to this public hearing,
13 and I am very happy to be joined by my colleague
14 Gail McLarnon, who's also from the Office of
15 Postsecondary Ed.

16 This is, as you're probably aware, the
17 second of two hearings that we are convening to
18 receive input from the public on department
19 regulations and guidance specifically related to
20 postsecondary education programs that may be
21 appropriate for repeal, replacement,
22 modification. And this of course includes

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1 regulations regarding student financial aid and
2 discretionary grant programs.

3 Just for some background, these
4 hearings supplement the effort to implement
5 Executive Order 13777, Enforcing the Regulatory
6 Reform Agenda signed by the President on February
7 24th of 2017, and this order established a policy
8 to alleviate unnecessary regulatory burden on the
9 American public and directs all federal agencies
10 to establish a regulatory reform task force to
11 evaluate existing regulations and make
12 recommendations to the agency head regarding their
13 repeal, replacement or modification. So that
14 gives you some background on why we're here.

15 Furthermore, the task force is directed
16 to seek input and assistance from affected
17 entities, all of you guys. And to that end the
18 Department has also previously solicited written
19 comments from the public. And today we appreciate
20 the opportunity to hear directly and personally
21 from all of you for your suggestions in achieving
22 these objectives.

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1 The Department has also begun work in
2 reducing postsecondary regulatory burdens by
3 establishing two negotiated rulemaking committees
4 to develop regulations to revise gainful
5 employment rules and revise the regulations on
6 borrower defense to repayment of federal student
7 loans and other matters.

8 The Borrower Defense Negotiating
9 Committee will begin in November, and the Gainful
10 Employment will begin in December. And that's all
11 been published in the Federal Register notices.

12 The deadline for nominations for
13 negotiators to serve on these committees was
14 September 29th. And again, we look forward to
15 working with the communities on those important
16 regulations.

17 So again, thank you for being here today
18 and for giving us your time and your commitment to
19 these important processes. Your perspectives
20 will really help inform the work that we're going
21 to do going forward.

22 So I'm going to give you just a few

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1 housekeeping issues here. So for logistics, most
2 of you have signed up. I think we may have one
3 slot. So we are full for the entire day. So you
4 each have five minutes to speak. And forgive me
5 in advance, but we are going to keep you to that
6 five minutes. So, when you hear that, please begin
7 to wrap up. It is not to be disrespectful, but we
8 need to give everybody the time that they signed
9 up for.

10 If there's time sufficient at the end,
11 and I'm not sure there will be, and there's time
12 for a second round -- again don't -- I wouldn't
13 expect that today -- we may be able to do that.

14 Also ask that you silence your phones.
15 It's distracting obviously when someone's up here.
16 This is a little distracting with lights and all
17 that stuff. So we want to give everybody the
18 respect that -- for their five minutes.

19 It's also important that you know that
20 this is a public forum. So, right, phones,
21 tweeting, all that stuff that I'm too old to
22 appreciate, may be happening, so you just need to

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1 be aware these are -- your comments will be likely
2 made public. They will also be transcribed and
3 will be published later. So just so you know that
4 what you say here today, what I'm saying here today
5 is all being recorded.

6 Again, I would just ask folks -- and
7 this is just me sort of off the record saying --
8 if you're going to videotape it, just again be
9 respectful of some people being a little bit
10 nervous up here and wanting to do a good job in their
11 speaking.

12 We have three scheduled breaks, one
13 this morning at 10:30, a lunch break -- and again,
14 all this is a little bit fluid, and then one in the
15 afternoon. So when you come up and you are going
16 to begin your presentation, please give us your
17 name and the organization from which you hail, and
18 who you're representing here today. And we look
19 forward to having you join us today. Thanks so
20 much.

21 MS. McLARNON: So our first speaker
22 today is Jamey Rorison. Thank you. Good morning.

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1 MR. RORISON: Good morning.

2 Good morning, Acting Assistant
3 Secretary Smith, Acting Deputy Assistant Secretary
4 McLarnon. Thank you, everybody. Good morning.
5 Appreciate the opportunity to share comments today
6 to inform your evaluation of existing federal
7 regulations.

8 My name is Jamey Rorison. I'm Director
9 of Research and Policy at the Institute for Higher
10 Education Policy, or IHEP. We're a non-profit,
11 non-partisan organization that promotes college
12 access and success especially for underserved
13 students. Our team conducts high-quality
14 research to address the challenges facing our
15 postsecondary education system and to inform
16 federal, state and institutional policy.

17 My comments today focus on regulations
18 impacting college students, programs and
19 institutions. At IHEP we recognize the importance
20 of assessing the efficacy of existing federal
21 regulations. While undertaking this assessment I
22 have urged the task force to maintain regulations

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1 that promote educational equity, protect students'
2 civil rights, and implement programs designed to
3 serve students. By ensuring the proper
4 delivery of need-based financial aid programs,
5 providing data to inform consumer choice and policy
6 making, and protecting civil rights, federal
7 regulations can foster student success. A number
8 of regulations under the Higher Education Act,
9 Civil Rights Act, Title IX and other federal
10 legislation are in place to accomplish exactly
11 these goals. Eliminating these regulations is
12 tantamount to turning our backs on our students.

13 The Department must maintain
14 regulations that administer essential Title IV
15 financial aid programs for needy, hard-working
16 students pursuing a college credential. These
17 programs include the Federal Pell Grant, the
18 Federal Supplemental Educational Opportunity
19 Grant, or FSEOG, and Federal Work-Study Programs,
20 which serve students who would otherwise be unable
21 to afford college.

22 Work-Study, FSEOG and Pell are written

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1 into statute, so while eliminating their
2 associated regulations would not eliminate the
3 programs themselves, it could make compliance more
4 difficult for the Department and for institutions
5 and could prevent many low-income students from
6 accessing and persisting in college.

7 We also urge the Department to maintain
8 regulations that promote the collection and use of
9 high-quality postsecondary data. IHEP leads the
10 Postsecondary Data Collaborative, a broad
11 collection of organizations representing
12 institutions, states, students, employers,
13 privacy and security experts, and others, all
14 committed to the use of high-quality data to
15 improve student success and close equity gaps.

16 Students, policy makers, and
17 institutions deserve to know which colleges and
18 universities serve students well and which do not.
19 Through required IPEDs reporting for Title IV
20 institutions the Department helps to cast light on
21 student enrollment, retention, completion,
22 transfer out rates, financial aid information and

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1 cost of attendance. Critically, graduation rates
2 must continue to be disaggregated by race, gender
3 and economic status.

4 We urge the Department to also maintain
5 data reporting requirements mandated by the Civil
6 Rights Act and Title IX, as well as regulations
7 requiring institutions to calculate cohort default
8 rates and to disclose debt and earnings information
9 for programs at public, non-profit, and for-profit
10 colleges to prepare students for gainful
11 employment. Students need the data provided to
12 the gainful employment rule to help them make
13 informed choices about the potential return on
14 their investment. The Department must also
15 maintain current regulations that protect student
16 privacy and outline parameters for acceptable data
17 use.

18 The Department has a series of existing
19 regulations that prohibit discrimination based on
20 sex and age in programs or activities receiving
21 federal financial assistance, as well as
22 regulations that help the Department and colleges

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1 and universities comply with the Civil Rights Act.
2 Please commit to protecting students' civil rights
3 by maintaining these regulations.

4 However, not all regulations should
5 remain intact. Some impede postsecondary
6 students' success. Right now individuals who have
7 been incarcerated in federal or state prisons are
8 ineligible to receive Pell Grants and individuals
9 who have been convicted for the sale or possession
10 of illegal drugs are prohibited from receiving any
11 form of student aid at the federal level.

12 These laws and the regulations diminish
13 reentry outcomes upon release despite clear
14 evidence that recidivism rates drop significantly
15 for individuals who earn postsecondary credentials
16 while incarcerated.

17 We urge the Department to work with Congress to
18 overturn these laws and then rescind their
19 accompanying regulations.

20 As the Department's task force
21 undertakes its next steps, please consider how
22 existing regulations foster success along the

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1 postsecondary continuum beginning with the
2 information made available to aspiring students,
3 continuing through their enrollment, completion,
4 and finally their transition into the workforce.

5 May of the regulations I've addressed
6 this morning ensure that our higher education
7 system works for all Americans regardless of race,
8 sex or economic status. These regulations also
9 work to eliminate longstanding equity gaps.
10 Conversely, some regulations hinder progress for
11 underserved members of our community and should be
12 eliminated after working with Congress to amend
13 their underlying legislation. Ask yourselves
14 what's best for students and keep those answers
15 front and center.

16 The IHEP team welcomes the opportunity
17 to serve as an ongoing resource to the Department.
18 Thank you so much.

19 MS. SMITH: Thank you.

20 MS. McLARNON: Thank you. Our next
21 speaker is Sara Garcia from the Center for American
22 Progress.

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1 MS. GARCIA: Good morning. I want to
2 first thank the Department for the opportunity to
3 speak at this hearing. My name is Sara Garcia and
4 I am here to comment on behalf of the Center for
5 American Progress.

6 The current regulations under review
7 include critical rules that enforce strong
8 consumer protections and guarantee civil rights.
9 It is necessary, not optional, to protect students
10 and taxpayers.

11 Every year the Department of Education
12 provides nearly 130 billion in grants and loans to
13 help 13 million students each year attend more than
14 6,000 colleges. This massive investment of public
15 money means the Department of Education has an
16 obligation to protect students and taxpayers. If
17 anything, current regulations intended to protect
18 consumers should be strengthened, not eliminated.

19 Therefore, CAP believes that the
20 following regulations must remain. First, gainful
21 employment. The gainful employment rule is a
22 crucial measure for holding career training

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1 programs accountable so they cannot receive
2 substantial sums of taxpayer money without
3 producing a meaningful return. If this regulation
4 goes away, career training programs and schools
5 could go back to ripping off students through
6 low-quality programs and some will continue to
7 engage in deliberate predatory marketing to
8 low-income people and veterans.

9 The Department is currently failing to
10 uphold its legal obligations with respect to this
11 rule even as it plans to start a new regulatory
12 process that requires it to negotiate in good
13 faith. This rule has been negotiated twice and
14 survived multiple court challenges. Simple
15 dislike of the rule is not a sufficient rationale
16 for eliminating it.

17 Second, incentive compensation.
18 Incentive compensation regulations prohibit
19 colleges from paying bonuses to recruiters in
20 exchange for getting students to enroll. A
21 previous attempt by the Bush administration in 2002
22 to weaken this rule resulted in colleges pursuing

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1 student enrollment through unethical and damaging
2 recruiting tactics. Colleges and their
3 recruiters also manipulated students by exploiting
4 their insecurities in what was known as the pain
5 funnel. Eliminating the rules that guard against
6 such tactics will lead to a return of unjust
7 practices for the sake of profit and at the expense
8 of students.

9 Third, cash management. Cash
10 management regulations protect students from being
11 misled or forced into paying excessive fees to
12 access their federal student aid dollars. These
13 rules crack down on abusive banking products and
14 ensure that student money goes towards education
15 and not banking fees. Eliminating these rules
16 will put students at the mercy of cash management
17 companies looking to profit off financial aid
18 dollars that should be going towards students'
19 education.

20 It is also important the Department not
21 eliminate important regulations based on a
22 simplistic assessment of burden. Current

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1 approaches to regulatory reform use a simplistic
2 assumption that all burden is inherently bad.
3 While some burden can and should be avoided, simply
4 making colleges meet certain requirements to
5 access taxpayer money is by no means unreasonable.

6 Eliminating all burden for the sheer
7 sake of elimination is counterproductive.
8 Efforts to reduce burden should take into
9 consideration the purpose of a regulation and how
10 it applies in all contexts. Regulations such as
11 substantive change are necessary to maintain a
12 quality higher education system.

13 In addition, some regulations generate
14 critical information while protecting student
15 privacy on the performance of our higher education
16 system that is necessary for students and the
17 public. Any regulatory rollback must maintain
18 current data collections and public dissemination
19 of that data to ensure students are well-served and
20 taxpayer investment is well spent.

21 Additionally, all Department of
22 Education civil rights rules and regulations are

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1 both important and necessary. These regulations
2 prevent schools and colleges from discriminating
3 on the basis of race, gender, religion, or ability,
4 among other protected categories. All students
5 should be guaranteed equal access to educational
6 opportunity, period.

7 In conclusion, repealing or replacing
8 regulations for the sake of itself runs the risk
9 of eliminating critical rules designed to protect
10 students and taxpayers. In its review, the
11 Department of Education should maintain rules that
12 enforce strong consumer protections and guarantee
13 civil rights. While regulations may cause some
14 burden, burden alone is not an adequate reason for
15 wholesale elimination. Congress should follow --
16 colleges -- excuse me -- colleges should follow
17 basic rules in exchange for student and taxpayer
18 money.

19 As the above examples show, an absence
20 of strong regulations or failure to enforce them
21 leads to real harm. Harm to students or taxpayers
22 as a result of negligence on behalf of the

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1 Department is a price that is simply too high to
2 pay. Thank you.

3 MS. McLARNON: Thank you, Sara.

4 Our next speaker is Laura -- or rather
5 Harper Jean Tobin.

6 MS. TOBIN: Good morning, acting
7 Assistant Secretary, Acting Deputy Assistant
8 Secretary, everyone here.

9 I'm with the National Center for
10 Transgender Equality. I would like to associate
11 myself with the comments of the preceding speakers
12 and use my time to talk about Title IX.

13 I am here for the estimated 200,000
14 college-age Americans who are transgender and the
15 47 percent of them who are survivors of sexual
16 assault.

17 I am here for the survivor who was
18 sexually assaulted and stalked on campus and who
19 wrote to NCTE, quote, the university didn't do
20 anything to help me; instead it threatened to
21 punish me. I lived in terror the entire time I was
22 on campus.

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1 I'm here for the transgender survivors
2 who don't feel safe or comfortable calling the
3 police because our research finds that 57 percent
4 of transgender people don't.

5 I am here for the survivors who for
6 many, many legitimate reasons don't choose to make
7 a criminal complaint but do want some simple
8 remedies on campus like making sure they don't have
9 to share a class or a dorm with the person who
10 assaulted them.

11 Contrary to the Secretary's recent
12 assertions, there was never a -- an era of rule by
13 letter under Title IX or other civil rights laws.
14 The Department has issued letters, as it should,
15 with a combination of explanation of case law and
16 recommended best practices for decades. The
17 letter published last month by the Department
18 disregarded hundreds of thousands of comments from
19 the public in a comment period that ended just two
20 days previously.

21 Congress gave the Department the job of
22 enforcing the law. It also gave the Department the

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1 job of helping schools and students understand what
2 the law is. Saying the words that every student
3 is entitled to dignity and respect is important,
4 but it is far short of the Department's job.

5 The Department it appears is not doing
6 its job when it comes to LGBT students or when it
7 comes to sexual violence. Instead, the
8 Department's recent actions and statements have
9 sowed confusion and served implicitly to promote
10 discrimination.

11 I urge the Department to reconsider its
12 current course and its recent announcements. I
13 urge all of you at the Department to ensure that
14 the Department stops promoting false equivalencies
15 and the myth of an epidemic of false reports. I
16 urge you to formally consider and respond to all
17 of the comments already received on these and other
18 topics before taking any rulemaking action. And
19 I urge the Secretary to personally undertake a
20 national listening tour to hear from survivors. I
21 urge you at the Department to make unambiguously
22 clear that schools cannot abuse students by forcing

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1 them to personally face cross-examination by their
2 rapist as opposed to a representative and that
3 schools cannot abuse students in other ways that
4 the interim letter issued last month left unclear.

5 In closing, I urge you to make
6 unambiguously clear also what the courts have said,
7 that discrimination based on gender identity
8 violates Title IX. Thank you for your time.

9 MS. McLARNON: Thank you. Our next
10 speaker is Laura Dunn from SurvJustice. Laura
11 Dunn?

12 (No audible response.)

13 MS. McLARNON: Okay. I'm going to
14 move on to Tamara Hiler. Thanks.

15 MS. HILER: Hi. Good morning and
16 thank you for the opportunity to comment today on
17 the Department's review of regulations.

18 My name is Tamara Hiler and I'm a senior
19 policy advisor and higher education campaign
20 manager at Third Way, a think tank here in
21 Washington, D.C.

22 We all know that a credential beyond

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1 high school has become a necessity in our changing
2 economy. And as this Department moves forward
3 today and in the coming months with its review of
4 which regulations to repeal, replace and modify,
5 we hope you keep in mind the critical role the
6 federal government can and must play in making sure
7 that students and taxpayers get value out of the
8 investment they make in our higher education system
9 each year.

10 And while we do not believe regulations
11 alone are a silver bullet to remedy the challenges
12 currently facing higher ed, I'm here today to talk
13 briefly about how maintaining and strengthening
14 the rules around three specific topics: gainful
15 employment, accreditation, and the cohort default
16 rate, can help ensure that the Department is
17 upholding three baseline promises to the
18 constituents it serves.

19 One, it's providing consumers with
20 basic information about where to invest their time
21 and money. Two, it's safeguarding taxpayer
22 dollars, and three, it's protecting students from

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1 attending the worst of the worst institutions.

2 Let's start with gainful employment,
3 a rule that was put in place to weed out the programs
4 that provide the least value to students by cutting
5 off programs from federal funds that fail a basic
6 debt to earnings test. In just its first year this
7 rule has already proven to be an incredibly
8 powerful consumer protection tool. The
9 first set of data released by the Department
10 uncovered 803 programs that failed the gainful
11 employment metric because their former graduates,
12 more than 115,000 of them, did not earn enough money
13 to pay down their student loan debt. This includes
14 114 programs where the majority of graduates
15 actually earned below the federal poverty line.

16 This data makes clear the powerful role
17 gainful employment can play in warning students
18 away from the lowest value programs on the market.
19 Attempts to delay implementation and loosen
20 enforcement mechanisms are both undermining the
21 rule and harming millions of students. We urge the
22 Department to leave the current gainful employment

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1 regulations as is and instead work with Congress
2 to ensure that all institutions are held to the same
3 outcomes-based standards moving forward.

4 Now let's turn our attention to
5 accreditation. Each year the federal government
6 invests \$130 billion in federal aid to colleges and
7 universities, but right now our accreditation
8 system, the watchdog for this investment, is
9 lackluster when it comes to protecting students and
10 taxpayers from spending a large amount of money at
11 institutions that aren't actually helping kids get
12 ahead.

13 In large part this is because the Higher
14 Education Act asks the creditors to look mainly at
15 input-based standards like program length, number
16 of faculty and administrative capacity, but
17 includes no information about how or what
18 accreditors should measure in regards to student
19 achievement as part of the accreditation process.
20 To put it bluntly, the accreditation process cares
21 more about how many books are in a library than how
22 many students actually graduate. Some

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1 institutions leave their students without degrees,
2 underemployed and with unmanageable debt, yet they
3 can still maintain full accreditation status.

4 To fix this the Department should
5 continue to work with NACIQI to ensure that
6 accreditors aren't approving low-performing
7 institutions to participate in Title IV programs.
8 It should also work to encourage legislation that
9 not only requires accreditors to take student
10 outcomes into account, but remove some of the
11 compliance-based activities that do nothing to
12 focus on student success.

13 Lastly, when looking at the cohort
14 default rate we believe it is time for an update.
15 This year only 11 out of the 5,000 institutions that
16 participated in student loan programs lost Title
17 IV eligibility as a result of CDR sanctions. In
18 large part this is because institutions have
19 figured out loopholes to help their students avoid
20 going into default by encouraging students to
21 instead enter into forbearance or deferment on
22 their federal loans. Instead, the

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1 Department should work with Congress to update CDR
2 to instead measure the loan repayment rate at a
3 given institution over a period of time. This
4 would require the federal government to look at the
5 percentage of students able to pay down at least
6 one dollar on the principal of their federal loan
7 over a certain period of time as opposed to just
8 the number of defaults. This would be a more
9 robust and reflective measure of students'
10 financial health than just the students in dire
11 straits, and protect students from attending
12 institutions that make their students financially
13 worse off.

14 In summary, as millions of new and
15 returning students find themselves on campuses
16 this month they are hopeful that their investment
17 in higher education will result in a better life
18 for themselves and for their families.
19 Maintaining and strengthening rules that protect
20 students and taxpayers will move us closer to this
21 promise. Thank you.

22 MS. McLARNON: Thank you. Our next

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1 speaker is Steve Gunderson, Career Education
2 Colleges and Universities.

3 MR. GUNDERSON: Good morning. I am
4 Steve Gunderson, President and CEO of the Career
5 Education Colleges and Universities.

6 On September 20th we submitted a
7 comprehensive document to the Department on
8 regulatory reform. Our report consisted of 10
9 pages addressing no less than 21 specific
10 regulations in need of review, possible reform and
11 in some cases outright repeal.

12 We are not addressing today those
13 regulations the Department is reviewing elsewhere
14 under separate initiatives, but we do want to lift
15 up specific regulations addressing four areas, the
16 first of which is academic issues. The Department
17 would do all of higher education a huge favor if
18 you would simply repeal the current rule converting
19 clock hours to credit hours. We believe the
20 definition of credit hours was and remains best
21 left in the hands of our nation's accreditors.

22 In today's postsecondary career

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1 education new and updated programs are an essential
2 part of equipping students with the most current
3 skill demands, however, we cannot do that when the
4 Department's ECAR timeline doesn't approve new
5 programs in a timely manner.

6 Here is the great irony of the gainful
7 employment regulation. When schools submit new
8 programs for reviews that would comply with the
9 goals of gainful employment, they can't get them
10 approved. Some schools have waited almost two
11 years.

12 In the area of financial aid we offer
13 ten recommendations, and without going into deep
14 detail in five minutes, I want to suggest the
15 following this morning. The revised verification
16 regulations have imposed significant new burdens
17 on both the student and the school. This is
18 especially the case for low-income students. The
19 R2T4 process has become overly complex. Many of
20 our students often need to stop and then restart
21 their education journey because life or jobs get
22 in the way. The current regulations ignore such

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1 realities.

2 We all will benefit if the Department
3 develops a clear tight definition of what
4 constitutes a third-party servicer for loans. No
5 school should deny a student loan monies needed for
6 their education, but schools should be allowed to
7 develop uniform policies equating loan limits to
8 education costs in ways that protect the student,
9 the school, and the American
10 taxpayer.

11 Finally, we ask the Department to
12 implement an appropriate and fair due process for
13 schools in both their certification for program
14 participation and in the use of HCM1 and HCM2.
15 Quite frankly, there is no due process for schools
16 today in either of these regulations.

17 Our third section looks at the
18 administration of the partnership between schools
19 and our government. We all seek an environment
20 where the Department and schools can work together
21 in the interest of best serving our students. Here
22 are some ways to improve this relationship.

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1 The incredible difficulty in finding a
2 consensus on state authorization may be telling us
3 that this simply is not the appropriate federal
4 role. Let the states handle it.

5 The previous Department issued a 203
6 page document designed to uniquely and exclusively
7 regulate the audits of proprietary schools. It is
8 obviously guided more by ideological hostility
9 towards the sector than any appropriate
10 modernization of the guide. We ask you to revise
11 it. Please develop one common set of metrics and
12 data for use in providing students and the public
13 information.

14 We currently have different
15 requirements for GE, the Financial Aid Shopping
16 Sheet, the College Scorecard and the Net Price
17 Calculator. There are clear deadlines for schools
18 to provide data during program reviews.
19 Unfortunately, there are no similar guidelines or
20 deadlines for the Department to respond. Schools
21 should not be left wondering what the status of
22 their review is.

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1 Our final section looks at regulations
2 governing a change in a school's ownership or
3 operations. The past administration's priority
4 was closing schools regardless of its impact on
5 students. We suggest you should prioritize
6 keeping students in schools, progressing towards
7 completion of their degrees. And if this were our
8 public priority, many of the protocols in the
9 regulatory side would change.

10 For example, you would allow buyers to
11 buy individual campuses, not every campus within
12 an OPE ID number. You would not require that new
13 buyers accept the liabilities of the previous
14 owners. Also, you would not condition a school's
15 participation in Title IV to accepting the
16 liabilities of the previous owner. The only one
17 hurt in such a rule is the students left on the
18 street.

19 Please review the current regulations
20 or interpretations defining persons in control.
21 The current interpretation unfairly hurts many
22 qualified professionals with no financial

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1 management role in a previous school from
2 continuing to serve students in our sector.

3 In conclusion, your task is
4 significant. We applaud you for the commitment
5 and we encourage you every step along this
6 important journey. We as a sector and as
7 individual schools stand ready to be helpful.
8 Thank you.

9 MS. McLARNON: Thank you. Our next
10 speaker is Dr. Monica Herk from Education
11 Research.

12 DR. HERK: Thank you. Is there a timer
13 that shows --

14 MS. SMITH: I've got one right here.

15 DR. HERK: Okay. Great.

16 Thank you. My name is Monica Herk.
17 I'm Vice President for Education Research at the
18 Committee for Economic Development.

19 CED appreciates the opportunity to
20 comment on regulations related to higher
21 education. As a non-profit, non-partisan,
22 business-led public policy organization that

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1 provides reasoned solutions in the nation's
2 interest, CED is a strong advocate for education
3 and has long supported a balanced approach to
4 government regulation.

5 In keeping with that balanced approach
6 our comments focus on three themes. First,
7 providing transparent and useful information to
8 students and families to improve the functioning
9 of higher education markets. Second, promoting
10 innovation in higher education by ensuring a level
11 playing field for all types of higher learning
12 providers, and third, enhancing quality assurance
13 by improving the accreditation system for higher
14 education, including greater emphasis on student
15 outcomes.

16 So to elaborate a little more on those
17 three themes, first of all, providing transparent
18 and useful information to students and families.
19 Markets and consumer-driven choice can do much to
20 ensure that consumers receive high-quality
21 services of the type they desire at the best
22 possible price, however, markets require informed

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1 consumers to deliver these outcomes.

2 For these reasons we recommend that the
3 Department reconsider and restructure the required
4 consumer information disclosures for institutions
5 of higher learning. Current consumer information
6 disclosures include, but are not limited to, the
7 Net Price Calculator, the Shopping Sheet, the
8 College Scorecard and others. It's unclear how
9 helpful this overwhelming abundance of information
10 is to students looking to make informed college
11 choices.

12 While much of the information that
13 institutions must report is mandated by
14 legislative law, the Department should revise how
15 it requires institutions to report this
16 information so that it is of the greatest benefit
17 to students.

18 On the second theme, removing
19 restrictions on the form and mode of learning in
20 higher education, like all sectors of the economy
21 the higher education market is evolving to meet the
22 demands of the 21st century. How students learn,

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1 the pace at which they learn and where they learn
2 are changing, sometimes dramatically, yet many of
3 your regulations still reflect traditional models
4 of delivering higher education.

5 Our regulations need to reflect these
6 changes and how students receive education to
7 better serve their needs, particularly those who
8 are pursuing their educations with the help of
9 non-traditional institutions of higher learning.

10 So specifically we suggest that the
11 Department should eliminate regulatory
12 requirements that are intended to disadvantage
13 particular sectors or learning models. They
14 should eliminate course and program duration
15 minimum requirements. They should not require
16 time in seat, the credit hour, as a measure of
17 academic sufficiency. They should base
18 satisfactory academic progress on whether a
19 student meets measurable learning objectives, not
20 the credits earned or attempted. And they should
21 encourage reciprocity agreements between states by
22 clarifying regulatory guidance on the definition

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1 of such agreements such as the State Authorization
2 Reciprocity Agreements, or SARA.

3 On a related point the Department
4 should eliminate distinctions based on
5 institutional ownership and control. This will
6 foster innovation and increase access to the widest
7 possible variety of high-quality educational
8 experiences. And the government should avoid
9 discriminating in law or regulation based on type
10 of institution, public, non-profit, for-profit,
11 campus-based or online, credit-based or
12 competency-based. We have some specific
13 recommendations in that regard that appear in our
14 written testimony.

15 And finally, to turn to our third main
16 theme, we feel the Department should modify the
17 accreditation process for institutions of higher
18 learning. The Department should preserve the
19 principle of non-governmental assurance of quality
20 for higher education institutions that our current
21 system of voluntary accreditation achieves,
22 however a review of existing regulations governing

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1 how this voluntary accreditation system is
2 organized is long overdue.

3 Specifically, the Department should
4 modify accreditor approval regulations to move
5 from a geographically-based accreditation system
6 to one based on type of school.

7 Is that it?

8 (No audible response.)

9 Great. The details appear in our
10 written comments. Thank you.

11 MS. McLARNON: Thank you. Our next
12 speaker is Jill Creighton, Association for Student
13 Conduct.

14 MS. CREIGHTON: Good morning. My name
15 is Jill Creighton and I serve as the President of
16 the Association for Student Conduct
17 Administration, a 501(c)(3) representing more than
18 3,000 higher education student conduct
19 administrators at approximately 1,200 colleges and
20 universities in all 50 states.

21 We are the highly-trained
22 practitioners who work with student disciplinary

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1 concerns at the postsecondary level including
2 cases of alcohol and drug misuse, theft, physical
3 assault, hazing, harassment, and sexual
4 misconduct. Ninety-three percent of us have
5 earned master's and/or terminal degrees. We've
6 been trained on how to investigate, ask questions,
7 apply laws, write thorough reports and innumerable
8 other skills required to do our work.
9 Many of our members also serve as deputy Title IX
10 coordinators.

11 For 30 years ASCA has taught campus
12 administrators to adjudicate student misconduct
13 from a lens of fundamental fairness using a myriad
14 of conflict resolution techniques including formal
15 investigation, adjudication, restorative justice,
16 conflict coaching, and mediation. Every day I'm
17 responsible for talking with, listening to, and
18 learning about our students' lives. I am charged
19 with ensuring that all students are treated with
20 respect and dignity and treated with the untenable
21 rights and fundamental fairness.

22 Today I will speak to three concerns

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1 raised by the student conduct administrator
2 community. First, I want to speak to campus
3 student conduct due process and deference to campus
4 administrations. Federal courts have determined
5 what encompasses adequate due process. Decisions
6 including Dixon v. Alabama State Board of
7 Education, Goss v. Lopez, and Esteban v. Central
8 Missouri State University give clear guidance that
9 we must provide adequate notice. This includes a
10 description of the alleged behavior, the date and
11 time of the incident, and some kind of hearing,
12 which includes the opportunity to respond to and
13 ask questions of the totality of the information
14 provided against the complainant.

15 In 1968 the Western District of
16 Missouri issued a general order that articulates
17 why campus processes should not resemble courts of
18 law and should have a separate and distinct
19 function related to the maintenance of a safe
20 campus environment. The courts have spelled out
21 the requirements of campus due process which are
22 widely used today. Any new rulemaking should

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1 reflect what the courts have already decided and
2 not attempt to make campus proceedings into a mock
3 courtroom.

4 ASCA teaches that campus processes must
5 be fundamentally fair, however, we do not believe
6 it is the role of the government to micromanage
7 them. The 2001 guidance states, one of the
8 fundamental aims has been to emphasize that in
9 addressing achievement levels of sexual harassment
10 the good judgment and common sense of school
11 administrators are important elements of a
12 response that meets the requirements of Title IX.
13 The '97 guidance, quote, offers school personnel
14 flexibility in how to respond to sexual harassment.

15 I encourage this administration to
16 continue to provide adequate flexibility to
17 schools and professionals so that they may feasibly
18 manage their administrative processes, including
19 student discipline.

20 Second, I want to address the
21 preponderance of the evidence standard as it
22 applies to Title IX. Case law asserts the

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1 preponderance of the evidence standard is the most
2 appropriate for student conduct proceedings.
3 ASCA recommends it because it is not only the
4 standard that reflects the integrity of equitable
5 and student -- equitable student conduct processes
6 for all parties. On a campus we are evaluating
7 whether a student violated our institutional
8 policies. We are not determining whether the
9 student broke the law.

10 The most severe sanction that an
11 institution can impose is expulsion from that
12 school. While this is certainly a serious
13 consequence, it is not comparable to the loss of
14 life or liberty. That is what the criminal justice
15 system protects.

16 Given the lower stakes, the
17 preponderance standard is the most suitable and
18 equitable standard by which to weigh a complaint.
19 Most campuses already use and have been using
20 preponderance for long since and long before the
21 rescinded 2011 guidance. This is the same
22 standard that civil litigations are decided.

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1 In the Doe v. Brandeis University case,
2 which was not a Title IX complaint, the court raised
3 concerns that applying different standards of
4 proof for different behaviors at the same
5 institution is in and of itself discriminatory.
6 Changing a campus's burden of proof through
7 regulation, whether at the federal or state level,
8 not only ignores institutional deference, it also
9 de facto determines the standard for all campus
10 violations lest we create a discriminatory
11 environment.

12 Third, I ask for clarification on the
13 use of mediation for sexual violence cases. On her
14 September 28th, 2017 call with NACUA, Assistant
15 Secretary Jackson stated that mediation is
16 permitted for a sexual violence case whereas the
17 2001 guidance specifically prohibits this.

18 We request the Education Department to
19 clarify this in their definition as they see it,
20 as well as the role of other methods of informal
21 resolution such as restorative justice, shuttle
22 diplomacy, and facilitated dialogue.

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1 In conclusion, student conduct
2 administrators have thus far been excluded from
3 conversations that directly impact our abilities
4 to do our jobs well. I understand the Department
5 of Education has been working with both NACUA and
6 ACE, but while the student conduct professionals
7 often work closely with campus legal counsel, we
8 have the valuable perspective of interacting
9 directly with all students, respondents,
10 complainants, witnesses and others.

11 The Department of Education would be
12 remiss to exclude our practical experience from any
13 future negotiated rulemaking or other procedures.
14 Therefore, we respectfully request to be included
15 in future efforts to change federal rulemaking.
16 We invite Secretary DeVos and Assistant Secretary
17 Jackson to attend the ASCA annual conference in
18 February 2018 as our guests. It is prudent and
19 necessary for the Department of Education to garner
20 a stronger sense of the student conduct profession,
21 those who work in this field, and the level of
22 training and expertise we bring to the table.

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1 Thank you for your time.

2 MS. McLARNON: Thank you. Our next
3 speaker is Eric Rosenberg of Rosenberg & Ball.

4 MR. ROSENBERG: Thank you. My name is
5 Eric Rosenberg. I am an attorney with Rosenberg
6 & Ball from Granville, Ohio, and I'm here to speak
7 about OCR's 2011 Dear Colleague letter, the 2014
8 directives which were addressed in OCR's recent
9 September DCL and question and answer. For the
10 past seven years the attorneys in my firm have
11 represented upwards of 100 college students in
12 Title IX disciplinary proceedings at the
13 university level and in 20 lawsuits filed in state
14 and federal court.

15 I was initially somewhat reluctant to
16 get into this area of work because I had spent five
17 years as executive director for a Christian NGO
18 working with sex-trafficked women and at-risk
19 women and girls in Asia, Africa, as well as North
20 America. To say otherwise, I have zero tolerance
21 for sexual assault or exploitation of women, but
22 I did work in countries where rule of law was often

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1 lacking and the parties involved in the
2 proceedings, whatever proceedings there were, felt
3 that there was no fairness or justice meted out by
4 the system. So when I heard that OCR was
5 conducting hearings to address ineffective
6 regulations that create inconsistencies or
7 otherwise interfere with regulatory reforms, I
8 asked to speak this morning.

9 The American College of Trial
10 Attorneys, which is cited in the 2017 question and
11 answer document from OCR -- it's a white paper on
12 campus sexual assault investigations -- noted,
13 quote, OCR has established investigative and
14 disciplinary procedures that in application and in
15 many cases fundamentally unfair to students
16 accused of sexual misconduct.

17 I brought with me a flash drive this
18 morning of nine of the lawsuits that I've filed
19 across the country which address the breakdown in
20 what we would consider traditional due process
21 rights in disciplinary proceedings with regard to
22 Title IX. The flash drive also contains a comment

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1 from a parent, an anonymous parent of a student who
2 went through a disciplinary proceeding.

3 Having spent years working with the
4 victims of sexual assault and exploitation, I think
5 it's important to note that the falsely accused
6 suffer tremendously under the allegations made
7 against them and are often not provided a voice.
8 I've received numerous phone calls from suicidal
9 students who have been accused of sexual misconduct
10 and are asking for help in systems they do not
11 understand. I'm personally aware of at least
12 three suicides of falsely accused students.

13 So I believe that OCR's September DCL
14 and question and answer is a remedy in part to the
15 ineffective and inconsistent application
16 triggered by OCR's 2011 and '14 directives.
17 However, some colleges are expressing an intent to
18 ignore or circumvent the OCR's September 2014 DCL
19 and question and answer.

20 Therefore, I echo requests made here
21 this morning that CFRs or rulemaking proceedings
22 occur with regard to this very important issue that

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1 would establish an opportunity for all parties to
2 be heard on these issues and I would hope based on
3 my experiences in this area that these regulations
4 would take the form of the American College of Trial
5 Attorneys white paper which recommends numerous
6 commonly held due process rights that most of any
7 of you would probably want if you were accused of
8 sexual misconduct, like notice of what the charges
9 are and the opportunity to cross examine your
10 accuser in some capacity. Because when these
11 fundamental concepts of American justice are
12 denied to the accused, everyone leaves the system
13 with a feeling of an inability to understand what
14 happened to them.

15 So I would sincerely encourage that the
16 types of due process rights addressed in the 2014
17 question and answer and the Academy be endorsed by
18 the Department. Thank you.

19 MS. McLARNON: Thank you. Our next
20 speaker is Patricia Hamill.

21 MS. HAMILL: Good morning. My name is
22 Patricia Hamill. I'm a mother of two sons and a

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1 college-aged daughter. I'm a feminist and I'm
2 concerned that victims of sexual assault get the
3 support they need on college campuses and that
4 their claims are taken seriously, but I'm also
5 concerned about fairness in the processes for all
6 because there are no sides to this very important
7 issue.

8 I come at these issues first and
9 foremost as an attorney who believes that everyone
10 benefits when participants in a process both are
11 and feel they have been treated fairly. I have
12 seen firsthand over the last five years in my
13 representation of nearly 100 college students,
14 mostly male accused students in college Title IX
15 disciplinary proceedings, of the ruin that can be
16 left behind because of deeply flawed systems. The
17 policies and procedures used at most colleges and
18 universities implemented in the wake of the 2011
19 Dear Colleague letter are seriously flawed and
20 overwhelmingly skewed against accused students,
21 the vast majority of whom happen to be male.

22 Because my time is limited I won't

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1 discuss the specifics of a particular case, but I
2 want to highlight what I have seen that is typical
3 in many Title IX proceedings.

4 As the accused student you get notice
5 of a complaint often with little to no detail. You
6 may be moved out of your dorm or banished before
7 any opportunity to be heard. The university may
8 appoint a single investigator to serve as police,
9 prosecutor, judge and jury regarding the complaint
10 against you. The investigator never, not once
11 tells you what you are accused of, or if you're
12 told, only in very general terms.

13 You never get to face your accuser or
14 hear what she or he has to say firsthand, or if you
15 do, you are severely restricted in your ability to
16 cross-examine or challenge your accuser's claims.
17 You're found responsible and sanctioned with a
18 lengthy suspension, often at least until your
19 accuser has left campus or worse, you are expelled.

20 You try to transfer to another school,
21 but now you've been branded a sexual predator and
22 no other school will take a chance on you. If

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1 you're lucky enough to be able to continue your
2 education, you will still have to disclose to every
3 law or grad school that you apply to that you have
4 a disciplinary record and that you were found
5 responsible for sexual misconduct.

6 This is the world we find ourselves in,
7 whether it involves two men, a man and a woman, two
8 women, a long-term relationship, a casual hookup,
9 at a private school or a public university.

10 The question that arises in this world
11 was aptly summed up by the federal judge in a case
12 involving our client, an accused male student in
13 a case against Brandeis University. The judge
14 stated, quote, "The role of reducing sexual assault
15 and providing appropriate discipline for offenders
16 is certainly laudable. Whether the elimination of
17 basic procedural protections and the substantially
18 increased risk that innocent students will be
19 punished is a fair price to achieve that goal is
20 another question altogether."

21 The answer to the question is of course
22 no, the elimination of basic procedural

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1 protections is never acceptable.

2 So what can the Government do in light
3 of this administration's goal of reducing
4 Government overreach? And important first step
5 was taken on September 22nd by the withdrawal of
6 both the 2011 Dear Colleague letter and the 2014
7 questions and answers. I'm heartened that this
8 administration also intends to move forward
9 through the appropriate legislative process with
10 notice and comment for all before promulgating any
11 further rules or regulations.

12 The September 17th, 2017 interim
13 guidance provides and should serve as a foundation
14 for any further rulemaking. At a minimum there
15 should be notice of the factual basis of a
16 complaint, allowance of the school's process to
17 follow behind any criminal proceedings, an
18 investigation by a well-trained, competent,
19 unbiased and impartial investigator, a right to
20 meaningfully comment on any investigation report,
21 a right to an informal resolution of a complaint,
22 a right to meaningfully challenge or cross-examine

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1 the complaining student. And I thank you for all
2 of your efforts.

3 MS. McLARNON: Thank you. The next
4 speaker is Cynthia Garrett, Families Advocating
5 for Campus Equality.

6 MS. GARRETT: Thank you. I'm
7 Co-President of Families Advocating for Campus
8 Equality, a non-profit that supports and advocates
9 for hundreds of students wrongfully sanctioned for
10 alleged Title IX violations. I will be reading
11 excerpts from the accounts of 12 FACE families
12 which illustrate a system severely in need of
13 reform.

14 "My underage son's professor purchased
15 alcohol, introduced his accuser and cheered them
16 on to have sex. He passed two polygraph tests. We
17 have recordings of a university attorney telling
18 him not to waste time trying to defend himself and
19 another from a witness admitting she's been
20 intimidated by the university not to testify.
21 Suspended for three years."

22 "I saw my innocent son lose everything.

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1 His hopes, his dreams, any trust. We picked him
2 up off the campus lawn, in a crumble and vomiting,
3 after a meeting with the dean. I didn't sleep for
4 months, worried he'd take his own life, pulling him
5 from the depths of despair to see his future.
6 There was no sex. He said no. The nightmare
7 rocked our family, brought us to our knees. I pray
8 for the day I can tell my story to senators in a
9 hearing."

10 "She told her roommates the day after
11 how cute he looked in boxer shorts and what a good
12 kisser he was and tagged him in pictures on her
13 social media account. Two days later she went to
14 the student conduct office and claimed he'd
15 sexually assaulted her. Expelled."

16 "While it was clear in the end she'd
17 fabricated her claims, my son was still left
18 suicidal with severe mental illness. Two
19 extensive hospitalizations, three law semesters,
20 \$90,000 and the complete loss of his hopes and
21 dreams."

22 "My son's doctor asked how often he

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1 thinks of killing himself. He replied nearly
2 every day. We left that appointment with yet
3 another antidepressant hoping this one will keep
4 him out of the dark hole he now lives in."

5 "I remember crying when I vacuumed the
6 living room. Sobs, tears dripping on the carpet,
7 trying to understand what was happening and
8 mourning the loss of my son's dreams. I worried
9 I would find him dead in the morning. What
10 happened to him was a nightmare and it affected our
11 entire family. I felt like I couldn't keep any of
12 my children safe."

13 "My giant offensive lineman son sobbing
14 in my arms saying, mom, I don't know why she's doing
15 this to me. My heart grabbed, twisted and yanked
16 out. I will never forget his voice, his face, his
17 tears."

18 "What I remember most is his smile, the
19 pride beaming on his face the first day at his dream
20 college. He had worked so hard to get there. What
21 comes from Title IX? Suicide watch, anxiety,
22 depression, PTSD. Who can he trust? Trying to

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1 understand how this could be allowed to happen.
2 His life matters, or it should."

3 "My son helped a girl crying at a party.
4 They kissed, clothes on, no sex. A week later he's
5 accused of sexual misconduct, but the girl didn't
6 want to participate. Doesn't matter. He's
7 expelled on graduation day."

8 "The impact of this nightmare has
9 changed our family and our son forever. His mental
10 health issues have been diagnosed as a direct
11 result of the trauma imposed on him by a flawed
12 process and bullying by administrators and
13 friends. Four-and-a-half years later he suffers
14 from PTSD with debilitating anxiety that prevents
15 him from work and study. No doctor can help. We
16 are helpless."

17 "Something deep inside me told me to go
18 home. I packed up and headed out. As I drove, I
19 felt panic. I knew something was wrong. I tried
20 to talk myself out of it. Once home I went to the
21 garage, opened the door gazing up. I see fingers
22 fumbling around a rope. What kind of rope? Where

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1 did he get that? I glance down. Tennis shoes
2 teetering on a large bucket. My face meets his.
3 Tears streaming down his face. He is broken. I
4 start to shake. My voice cracks through my tears.
5 Honey, this isn't the way. Things will get better.
6 Sobs. I help him down. Take the rope from his
7 neck. Hold him tight to pull him from the depths.
8 I won't let go. I will fight for all of us."

9 "It's hard to believe our experience
10 with Title IX could be worse than his father's
11 year-long battle with brain cancer when our son was
12 only five years old, but is in fact far worse. So
13 I can tell former Vice President Biden that I
14 understand it is horrible to lose a beloved family
15 member to brain cancer at his prime as he did his
16 beloved son, but I can also say that Mr. Biden was
17 blessed to lose his son to brain cancer rather than
18 losing him 20 years later before his prime to a
19 corrupted Title IX process that caused our son to
20 lose his mind."

21 Thank you.

22 MS. McLARNON: Thank you. The next

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1 speaker is Christopher Muha of KaiserDillon.

2 MR. MUHA: Good morning. My name is
3 Chris Muha. I'm an attorney here in Washington,
4 D.C. at KaiserDillon. My firm has represented
5 students on both sides of the sexual misconduct
6 process, but the great majority of the students who
7 hire us; and they've come from almost 100 schools
8 nationwide, are ones who have been accused of
9 sexual misconduct, and I'm here today to talk about
10 their experiences.

11 For decades the problem of sexual
12 assault was swept under the rug, but the process
13 of confronting that very real problem has led to
14 new abuses. Those abuses are real, they're
15 spreading and they threaten to rob campus
16 proceedings of all legitimacy.

17 At school right here in D.C., for
18 instance, you can be expelled for sexual assault
19 without getting to ask your accuser or any other
20 witness a single question or getting to see any of
21 the evidence against you. The school's
22 investigator prepares a secret report based on

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1 secret evidence that goes to an administrator you
2 never get to meet with who decides your fate with
3 no right of appeal of any kind.

4 At a well-known school in the Midwest
5 we learned last year that the person deciding our
6 client's appeal had recently retweeted, quote, "To
7 survivors everywhere, we believe you." We asked
8 that he be recused, and that request was denied.
9 Imagine if that same person had instead retweeted,
10 "To accused students everywhere, we believe you."
11 Is there any doubt that he should have been and
12 would have been recused? Not surprisingly every
13 single student at that school who went through its
14 formal sexual misconduct process that year was
15 found responsible. Every single one.

16 Consider another client of ours who was
17 found responsible for a forcible sexual assault by
18 a different Midwestern school even after tape
19 recording his accuser admitting that he had not
20 assaulted her. That student was still found
21 responsible and suspended for two years.

22 Being falsely accused of sexual assault

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1 takes a real visible toll on our clients, both male
2 and female. They lose sleep, they lose weight,
3 they lose friends, their grades suffer and the
4 majority of them end up in some form of counseling.
5 They're forced to live in a world where almost
6 everyone is taught to believe the accuser, and they
7 have to live that way for months.

8 I represent a client right now who was
9 charged with rape by his school, immediately put
10 on an interim suspension without any kind of
11 hearing, and finally after 17 months was given a
12 hearing and cleared of the rape charge. For 17
13 months he had to live as a presumed rapist with no
14 kind of hearing to clear his name.

15 In my experience Secretary DeVos is
16 absolutely right when she says that the current
17 system doesn't serve anyone very well. I
18 represent a young man who was twice expelled for
19 sexual assault by his school and who has twice now
20 had his expulsion overturned in court because his
21 school didn't give him a fair hearing.

22 That client is truly innocent. And you

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1 don't have to take my word for it. The school
2 adjudicator who presided over his second hearing
3 actually found him not responsible after two days
4 of deliberations. She reversed course only after
5 three days of secret lobbying by the school's
6 counsel.

7 Our client and his accuser now face the
8 prospect of a third campus hearing. That means one
9 of two things: Either an actual rape survivor will
10 have to relive her nightmare a third time or, as
11 I truly believe to be the case, an innocent student
12 will have to relive his. Both possibilities are
13 tragic and both would have been avoided if the
14 school had given him a fair hearing from the start.

15 If the trend started by the 2011 Dear
16 Colleague letter continues, stories like the ones
17 by firm sees every day won't be outliers; they won't
18 be unusual. Without real due process stories like
19 these will be the stories through which our country
20 understands the problem of campus sexual assault.

21 When people think of campus sexual
22 assault, they'll think of Rolling Stone and UVA.

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1 They'll think of schools with secret evidence.
2 They'll think of students who wait 17 months for
3 a hearing. They'll think of tape-recorded
4 confessions that are ignored. They'll think of
5 innocent kids who are expelled because of a school
6 lawyer. And when that happens, it's only a matter
7 of time before a campus assault is trivialized
8 again, before survivors are marginalized, before
9 men and women are denied their education.

10 Due process now does more than just
11 protect the wrongly accused students of today. It
12 also protects the survivors of tomorrow. Thank
13 you.

14 MS. McLARNON: Thank you. The next
15 speaker is Alison Stuart.

16 MS. STUART: My name is Alison Stuart.
17 Thank you for the opportunity to be heard.

18 It was recently reported a young
19 college couple was spotted roughhousing on campus.
20 A third party mentioned it to a mandatory reporter,
21 and so it began.

22 The school's Title IX coordinator

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1 launched the investigation. The young lady was
2 interviewed and refuted the allegations against
3 the young man. She insisted the coordinator was
4 wrong, that the young man had never abused her and
5 explained she was not a battered woman as the
6 coordinator argued she was. The young man was
7 expelled despite the evidence.

8 How is it an individual disproves an
9 allegation against another and is created a victim
10 by her school? How is an innocent person expelled
11 for no legitimate reason? Promises to protect
12 both students from a hostile educational
13 environment are broken and the single
14 investigator/judge/juror feels justified in her
15 decision. Title IX and the truth be damned.

16 Their experience is not the outlier as many
17 might have once believe.

18 Five years ago in the seventh week of
19 his freshman year, my college student accepted an
20 invitation to engage in consensual sex with a
21 classmate. It was brief. His partner found it
22 lacking and ridiculed his sexual performance.

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1 Days later she accused him of rape.

2 He was not arrested, charged or
3 indicted by the grand jury. As every American
4 citizen he was guaranteed his right to due process
5 and his rights were upheld. The truth was quickly
6 revealed and the case dismissed. The possibility
7 of 42 years in the federal penitentiary was
8 unthinkable, but nothing compared to the ordeal my
9 student would face at his university.

10 Wielding the power of the 2011 Dear
11 Colleague letter and threatened by loss of federal
12 funding, his university leveled a full frontal
13 attack against him. He was subjected to an
14 investigation under the school's Title IX policy
15 and was found not responsible 73 days later. He
16 was dragged through a second investigation of the
17 same incident by a separate school office under the
18 student code of conduct policy and found not
19 responsible for a second time over six months
20 later. Double jeopardy.

21 Due to the sanctions levied by the OCR
22 against the school for previous Title IX

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1 violations, my student's case was subject to a
2 third review. Triple jeopardy.

3 A 2012 no contact order imposed against
4 my student restricted his movement and banned his
5 right to speak which continues today despite his
6 proven innocence. He was subjected to stalking
7 and harassment by his accuser and a third party and
8 the university refused to intervene. No one
9 protected him.

10 After 12 months my student finally
11 received the hearing he was ready, willing and
12 prepared for 9 months earlier. His accuser was
13 allowed to introduce unauthorized evidence. My
14 student was stopped when putting forth authorized
15 evidence. No one set it right.

16 Imagine losing your right to speak
17 freely, to defend yourself against disproven
18 allegations. Imagine constant harassment and
19 bullying of the most vicious kind. Imagine living
20 that horror. Imagine the trauma. Imagine the
21 aftermath, losing your son or daughter to suicide.
22 Mine was nearly taken by an intended drug overdose.

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1 One thousand, eight hundred and
2 twenty-five days ago today my family was changed
3 forever. Medical diagnosis attributed the
4 debilitating anxiety, depression and PTSD to his
5 OCR school experience. At best he can be described
6 as irreparably damaged by the hands of school
7 administrators, the Department of Education and
8 the OCR. Title IX was the weapon rather than the
9 shield of protection. Adjudication by a biased
10 system without the benefit of fairness, equal
11 treatment, due process and the presumption of
12 innocence nearly cost him his life and mind.

13 It's time to dig deep and work together
14 for all students including the accused. Don't be
15 that grossly misinformed Government official.
16 Take every voice seriously. Don't allow misguided
17 school administrators motivated by the bottom line
18 to place their interests ahead of their students',
19 and don't deprive every student their right to
20 equal and just guidance under Title IX law. Thank
21 you.

22 MS. McLARNON: Thank you. Our next

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1 speaker is Jonathan Andrews.

2 MR. ANDREWS: Good morning. My name
3 is Jonathan Andrews and I am both a sexual assault
4 survivor and a wrongfully accused student. While
5 my experience is holistically quite horrible, I
6 want to speak to you specifically about my
7 experience being accused in college.

8 In 2015 after being violently assaulted
9 by a fraternity brother, a group of fraternity
10 brothers in retaliation for my attempts to report
11 and get justice, filed their own sexual assault
12 complaint against me with the school. I was later
13 found not responsible in February of 2016, and on
14 the same day the same group of men filed a second
15 complaint. I was summarily found responsible and
16 expelled.

17 It is my firm belief that in the absence
18 of 2011 guidance I would have been given the
19 opportunity to fairly defend myself and clear my
20 name. Most egregious among the requirements laid
21 out in the 2011 guidance was the preponderance of
22 the evidence standard. Proponents say that this

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1 evens an already unbalanced playing field and tilts
2 it in favor of the accused. However, on its face
3 the preponderance of the evidence is an un-serious
4 solution to a very serious problem. As a survivor
5 I believe using such an unreliable standard of
6 evidence trivializes assault and rape.

7 During my rape to add insult to injury
8 I was constantly harassed by my accusers and my
9 assaulter. I received threatening letters in my
10 campus mailbox, attacks on social media and
11 anonymous text messages. One accuser wrote after
12 learning I was found not responsible, "Don't worry.
13 His celebration will be short." The implication
14 was clear. No matter how many times I was found
15 not responsible, they would continue to make
16 increasingly fraudulent claims against me until I
17 was expelled.

18 I begged my school to intervene and they
19 refused, so I attempted to take my own life.
20 This led to an extended stay in a mental health
21 facility where I was treated for PTSD, anxiety, as
22 well as few other mental health problems.

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1 The common assertion is that schools
2 like mine acted with disregard to the 2011
3 guidance. However, the reality is that colleges
4 felt empowered by the 2011 guidance to abuse the
5 rights of their students with relative impunity
6 knowing that the OCR of the day would likely side
7 with them as long as they found the student
8 responsible. A culture was created on this that
9 rendered every accused student guilty until proven
10 innocent, a direct contradiction of the most
11 important principles of American justice.

12 Another common assertion is that only
13 10 percent of accusations are false. The reality
14 is that this erroneous claim is not just
15 misleading, it is completely unsupported by
16 serious evidence. No comprehensive study has ever
17 been held to estimate the number of false
18 accusations on college campuses, but it does allow
19 certain special interest groups to create a
20 dangerous narrative that false accusations are not
21 a serious problem. Every innocent student
22 punished for something they didn't do, no matter

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1 how high or how low the percentage, is a real human
2 life ruined and we must do better to ensure this
3 doesn't happen again.

4 I applaud the Secretary's decision to
5 rescind the 2011 guidance. It is a crucial first
6 step to correcting the mistakes of the past,
7 however, I believe it doesn't go far enough. Both
8 parties must be given the right to have active
9 counsel in their hearings. Survivors must have
10 the opportunity to choose their method of healing
11 by opening up the path of mediation. Accused
12 students must have the right to face their accusers
13 and cross-examine witnesses brought against them.
14 The standard of evidence used in these cases must
15 be raised to clear and convincing. And finally,
16 dangerous investigative practices like the single
17 investigator model must be discouraged. It is
18 only with comprehensive reforms like these that we
19 can begin to set things right. Thank you.

20 MS. McLARNON: Thank you. The next
21 speaker is Mary Gilmore.

22 MS. GILMORE: Good morning. Thank you

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1 for letting me speak. I am a FACE parent and a
2 lawyer from Vermont. My experiences with Title IX
3 have been profoundly disturbing. I attribute the
4 fact that I survived and my family survived and my
5 son survived to the support of others, including
6 FACE. It's still extremely, extremely painful for
7 me to discuss this because it's recent, 2016-2017,
8 at the top school in the country.

9 The story about Jim. Jim met Sally in
10 a bar with friends. They weren't freshmen. He
11 was a graduate student and she was a senior. They
12 talked for several hours before having sex in Jim's
13 room. Sally had only one drink. Jim tried to
14 pursue the relationship afterwards, but got the
15 cold shoulder.

16 Months later he got a visit from the
17 police and then an email from Title IX directing
18 him to move out of his dorm room of three years
19 immediately in the dead of night right before
20 finals when he was studying. Thereafter he had
21 limited access to classes, no ability to socialize,
22 no ability to recreate on campus.

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1 Sally had a boyfriend. She knew she
2 had been seen going home with Jim. The next day
3 she texted her boyfriend. She questioned him
4 about where he had been and then she claimed that
5 she waited at the bar for him and when he didn't
6 show up -- she was very, very, very drunk and was
7 assaulted by someone; she didn't know who. The guy
8 had not used a condom, she claimed. She told him
9 not to tell anyone. He texted back that he was a
10 mandatory reporter because he was an RA. I'll
11 leave aside the system that creates that kind of
12 hostility that doesn't protect the confidence of
13 an alleged survivor.

14 As time went on Sally's story became
15 increasingly embellished to her friends and her
16 boyfriend. What started as an alcohol-infused
17 hookup became a violent sexual assault. The
18 evidence showed though that Sally was not
19 intoxicated because there were joint degree
20 students that were with them at the time. She
21 ended up admitting it. She had chatted to friends
22 by text four times, lengthy text messages that were

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1 spelled correctly during the course of this violent
2 sexual assault.

3 A roommate of Jim's who was 12 inches
4 away, divided by a drywall, heard sounds in the room
5 that were normal, and best of all there was an Uber
6 driver who could testify that they had almost had
7 consensual intercourse in the back seat, that Sally
8 was not drunk, that she was completely sober and
9 that she expressed a desire and a willingness to
10 go home to bed with Jim.

11 When Jim gave this evidence to the
12 investigator, he thought the case would be dropped,
13 however, the investigative report was crushingly
14 biased in favor of Sally. The report contained
15 numerous factual errors, covered up things like the
16 curated text messages Sally had with her boyfriend.

17 Most significantly the report
18 contained two provable lies: The first was about
19 the text messages between Sally and Jim. But worst
20 of all the second one so as to support not including
21 the Uber driver's statement, the investigator
22 claimed that she could not contact to confirm this

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1 with the Uber driver, had tried twice and the Uber
2 driver had no voicemail. Fortunately, Jim's
3 investigative team was able to verify that he had
4 never -- the Uber driver had not been contacted and
5 had voicemail.

6 The case notwithstanding went on for
7 another seven painful weeks while Jim and his team
8 fought the evidentiary issues and broadening the
9 investigation because the Title IX investigator
10 only wanted to talk about what happened in the
11 bedroom. His Title IX investigator who was caught
12 in an outright lie; the Provost Office knows it,
13 is still doing Title IX investigations at this top
14 school.

15 The harm caused to Jim by the false
16 claim: He lost 25 pounds, he cried frequently, his
17 career was delayed.

18 I tell you this story for one last
19 point: Jim survived this. Okay? He's damaged
20 physically, but he survived this because the
21 socioeconomics were in his favor. That is not
22 happening to most of these boys. There needs to

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1 be reform and it needs to be now. Thank you.

2 MS. McLARNON: Thank you. The next
3 speaker is Colonel Raymond Alves.

4 COL. ALVES: Good morning. I'm
5 Colonel Ray Alves and I'm here as a father to
6 provide a face to the severe repercussions the lack
7 of due process and wrongful sexual assault
8 accusations have on our young men.

9 My son is a victim. He's a victim of
10 the overreach of Title IX, specifically the Dear
11 Colleague letter which blatantly denied the
12 accused their rights of due process and a Virginia
13 law that brands students as sexual predators
14 forever.

15 In April 2016 my son was accused of rape
16 for a consensual sexual encounter he had with a
17 female student over six months earlier.
18 Criminally the police investigated and dismissed
19 the case, but within three months my son was
20 expelled from school and branded a rapist by
21 Virginia Tech, not in any court of law.

22 Let me be clear, my son is innocent of

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1 all accusations levied against him. He is a victim
2 because today Title IX is used as a politically --
3 as a political tool to appear tough on sexual
4 assault instead of ensuring students learn in a
5 safe secure environment and guaranteeing that
6 rights of both the accused and accusers are
7 protected.

8 When his student conduct proceeding
9 first started, I asked Virginia Tech's
10 representative who owns the burden of proof in this
11 process. To this day I have not received a
12 straight answer. Additionally, schools do not
13 have the capability or capacity to investigate or
14 adjudicate these cases in the manner they deserve.
15 In my son's case the Tech investigator had minimal
16 formal training, did not deem it necessary to speak
17 to some of the witnesses provided by my son, and
18 she did not investigate why the accuser's story
19 changed multiple times. It was through
20 our own investigation, not Virginia Tech's, that
21 we found text messages from the accusers to a friend
22 the day after the alleged assault stating that my

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1 son was real good and asking if it was too soon to
2 ask him -- to add him as a friend on social media.

3 But it was more than just the
4 investigator on my son's case. The vice dean in
5 charge of Title IX affairs stated on social media,
6 "We always put the victim in the driver's seat."
7 This statement alone should fill everyone in this
8 room with concern. This is the leader of Title IX
9 providing direction to his staff that accusers are
10 victims the moment an accusation is made and to
11 immediately assume anyone accused is guilty. How
12 can this process be considered fair and impartial
13 with this kind of top-down direction?

14 Also, the collegiate sexual assault
15 process reeks of cronyism. At Virginia Tech
16 members of the Title IX team who found my son guilty
17 are friends socially and all advocate for the same
18 victim-focused approach to sexual assault with no
19 discussion whatsoever on the rights of the accused.
20 But most importantly they all work for a school that
21 has a huge stake both financially and in the
22 preservation of its reputation ensuring they look

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1 tough on sexual assault.

2 The accuser in my son's case came right
3 out and publicly demanded my son's expulsion, and
4 if that did not happen the school would be sued.

5 While our colleges tout the high-minded
6 need to educate our young people, they also
7 religiously guard their reputations and bottom
8 lines. Virginia Tech administrators had a clear
9 stake in minimizing due process and finding my son
10 guilty. The current political climate and Dear
11 Colleague letter have essentially allowed schools
12 to remove any semblance of due process in the
13 adjudication of campus assaults to meet the goals
14 of well-meaning but over-zealous victims'
15 advocates.

16 There are those victims' advocates who
17 say the collegiate process does not have lasting
18 effects on the future of those who are wrongly
19 accused. They take the attitude of you may have
20 to break a few eggs to make an omelet.

21 In an attempt to get his life back on
22 track my son was denied acceptance to multiple

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1 schools because of a wrongful accusation and failed
2 due process. One school admitted him after he
3 provided a letter as part of his application, then
4 subsequently rescinded his admission when they
5 learned Virginia Tech violated state law and did
6 not mark his transcript correctly. No
7 repercussions to Virginia Tech for violating the
8 law, but my son was devastated.

9 Everyone in this room understands the
10 value of education and the lifelong detrimental
11 effects of its denial. Our colleges and
12 universities are ill-equipped to adjudicate
13 life-altering cases of this magnitude and it's
14 vital the adjudication of sexual assault is fair
15 and unbiased for both the accused and accuser.

16 I will close with two things: First,
17 I'm speaking for myself and not on behalf of the
18 military, but many of the same sexual assault
19 victims' advocates here today and in Congress feel
20 the military should not adjudicate cases within the
21 military because there is an inherent bias to take
22 care of their own. Those same individuals

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1 advocate for a biased process in colleges that does
2 exactly what they're arguing against in the
3 military.

4 But regardless of your thoughts on how
5 the military should adjudicate sexual assault
6 cases, I will tell you as a previous commander if
7 there was an alleged sexual assault in my unit, I
8 had at my disposal professionally trained law
9 enforcement investigators and lawyers to ensure
10 the rights of both the accused and the accuser.
11 Not true on college campuses. I truly do not
12 understand how victims' advocates support a Title
13 IX process that does not utilize trained
14 professionals and ignores due process.

15 Second, I hope and pray that those of
16 you who have children never have to see them go
17 through what my son has had to go through. You did
18 not see the depression resulting from a wrongful
19 accusation and expulsion from college. You were
20 not there when I had to scramble his friends when
21 he called crying from his car alone questioning why
22 he was being treated like a convicted felon. At

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1 21 he felt as if his life would be forever defined
2 this event and this false accusation would
3 continually overshadow any accomplishments. Not
4 what I want for my son.

5 I also have two daughters. I want them
6 to be able to get an education in a safe environment
7 free from sexual assault, but completely tilting
8 the scales of justice through incorrect
9 application of Title IX and the Dear Colleague
10 letter harms all involved, both the accused and
11 accusers. Thank you very much for your time.

12 MS. McLARNON: Thank you. We're going
13 to take a 10-minute break and come back 10:40.

14 (Whereupon, the above-entitled matter
15 went off the record at 10:29 a.m. and resumed at
16 10:41 a.m.)

17 MS. SMITH: Ladies and gentlemen,
18 we're going to reconvene, please. If you want to
19 take your seats?

20 DR. McARDLE: Next we have Alison Kiss
21 from the Clery Center.

22 MS. KISS: Good morning, honored

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1 members of the U.S. Department of Education staff.
2 I want to thank you for the opportunity to provide
3 testimony to you all at this hearing.

4 I'm proud to serve as the Executive Director of
5 Clery Center, a national non-profit organization
6 based in Pennsylvania.

7 Connie and Howard Clery founded the
8 organization following the rape and murder of their
9 daughter Jeanne by another student whom she did not
10 know. We have served at the heart of campus safety
11 for the last three decades through advocacy, policy
12 and training for colleges, university students and
13 families.

14 On behalf of the board and the team I
15 appreciate the opportunity to join you and discuss
16 the requirements specifically of the Jeanne Clery
17 Disclosure of Campus Security Policy and Campus
18 Crime Statistics Act.

19 My remarks at this hearing are informed
20 by a 15-year career in the criminal justice and
21 campus safety industry.

22 Before I talk I just wanted to deviate

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1 a little bit about the previous testimony. There
2 appears to be an intense misunderstanding of some
3 basic campus fundamental fairness. The narrative
4 today focused a lot on respondents or accused
5 students never having responsibility for their
6 actions. It painted a dangerous picture for me in
7 terms of false accusations and I do want to point
8 to my colleague who testified earlier, Jill
9 Creighton from Student Conduct Association, and
10 encourage the Department to look to them to
11 understand more about the campus process and how
12 it is different from the criminal justice system.

13 The Jeanne Clery Act was first passed
14 in 1990 and was amended six times, most recently
15 via the VAWA amendments. It is best known for the
16 disclosure of crime stats as a means of consumer
17 protection, but further is an essential part of the
18 dynamic landscape of college campus safety. This
19 includes policy disclosures through the annual
20 security report.

21 When a crime happens on a college
22 campus, students, parents or staff will often go

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1 to the annual security report to understand
2 options, process, reporting. If they suspect that
3 their institution violated the law, an individual
4 may file a Clery Act complaint, and this has
5 resulted in major changes in the higher education
6 landscape.

7 Notably, as soon as a complaint was
8 filed in 2011 against Pennsylvania State
9 University, colleges and universities proactively
10 across the country started to revisit their
11 policies for minors on campus. Further, they
12 looked at training and identifying campus security
13 authorities, those responsible for addressing
14 crimes when they're reported to them and passing
15 information along to campus law enforcement. So
16 nothing goes unreported.

17 In 2017 Occidental College in
18 California was found in violation of the Clery Act
19 noting failure to meet obligations to compile and
20 disclose statistics, issue timely warnings,
21 maintain crime logs and have adequate policies and
22 procedures in place.

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1 As a result of the initial complaint in
2 2013 Occidental took steps to improve compliance
3 and safety within the community. This includes
4 hiring trained staff, providing additional
5 training, professionalism of policies and
6 procedures, improving transparency for safety
7 concerns. These findings only represent a small
8 sample of program reviews available to the public
9 that serve to assist colleges and universities to
10 build comprehensive compliance programs.

11 One of the strengths of the Clery Act
12 is its evolution over time. Through the
13 amendments to the law we've seen the additions of
14 rights for victims of sexual assault, emergency
15 notification, the addition of dating violence,
16 domestic violence and stalking, and the
17 requirement for an equitable student conduct
18 process less by trained administrators. These
19 changes have strengthened safety efforts and
20 professionalized staff in campus communities.

21 While regulation reform is geared at
22 reducing regulatory burden, it is also prudent to

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1 consider changes that may strengthen the law, in
2 this case a law geared towards transparency and
3 awareness of safety issues. To this end there are
4 some areas of Clery that have not played out as
5 intended, and I wish to draw the attention to these
6 two areas.

7 One, study abroad or foreign non-campus
8 property. Current guidance under the Clery Act
9 requires colleges and universities to collect and
10 report statistics that are reported at non-campus
11 properties in foreign locations. This task is
12 often time consuming yet does not inform safety.
13 A more effective replacement could be requiring
14 institutions to simply link and publish State
15 Department advisories specific to foreign
16 locations.

17 Non-campus property or short stays.
18 Current guidance also requires reporting of crimes
19 in short stay locations such as hotels or
20 institution-sponsored trips. We respectfully ask
21 for clearer guidance for institutions to consider
22 in these trips. These areas could be refined and

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1 could strengthen campus safety and make the
2 regulations less burdensome for institutions.

3 Lastly, I want to note that Clery has
4 evolved based on the needs of the student
5 community. We've seen a lot in the news lately
6 about hazing, and there's no universal definition
7 for hazing on colleges and university campuses,
8 making it challenging for colleges and
9 universities to enforce.

10 Recently Congressman Meehan and
11 Congresswoman Fudge introduced the bipartisan
12 REACH Act in the house which would amend Clery to
13 include the disclosure of hazing policy and
14 statistics and to mandate educational programs on
15 hazing to the student population.

16 MS. SMITH: Time.

17 MS. KISS: Thank you.

18 DR. McARDLE: Our next speaker is Tom
19 Rossley.

20 MR. ROSSLEY: Good morning. I would
21 like to thank you for the platform to speak today
22 and I would like to thank you for listening.

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1 My name is Tom Rossley. I'm a dad from
2 Chicago, Illinois. My wife and I are celebrating
3 our 31st wedding anniversary today long distance,
4 and I'm here to speak on Title IX.

5 We have three adopted children from
6 Central and South America. My two sons and I each
7 attended Drake University in Des Moines, Iowa.

8 Our Title IX nightmare began in October
9 '15 when my oldest son was called into the dean's
10 office for a possible violation of Drake
11 University's sexual assault policy. Immediately
12 my son disclosed his ADHD, anxiety, and
13 language-based learning disabilities. He was
14 accommodated for his disabilities in the
15 classroom. They were never accommodated in the
16 Title IX process.

17 When told why he was being questioned,
18 he proclaimed that's what she did to me. An
19 investigation into his claim was never opened
20 because the university wanted to consider it
21 retaliation. I cannot find anywhere, not in Title
22 IX, not in the Clery Act, and not in Drake policy,

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1 that a university can refuse to investigate a claim
2 of sexual assault if they consider it retaliatory.

3 The unbiased investigator was a
4 self-proclaimed victims' rights advocate and
5 activist. She was the Title IX coordinator at Iowa
6 State University and she had been a sex crimes
7 prosecutor in a neighboring county for over 10
8 years. She had never investigated a case at Drake
9 before.

10 When my son told her that he had no
11 recollection of having sex with this woman as was
12 being claimed, the investigator wrote across her
13 notes the word "lie." She neglected to interview
14 over nine witnesses, chose to eliminate the
15 testimony of my son's roommate who was in the room
16 all night, and there was significant testimony in
17 her notes that never made it to her findings, much
18 of which could have helped my son's case.

19 Interestingly, the dean of students,
20 who had been in his role for just one month at the
21 accusation had editorial rights to the
22 investigator's report, declared my son's guilt

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1 upon reading the report and publicly stated he
2 would be seeking his expulsion in the upcoming
3 hearing, the very hearing which was supposed to
4 establish whether a violation occurred.

5 Shockingly, the acting dean decided to insert
6 himself into the hearing as a second prosecutorial
7 complainant with the university's attorney by his
8 side. The female was the first complainant with
9 her attorney by her side. The acting dean also
10 retained the right to appeal any decision of the
11 hearing officer. All appeals including his own
12 were required to be made to the acting dean himself.

13 My son's attorney, realizing that this
14 didn't appear to comply with Title IX, asked the
15 hearing officer for comparable speaking time that
16 afforded the complainants. It was going to be
17 granted until the Title IX coordinator who had been
18 in her role for just one week when the accusation
19 was made wrote an affidavit to the hearing officer
20 that included this line: Quote, "The only
21 mechanism for the university to comply with Title
22 IX is to waive its allotted speaking time."

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1 At the hearing they did not give up
2 their speaking time and the complainant's side had
3 twice the advantage as my son and his attorney.
4 And because attorneys cannot speak in these
5 hearings, my son with his ADHD, anxiety and
6 language-based learning disabilities was required
7 to serve as his own attorney without accommodations
8 for nine hours. In fact, on several occasions when
9 my son's attorney confronted Drake's attorney with
10 his concerns, he replied, "The University isn't
11 worried about the Rossley family suing them.
12 They're worried about the female suing them." I
13 was considered Mr. Drake for a while.

14 In the hearing that expelled my son one
15 month before his graduation the female actually
16 admitted to sexually assaulting him without his
17 consent. She defined consent as to when she
18 initiates sex, and she went on to proclaim that she
19 was just giving him what she thought he wanted.
20 And it's all on a tape.

21 My son's claim had always been that he
22 had been falling in and out of consciousness and

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1 could not maintain an erection. Excuse me. The
2 acting dean thought it appropriate to ask my son
3 about her assault on him by saying and you didn't
4 say no? He was found responsible and was expelled.
5 Her admission was ignored.

6 The university president had been in
7 his role only since July. He knew from the
8 beginning that my son had claimed he was sexually
9 assaulted. He did nothing to fix the problem and
10 then signed off on the expulsion because he was
11 confident the process was fair. The chair of the
12 board of trustees also knew of the claim and did
13 nothing. He was expelled in the spring of '16.
14 She graduated in the spring of '17.

15 I had been a trustee at Drake for the
16 prior 23 years, the longest serving trustee at the
17 time. In April of '16 I expressed my concerns
18 about possible violations of both Title IX and the
19 ADA in a 12 page letter to my fellow trustees.
20 Three months later I was removed by a vote of the
21 trustees.

22 We did not experience a Title IX

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1 problem. We did not experience a Dear Colleague
2 letter problem. We did not experience a problem
3 with Drake's own policies. We experienced a
4 problem with the university administrators and the
5 process.

6 I was on the Student Life Committee in
7 2011 and '12 when we wrote the university policy.
8 We never looked at the process. In fact, in my 23
9 years as a trustee we were never trained in Title
10 IX.

11 My son has sued the -- his -- our alma
12 mater in federal court and six of his seven claims
13 have already survived dismissal and are moving to
14 discovery. I have filed a federal lawsuit as well
15 and the university is challenging only two of my
16 claims. Whatever you do, please consider pushing
17 for legislation that mandates that even private
18 schools that take federal funds must guarantee
19 constitutionally-protected due process rights to
20 all students in all of their disability processes.
21 Thank you.

22 DR. McARDLE: Thank you. Next we have

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1 Neena Chaudhry.

2 MS. CHAUDHRY: Good morning. My name
3 is Neena Chaudhry and I'm Director of Education and
4 senior counsel at the National Women's Law Center
5 here in D.C.

6 The center is a non-profit organization
7 that has worked since 1972, the same year that Title
8 IX was enacted, to combat sex discrimination and
9 expand opportunities for women and girls in every
10 facet of their lives, including education.

11 I'd like to focus my comments today on
12 the September 2017 Q&A on campus sexual misconduct.
13 The National Women's Law Center urges the
14 Department of Education to withdraw this misguided
15 interim guidance because it will hurt survivors of
16 sexual assault, create uncertainty and confusion
17 for schools and make campuses less safe.

18 This guidance was issued pursuant to an
19 unfair and uninformed process before an open
20 comment period on regulations and guidance was even
21 closed and without considering the hundreds of
22 thousands of parents, students, alumni and school

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1 officials who strongly urged the Department not to
2 change the governing policies. It is unnecessary
3 and will impose great costs both on survivors and
4 on schools who rely on it.

5 The 2017 interim guidance was issued by
6 the Department at the same time that it rescinded
7 a 2011 guidance that schools had asked for to help
8 them understand their legal obligations to address
9 sexual violence. One in five young women in
10 schools across the country is sexually assaulted,
11 and these numbers are even higher for young women
12 of color, those with disabilities and LGBTQ
13 students.

14 One of the most important things that
15 the Department of Education did in the 2011
16 guidance was remind schools that they have the
17 serious obligation to address sexual violence.
18 That guidance also detailed a framework for schools
19 to ensure a fair process for both sides in any
20 investigation. For example, the 2011 guidance
21 reminded schools that only allowing one party to
22 appeal was blatantly unfair, that allowing a

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1 survivor to be directly cross examined by her
2 assailant was not okay because of the trauma that
3 it could inflict, and that forcing a survivor to
4 sit down and try to work it out through mediation
5 with her assailant was not appropriate.

6 Another thing the 2011 guidance did was
7 tell schools to use the preponderance of evidence
8 standard when deciding whether a student was
9 responsible for sexual assault. This standard,
10 which was already the one used by the vast majority
11 of schools, essentially asks whether it is more
12 likely than not that a student committed sexual
13 assault. It's the standard used in civil and civil
14 rights cases and it's the right one because it
15 values both students' access to education equally
16 and it assumes that both students are equally
17 credible.

18 The Department says that it issued the
19 interim guidance because the 2011 guidance was
20 unfair to accused students, but where schools were
21 getting it wrong for either side, they were
22 violating the 2011 guidance. What schools need is

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1 more help from the Department to get it right, not
2 a new system that grants only those accused of
3 sexual assault special rights.

4 By allowing schools to grant appeals
5 for accused students only, permitting direct
6 questioning of survivors by their assailants and
7 letting schools use mediation to address sexual
8 assault, among other damaging provisions, the
9 Department's interim guidance will have a
10 devastating impact on student survivors. It will
11 take us back to a time when sexual violence -- when
12 the sexual violence that plagues our nation's
13 school was simply swept under the rug.

14 Sexual assault is vastly under-reported and
15 understandably so. Survivors are often met with
16 systems that are fundamentally unfair, that
17 dismiss their concerns, are re-traumatizing and
18 make it nearly impossible to demonstrate to anyone
19 the harm they have experienced. The interim
20 guidance will only exacerbate these problems and
21 make campuses less safe.

22 This new guidance also creates

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1 uncertainty for schools who have worked hard to
2 make progress and ensure fair process that value
3 both students' educations equally. Many schools
4 with help from the Office for Civil Rights have
5 invested time and energy in revising their policies
6 and procedures and ensuring that everyone in the
7 school community understands their obligations to
8 promptly and fairly investigate sexual violence.

9 The interim guidance contains a number
10 of statements that are wrong and contrary to
11 established law. It also invites schools to tilt
12 the previously balanced scales of justice towards
13 accused students and makes it harder for survivors
14 to get relief. Schools that use the interim
15 guidance as their guide will do so at their own
16 peril as they will face increased litigation from
17 student survivors and advocates.

18 Not surprisingly, many schools have
19 already publicly stated that they are not changing
20 course and we hope that more will continue to stand
21 up and do right their students. We ask the
22 Department to withdraw the 2017 interim guidance

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1 and reinstate the 2011 guidance and accompanying
2 2014 Q&A document and we urge Secretary DeVos and
3 Acting Assistant Secretary Candice Jackson to
4 conduct a listening tour with survivors at all
5 levels of education across the country and to focus
6 on enforcing Title IX instead of weakening it.
7 After all, the mission of the Office for Civil
8 Rights is to ensure equal access to education
9 through vigorous enforcement of civil rights in our
10 nation's schools. Thank you.

11 DR. McARDLE: Thank you. Our next
12 speaker is Christopher Chapman.

13 MR. CHAPMAN: Good morning. My name
14 is Christopher Chapman and I serve as President and
15 Chief Executive Officer of AccessLex institute,
16 the largest philanthropic organization dedicated
17 to improving access, affordability and value with
18 respect to legal education in this country.

19 Since 1983 AccessLex institute has been
20 committed to the pursuit of these tenets on behalf
21 of the aspiring professionals who attend our nearly
22 200 ABA-approved non-profit and state-assisted law

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1 schools. Our Center for Education and Financial
2 Capability based in West Chester, Pennsylvania
3 offers best in class financial education
4 programming and resources to students all free of
5 charge. And our Center for Legal Education
6 Excellence based in here in Washington, D.C.
7 conducts research and advocates for policies that
8 make legal education work better for students and
9 society alike. And this mission is what brings me
10 here today, and I thank you for this opportunity
11 to address the Department on a matter we find
12 especially important.

13 As I noted in my September 11th letter
14 to the Department, AccessLex institute believes
15 the federal regulations which limit institutions
16 of higher education from expanding required
17 counseling for federal student loan borrowers
18 beyond the narrowly-scoped entrance and exit
19 counseling requirements contained in the Higher
20 Education Act is detrimental on a broad scale and
21 should be modified to allow schools to require
22 additional financial counseling for students as a

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1 condition for receiving federal loan funds.

2 The rising cost of higher education and
3 increased levels of student borrowing create an
4 imperative that students have the necessary
5 information to make the best financial decisions,
6 and for many students the minimum counseling
7 requirements are simply not enough. Graduate and
8 professional students who as a group hold the
9 largest loan balances upon graduation especially
10 need more comprehensive, frequent and customized
11 counseling.

12 On a big-picture level 40 percent of the
13 \$1 trillion of outstanding student loan debt in
14 this country is attributable to the financing of
15 graduate and professional degrees and the average
16 balances of those borrowers are substantially
17 higher than those of undergraduates. And while
18 these debt levels alone could warrant additional
19 counseling, students themselves are asking for
20 more and better financial education.

21 In a 2017 AccessLex survey of nearly
22 5,000 law school students 98 percent of respondents

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1 indicated an interest in having a personal
2 financial program offered to them. Eighty-five
3 self-reported a grade of B-minus or lower as it
4 related to their own personal finance knowledge and
5 over seventy-five percent worried about their
6 student loan debt.

7 So we know students want and recognize
8 the need for additional loan counseling, but the
9 regulation as currently interpreted creates a
10 barrier for schools to effectively provide it to
11 those who need it the most. Removing this barrier
12 would allow schools to offer sufficient and timely
13 information to borrowers and this would not have
14 to result in an increased burden to schools or
15 students. Options are available to schools that
16 include online counseling and partnership -- or
17 partnerships with outside organizations.

18 For example, my organization AccessLex
19 provides free financial education to borrowers on
20 topics such as financing their education, loan
21 repayment and budgeting. Most recently we
22 launched MAX By AccessLex, a free personal finance

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1 program exclusively for law students that
2 complements the work schools are already doing to
3 educate students on borrowing and loan repayment.

4 As of today 120 of the 199 member law
5 schools adopted this program in its first year,
6 clearly showing that schools are hungry for the
7 opportunity and want and need to recognize the need
8 for financial education for their students. And
9 what's more, it's also a taxpayer issue.

10 Among other required elements
11 currently required under law, loan counseling must
12 emphasize to the borrower the seriousness and
13 importance of the repayment obligation that the
14 student borrower is assuming. On this point a
15 recent Brookings institution study found that
16 about half of all first-year college students
17 underestimate how much student debt they even have
18 and 14 percent of those who have student loans don't
19 think they have any student debt at all.

20 Schools need the flexibility to require
21 students to participate in loan counseling as a way
22 to show students their cumulative debt amount,

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1 explain the revised estimated monthly payments and
2 really give them an indication of what that next
3 dollar borrowed means. This is the most obvious
4 and direct way to emphasize and remind student
5 borrowers of the seriousness and importance of
6 repayment, and it is serious and important to both
7 the borrowers for whom loan repayment affects their
8 future financial health and security and the
9 nation, because unpaid student debt ultimately
10 becomes taxpayer debt.

11 While we are hopeful that Congress will
12 consider the importance of financially literate
13 federal loan borrowers during the reauthorization
14 of the Higher Education Act and adopt changes to
15 realign loan counseling requirements with the
16 economic realities of today and tomorrow, the
17 substance and timing of any such changes are
18 unknown at this point, and in any case would occur
19 well into the future.

20 However, the Department of Education
21 has the ability to act quickly to revoke this
22 prohibition and in turn provide a simple

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1 improvement that will benefit schools, students
2 and the American taxpayer alike. We strongly urge
3 it to do so.

4 Thank you again for your time today and
5 thank you for considering our recommendation.

6 DR. McARDLE: Thank you. Our next speaker
7 will be Karen McCarthy from the National
8 Association of Student Financial Aid
9 Administrators.

10 MS. McCARTHY: Good morning. I'm
11 representing the National Association of Student
12 Financial Aid Administrators, and we thank you for
13 the opportunity to identify regulations that need
14 revision.

15 Regulations that carry more burden than
16 benefit or that control institutional processes
17 too tightly, increase costs and reduce student
18 services, rules that create barriers to aid
19 application, enrollment and completion or that
20 inhibit innovation by institutions are as
21 problematic as those that inhibit job creation.

22 Given Ed's intention to revisit gainful

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1 employment and borrower defense rules, we will not
2 discuss those here. I will highlight areas that
3 most raised concerns about burden. Our written
4 response lists others and references reports that
5 include recommendations from NASFAA member
6 institutions to reduce burden, eliminate barriers
7 and encourage student success.

8 Return of Title IV funds. R2T4
9 regulations are highly complex and detailed beyond
10 what is required by law. For example, the
11 definitions of "withdrawal" and "required to take
12 attendance," the treatment of modules and some
13 deadlines are purely regulatory. Recent input
14 from our membership yielded more than twice as many
15 complaints about R2T4 as any other topic. One
16 member stated no one with modules gets this thing
17 right.

18 In fact, R2T4 consistently appears as
19 a top audit and program review finding. Schools
20 do not aspire to be non-compliant. Any area of
21 regulation that consistently trips up schools
22 should be reviewed. Ed should conduct a

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1 negotiated rulemaking dedicated to R2T4 aimed at
2 minimizing specificity and complexity and
3 maximizing school options.

4 Subsidize usage limits, known as SULA.
5 The number of comments on SULA was second only to
6 R2T4. Although the limitation on loan subsidies
7 is statutory, the implementing regulations are
8 interpreted and difficult to explain to students.
9 SULA-related reporting requirements are imposed on
10 programs not even eligible for subsidized loans.
11 We recommend a limited negotiated rulemaking
12 session just on SULA.

13 Disclosures. Mandated consumer
14 disclosures are generally unread. The sheer mass
15 of them is counterproductive. Not only is content
16 an issue, but timing, appropriate recipients,
17 delivery method, format and presentation all
18 should be reviewed.

19 Verification. Well-designed
20 verification is essential to program integrity;
21 however, its implementation is usually on the list
22 of burdensome regulations that affect student

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1 access to higher education. Regulatory revisions
2 effective in 2012-'13 were based on successes from
3 the Quality Assurance Program, however, a
4 transitional approach using tracking groups rather
5 than truly targeted selection of data elements for
6 each applicant has persisted for seven years now.
7 We would like to see more advances in targeted data
8 selection, more flexibility for institutions to
9 apply quality assurance principles and
10 consultation with institutions before adding new
11 verifiable data elements.

12 Our members are also concerned that
13 they have become responsible for knowing and
14 enforcing certain IRS rules such as filing status
15 requirements. Financial aid administrators
16 should be allowed to rely on IRS records and data
17 as received.

18 Non-traditional program formats and
19 distance education. Perhaps the greatest areas
20 for innovation in higher education are distance
21 education and non-traditional program formats
22 which can significantly reduce costs. Ed should

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1 work with stakeholders in these areas to modify
2 regulations designed for traditional programs at
3 brick and mortar schools that inhibit innovation
4 and success in non-traditional and distance
5 formats.

6 Generally speaking, regulations should
7 provide clear goals and guidelines with details
8 left up to schools as much as possible. We
9 encourage Ed to reformulate regulations that
10 currently have a high degree of specificity and few
11 options into more flexible options for attaining
12 underlying objectives.

13 Negotiated rulemaking between the
14 higher education community and Ed's most
15 experienced career professionals is still the best
16 approach to formulating regulation. It can be
17 successful only if the number of issues included
18 is reasonable.

19 More focused rulemaking on one topic
20 such as R2T4 would result in better drawn rules.
21 If multiple topics are included, Ed should consider
22 modifying pass protocols to accept consensus on

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1 individual issues as binding rather than requiring
2 consensus on a package of unrelated issues.

3 NASFAA looks forward to working with Ed
4 to implement regulatory reform. And thank you for
5 your time.

6 DR. McARDLE: Thank you. Our next
7 speaker is Julie Peller from Higher Learning
8 Advocates.

9 MS. PELLER: Thank you for the
10 opportunity to testify. My name is Julie Peller
11 and I am the Executive Director of Higher Learning
12 Advocates.

13 We work to advance policy changes to
14 increase postsecondary attainment, specifically
15 policies that support a system of higher learning
16 that is student-centered, equitable,
17 outcomes-based and focused on educational quality.
18 As such, Higher Learning Advocates focuses on three
19 key issues: high-quality outcomes, today's
20 students and the changing landscape of higher
21 education.

22 We are a proponent of smart efficient

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1 regulations that fit together to improve
2 postsecondary outcomes for all of today's students
3 including completion, employment, equity and
4 value.

5 During this regulatory review we ask
6 that the Department of Education consider not only
7 specific requirements but how the array of
8 regulations and requirements can work together to
9 advance outcomes for the students and institutions
10 of today.

11 Today's students are more diverse in
12 age, race and income. Many live off campus, attend
13 college part time, are working while in school and
14 are parents. Regulations should be designed to
15 recognize this reality, respond to the needs of
16 today's students and support institutions in
17 modifying and evolving program offerings and
18 student supports.

19 The Department should use this
20 opportunity to consider how different requirements
21 and metrics work with one another. For example,
22 the various federal reporting mechanisms for

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1 postsecondary education use different time frames
2 for completion inconsistently and
3 interchangeably. Common metrics and definitions
4 implemented across regulations would ease the
5 process of reporting data to the Federal
6 Government, promote greater transparency and
7 enhance data quality.

8 We also believe this regulatory review
9 is the appropriate time to consider ways to reduce
10 the complexity and confusion created by some
11 regulations. Streamlining regulations such as
12 simplifying the Free Application for Federal
13 Student Aid and timely loan forgiveness during
14 borrower defense to repayment claims could reduce
15 some challenges that may be facing today's students
16 by increasing clarity and communication.

17 While we believe a holistic review
18 could improve outcomes and oversight, Higher
19 Learning Advocates also urges the Department of
20 Education to consider some specific regulations in
21 your conversations.

22 We support the original intent of the

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1 gainful employment regulations and believe the
2 data required under these rules are an improvement
3 upon existing systems that provide useful
4 information for today's students, institutions and
5 policy makers. Specifically the earnings data
6 collected and reported under gainful employment
7 are a vast improvement over currently available
8 earnings data and provide a useful example of how
9 institutions of higher education can accurately
10 communicate graduates' earnings while providing
11 data security to inform current and prospective
12 students and their families.

13 We also urge the Department to examine
14 current accreditation regulations and the process
15 for recognizing accreditors. Higher Learning
16 Advocates supports aligning the federal role in
17 accreditation with quality rather than compliance
18 and clearly defining a process for differentiated
19 accreditation. This approach would ensure that
20 accreditors are appropriately targeting time and
21 resources in their reviews.

22 As higher education requirements are

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1 outlined in statute, we hope the Department will
2 work with Congress to focus requirements on student
3 outcomes, specifically requirements that govern
4 innovative delivery models such as
5 competency-based education, industry
6 certifications and digital credentials to enable
7 such models to become more widespread while
8 maintaining the quality protections for students
9 and taxpayers.

10 To conclude, as the Department
11 continues its review of regulations we ask you to
12 consider how regulations and any proposed changes
13 will work together with the goals of advancing
14 student outcomes, enabling high-quality higher
15 learning and supporting today's students. Thank
16 you for your time.

17 DR. McARDLE: Thank you. Our next
18 speaker is David Bousquet.

19 MR. BOUSQUET: Good morning. Good
20 morning, members of the U.S. Department of
21 Education staff. My name is David Bousquet. I am
22 the Chief of Police at Becker College in Worcester,

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1 Massachusetts and I am proud to also serve as the
2 current president of the International Association
3 of Campus Law Enforcement Administrators, or
4 IACLEA.

5 IACLEA is the leading authority for
6 campus public safety in the United States and
7 beyond. We have more than 3,400 members at 1,200
8 colleges and universities in the United States and
9 15 other countries. Next year we celebrate our
10 60th anniversary.

11 On behalf of our membership I am
12 grateful for the opportunity to provide the
13 perspective of campus law enforcement and public
14 safety executives to assist your consideration of
15 the regulations and sub-regulatory guidance
16 associated with the Federal Clery Act. Please
17 know that IACLEA supports the intent of the Clery
18 Act.

19 We believe that overall it has helped
20 enhance the safety of our campus communities, our
21 members' attempt to faithfully carry out the
22 provisions of the Clery Act on a daily basis,

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1 however, some of the statutes implementing
2 regulations and sub-regulatory guidance are
3 unclear and add to the compliance challenges of
4 colleges and universities without a clear
5 resultant increase in student, faculty and staff
6 safety.

7 This morning I briefly draw your
8 attention to three areas of concern for campus
9 police chiefs and public safety directors.

10 Non-campus property, foreign
11 countries. In sub-regulatory guidance the
12 Department of Education has directed colleges and
13 universities to collect and report crime
14 statistics for facilities used for overseas study.
15 Given the number of countries visited for study
16 abroad by American students, this task is extremely
17 complicated and time-consuming. More often than
18 not, useful information is not received from
19 foreign countries hosting our students on a
20 temporary basis.

21 We encourage all of our member
22 institutions to take proactive steps to assess the

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1 safety of facilities and the surrounding area where
2 their students will be studying in foreign
3 countries. However, because this reporting
4 requirement does not enhance safety, we
5 respectfully request that it be removed.

6 Non-campus property, short stays. In
7 sub-regulatory guidance the Department of
8 Education has directed colleges and universities
9 to collect and report crime statistics for
10 facilities not directly associated with the
11 campus. In this case the reporting requirement
12 goes to facilities such as hotels where university
13 sports teams may be lodged. Again, we encourage
14 all of our member institutions to assess the safety
15 of facilities that will be used within the United
16 States for field trips or to house our sports teams.
17 However, because this requirement does not enhance
18 the safety of the core campus community, we
19 respectfully request that it be removed.

20 Uniform definition of Clery crimes.
21 Some of the Clery Act implementing regulations
22 require the reporting of crimes that are not crimes

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1 in every state. In some instances the Clery Act
2 definitions conflict with state definitions. In
3 yet others the crime is not clearly defined by Clery
4 in its regulations or in state law.

5 IACLEA recommends that Clery Act crimes
6 be defined consistent with the FBI Uniform Crime
7 Reporting System, and then once the FBI National
8 Incident-Based Reporting System is fully
9 functional to align with that system.

10 Again thank you Secretary DeVos and the
11 staff of the Department of Education for providing
12 this opportunity for campus police chiefs and
13 others to share their experience and insights with
14 the Task Force on Regulatory Reform. I hope this
15 information we have shared is useful to your
16 endeavor. Thank you.

17 DR. McARDLE: Thank you very much.
18 The next speaker is Reid Setzer from the Young
19 Invincibles.

20 MR. SETZER: Good morning. My name is
21 Reid Setzer, and I am the Government Affairs
22 Director of Young Invincibles, a national

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1 nonpartisan organization dedicated to expanding
2 economic opportunity for young people, and
3 amplifying their voices in the political process.
4 We are committed to preserving and expanding
5 affordable access to quality higher education for
6 our generation.

7 Because of this, YI urges the
8 Department to step back from weakening or
9 eliminating key consumer protections, and we
10 reiterate our support for the gainful employment,
11 borrower defense, and incentive compensation
12 rules.

13 Undermining these regulations benefits
14 the worst-performing and most predatory schools at
15 the expense of students and taxpayers.

16 Instead, the Department should focus on
17 helping students and families by simplifying and
18 improving the FAFSA verification process, and
19 reinstating the memoranda of understanding with
20 the Consumer Financial Protection Bureau to
21 monitor and improve borrower experiences with
22 student loan servicers.

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1 As indicated in previous comments and
2 testimony, before issuing new career education
3 regulations, the Department of Education amassed
4 a strong pool of evidence indicating that many
5 for-profit colleges were dubiously profiting off
6 federal student aid without providing quality
7 education that advanced graduates' career
8 opportunities.

9 For example, the Senate Health
10 Committee found that for-profit education
11 companies enrolled roughly 10 percent of students
12 nationwide, but despite this, they receive 25
13 percent of Pell Grants and Stafford Loan dollars,
14 and account for 47 percent of all federal student
15 loan defaults.

16 Despite that grim picture, over the
17 past few years we have seen movement within the
18 career education sector to improve the quality of
19 the for-profit college market, spurred in part by
20 the Department taking these problems seriously,
21 and promulgating the gainful-employment rule.

22 The rule has prompted improvements.

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1 Out of the over 500 career education programs
2 flagged under the first year of applying the rule,
3 over 300 have already been shut down by the
4 institution offering them. Relatedly, the rule
5 has not had the catastrophic impact predicted by
6 the for-profit industry. Approximately 75
7 percent of all programs passed the debt-earning
8 ratios prescribed by the rule, and around 90
9 percent of colleges with career education had no
10 failing programs at all.

11 Equally key is the borrower defense
12 rule. The borrower defense rule creates clearer
13 processes, and strengthens protections for
14 students who have been misled, and are looking to
15 get back on track towards their goal of affording
16 higher education.

17 Instead of eroding and freezing
18 borrower defense, the Department should be putting
19 its weight and energy behind clearing the backlog
20 of individual discharge applications, and issuing
21 group discharges wherever justified. Over 50
22 organizations working on behalf of students,

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1 consumers, veterans, active service members,
2 faculty and staff, civil rights, and college access
3 support the rules, as well as 20 state Attorneys
4 General, and dozens of members of Congress.

5 Furthermore, 78 percent of Americans
6 say they support loan relief for borrowers whose
7 schools provided deceptive information about their
8 programs or outcomes. These rules should be given
9 the chance to be fully implemented.

10 Finally, part of the program
11 participation agreement rule, known, also known as
12 incentive compensation, is an important protection
13 that removes financial incentives for predatory
14 recruiting by school employees. The rule prevents
15 colleges from paying bonuses or other financial
16 rewards to recruiters, based on how many students
17 they enroll.

18 In the years when this rules was
19 relaxed, one college ran, quote, boiler rooms, to
20 maximize their chances of enrolling students
21 regardless of their chances of succeeding or their
22 ability to pay.

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1 Misrepresentations about job placement
2 rates, ability to transfer credits, and other
3 deceptions are unacceptable and extremely damaging
4 to a student's ability to select the best school
5 for them, and ultimately achieve a college
6 credential.

7 It's crucial to leave the current
8 incentive compensation policy in place to help
9 prevent this kind of unscrupulous behavior.

10 Instead of rolling back student and
11 taxpayer protections, the Department should turn
12 its attention to two areas where its action could
13 improve the lives of students and families.

14 The current FAFSA verification process
15 is unnecessarily burdensome to students and
16 families applying for aid. Pell eligible students
17 made up a staggering 98 percent of all students
18 flagged for verification in 2014 and 2015. The
19 Department should review the entire verification
20 process and adjust the filters used to prevent the
21 disproportionate targeting of Pell eligible
22 students and families.

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1 This could be accomplished by allowing
2 those that did not have to file a tax return to not
3 have to prove that they did not do so, as well as
4 letting students and families use copies of their
5 tax returns, instead of having to formally acquire
6 an official tax transcript. These changes can
7 dramatically improve the process that students
8 rely upon to receive essential financial aid.

9 Additionally, the Department of
10 Education decided recently to terminate two
11 memoranda of understanding between itself and the
12 CFPB. These agreements allowed for both agencies
13 to collaborate on a host of issues, including the
14 resolution of complaints from student borrowers in
15 relation to their federal or private student loans,
16 and the joint oversight of student loan services.

17 The Department's decision to terminate
18 those MOU is concerning to advocates and student
19 borrowers. In fact, the CFPB had resolved nearly
20 \$20,000 student loan complaints as of the beginning
21 of August, in keeping with language in Dodd-Frank
22 that required the Department and the CFPB to enter

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1 into an MOU to, quote, ensure coordination in
2 providing assistance to and serve borrowers
3 seeking to resolve complaints related to their
4 private education or federal student loans.

5 As such, the Department should meet
6 with the CFPB to determine the parameters for new
7 memoranda as soon as possible to ensure borrower
8 complaints are serviced, and proper oversight of
9 student loan servicers is effectuated.

10 The Department of Education must put
11 protecting students and families first as it moves
12 forward with its work. Young Invincibles looks
13 forward to continuing to share the youth
14 perspective on issues of importance in higher
15 education in the months and years to come. Thank
16 you.

17 DR. MCARDLE: Thank you. Our next
18 speaker is Katheleen Sullivan.

19 MS. SULLIVAN: Thank you very much. I
20 would like to thank the panel for listening, and
21 I would like to thank Secretary DeVos and the
22 Department of Education for having this hearing

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1 today.

2 I am here from New York City. I am an
3 attorney. I am here to address the issue of the
4 sad denial of due process that is happening on
5 college campuses right now.

6 I really appreciate that the Department
7 of Education is willing to review this, because I
8 feel that there is a terrible trend towards an
9 absolute denial of due process happening.

10 I was a prosecutor in the New York
11 County District Attorney's office for many years.
12 And in New York, we have a culture of respect for
13 defendants and those who are accused. I was
14 inculcated from day one to respect the due process
15 rights of those who were being prosecuted,
16 regardless of how heinous that criminal was.

17 It is something that makes the process
18 of jurisprudence in this country sacred. It is
19 something that we should all value.

20 I have seen, unfortunately, in the days
21 since I left the District Attorney's office and
22 became a private practitioner, I now do Title IX

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1 defense cases, a frightening erosion of the
2 rights of the accused on college campuses. I think
3 it is distressing, I think that we should all be
4 frightened of it -- even those who may say oh, you
5 know, they're bad people, they've been accused.

6 Today, they're going for that kid on a
7 college campus. Tomorrow, it might be you.
8 Tomorrow, it might be your child. Tomorrow, it
9 might be your friend.

10 When we stop honoring due process on
11 college campuses, we start down a very bad path.
12 I have personally seen several lives destroyed as
13 a result of accusations that were not fleshed out
14 on the college campus.

15 In New York, where I come from, we have
16 now passed into law what is colloquially called the
17 Enough is Enough Law, which is basically a, a
18 codification of the Dear Colleague Letter of 2011.
19 And in New York, a defendant on a college campus
20 does not have a right to have the charges against
21 him or her presented to them. They are not
22 adjudicated even by a panel. There is an

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1 investigator who gets to review the material, and
2 comes up with a decision based on his or her own
3 interpretation of what was said. The evidence
4 presented is completely one-sided, and these
5 findings destroy lives.

6 I think that many people don't know
7 about this, but I do respect Secretary DeVos for
8 addressing this, because once a defendant is
9 labeled a sexual predator, their academic record
10 is marked, they are usually expelled from their
11 school. Good luck getting into another school.
12 Good luck getting a job.

13 So basically, a lot of doors close at
14 that moment. Whether or not they are truly guilty
15 is something that matters. Of course it matters.
16 Nobody wants sexual predators. We all feel that
17 that's a horrible thing. But the, the absence of
18 due process, the absence of inquiry is destructive,
19 in my humble opinion, to our Republic.

20 So I am grateful that the Department of
21 Education is now evaluating this. I came here from
22 New York with my accent to thank everyone for the

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1 time and the attention that you have given to this
2 issue.

3 And having said that, I look forward to
4 better days where due process is valued on college
5 campuses as much as it should be everywhere. Thank
6 you.

7 DR. MCARDLE: Thank you. Our next
8 speaker is Alexis Goldstein from Americans for
9 Financial Reform.

10 MS. GOLDSTEIN: Thank you the
11 opportunity. Thanks for being here.

12 My name is Alexis Goldstein. I'm
13 Senior Policy Analyst at Americans for Financial
14 Reform. We are a coalition of over 200 consumer,
15 civil rights, labor, faith-based, and business
16 groups fighting for a safer and a fairer economy.

17 As a coalition that is focused
18 primarily on consumers and consumer protection, we
19 are deeply concerned with the Department's recent
20 decision to end the information-sharing agreement
21 with the Consumer Financial Protection Bureau by
22 terminating two memoranda of understanding.

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1 One of those MOUs was put in place to
2 ensure that coordination between the agencies on
3 complaint information could continue,
4 specifically complaint information about private
5 education or federal student loans, and, and
6 basically to ensure that students could get the
7 assistance they needed when they were filing those
8 complaints. This is obviously something that we
9 think is very important.

10 Secretary DeVos also decided to end
11 cooperation with the Consumer Bureau regarding the
12 oversight of student financial services such as the
13 supervision of student loan servicers.

14 We at AFR believe that this move was a
15 betrayal of students, and a boon to loan servicers,
16 who have a history of preying on students, and it
17 is also a move that makes oversight more difficult,
18 and accountability harder to come by.

19 The Consumer Financial Protection
20 Bureau has long been on the forefront of working
21 to ensure that servicers like Navient, who have
22 illegally overcharged Americans, including

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1 members of our military, are held accountable.
2 The Bureau sued Navient earlier this year for
3 illegally steering student borrowers toward paying
4 more than they had to in their loans.

5 And in the past -- excuse me --
6 coordination between the Department of Education
7 and the Consumer Bureau was very helpful. One
8 particular example of this is they helped to secure
9 \$480 million in relief for Corinthian students who
10 were targeted with a predatory private loan program
11 known as Genesis.

12 DeVos's decision to end cooperation
13 with the Bureau is not just an abdication of
14 responsibility. It is yet another move that shows
15 the Department choosing to act in the interest of
16 private companies like big student loan servicers,
17 instead of protecting students and borrowers.

18 The action also defies Congress, as was
19 mentioned by another speaker, because the MOU was
20 specifically required by the Dodd-Frank Act.

21 Americans for Financial Reform urges
22 the Department to immediately reinstate these MOUs

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1 with the Bureau.

2 In every major decision since the Trump
3 administration has taken over, the Department has
4 chosen to favor the interests of private companies
5 ahead of the students the Department is entrusted
6 with protecting. And no matter how loudly
7 consumer, student, and veterans' groups sound the
8 alarm, the Department continues to ignore the
9 dangers.

10 The Department rescinded three memos
11 meant to protect borrowers and ensure
12 accountability earlier this year, including one
13 meant to guarantee that servicers who broke the law
14 again and again weren't rewarded with government
15 contracts.

16 The Department abandoned the victims of
17 fraud at colleges by illegally delaying the update
18 to the borrower defense rule, and creating two new
19 negotiated rulemakings to redo both the borrower
20 defense and gainful employment rules -- rules that
21 are meant to prevent abuse, and hold bad actors
22 accountable.

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1 The Department has also hired multiple
2 former employees of for-profit colleges, including
3 Robert Eitel, who used to work for the for-profit
4 chain Bridgepoint, a chain that would benefit
5 substantially from all the deregulation advanced
6 by the Department. It has also tapped former DeVry
7 official, Julian Schmoke, Jr. to head the
8 Department's enforcement unit, despite his having
9 no background in law enforcement or
10 investigations.

11 Just last month, at the Republican
12 Leadership Conference in Michigan, Secretary DeVos
13 insulted defrauded students across the country
14 with a comment about students raising their hands
15 for, quote, free money, end quote, which ignores
16 the devastation that students who attended a school
17 that scammed them and did not educate them wreaks
18 -- the ruined credit, the wasted time, the
19 suffocative loans that impact all other areas of
20 your life, and your ability to obtain other types
21 of credit.

22 With this comment, DeVos also

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1 misrepresented how difficult the Department has
2 made it for students defrauded by Corinthian, ITT,
3 American Career Institute, and other schools to
4 obtain the discharges they are, they are owed by
5 law.

6 Even today, tens of thousands of
7 students are awaiting discharge, and some have had
8 to sue the Department simply to stop wage
9 garnishment, even though they are eligible for
10 discharges.

11 The Department should move to
12 immediately process the backlog of applications,
13 granting group discharges where the Department has
14 prior enforcement actions that impact 125,000
15 former Corinthian students by the Department's own
16 estimates.

17 The Department's actions under DeVos
18 have a common theme. They all represent a betrayal
19 of students, and a boon to private companies with
20 a history of preying on students. The Department
21 must stop relying on the advice of private
22 companies that make millions off students, whether

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1 the students succeed or not, and refocus their
2 attention on defending the students they are
3 entrusted with protecting. Anything less makes a
4 mockery of the mission of this Department.

5 Thank you for your time.

6 DR. MCARDLE: Thank you. Our next
7 speaker is Kaitlyn Vitez from U.S. PIRG.

8 MS. VITEZ: Thank you. Hello everyone.
9 Thanks for having us in today.

10 My name is Kaitlyn Vitez. I'm the
11 higher education advocate for U.S. PIRG. The U.S.
12 Public Interest Research Group is a consumer
13 advocacy organization with chapters at more than
14 50 college campuses across the country. And on
15 behalf of these college students, we seek to make
16 college more affordable.

17 With that mission in mind, we
18 appreciate the opportunity through the
19 Department's Regulatory Reform Tax Force to make
20 the case for a strong rule that lowers the cost of
21 bank accounts and debit card products that are
22 marketed to students on campus.

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1 In 2012, the U.S. PIRG Education Fund
2 released a report entitled The Campus Debit Card
3 Trap: Are Bank Partnerships Fair to Students? In
4 direct response to an uptick in complaints from our
5 college student members and from student
6 government representatives across the country, who
7 decried the high fees, unusual fees, lack of ATM
8 access, and push marketing of these products on
9 their campuses.

10 We found that two in five college
11 students across the country had access to a campus
12 debit card, often linked to their student ID card,
13 and that these accounts were exclusively loaded
14 with students' financial aid. The cards were
15 aggressively marketed to students through
16 financial aid disbursement and student
17 identification channels, which are both essential
18 to navigating student life.

19 While colleges gained revenue and
20 reduced costs by outsourcing services to banks and
21 financial firms, these card deals pushed costs
22 directly onto needy students. Students were being

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1 forced to pay fees to access their financial aid,
2 and some of the fees were unusual. They were not
3 found in normal debit accounts off campus.

4 Finally, the accounts also lacked
5 consumer protections in case of fraud or loss.
6 Meanwhile, the Federal Trade Commission launched
7 an investigation into the high fees students
8 encountered in these products, and aggrieved
9 students launched a class action lawsuit.

10 In 2014, the US Government Accounting
11 Office issued its own report entitled College Debit
12 Cards: Actions Needed to Address ATM Access,
13 Student Choice, and Transparency that found
14 problems with these banking arrangements in the
15 following areas: fees, ATM access, and the lack of
16 neutrality in the marketing of these accounts on
17 campus.

18 Against this ample documentation of the
19 program, of the problem, and with its broad
20 authority to maintain the integrity of the federal
21 financial aid disbursement process, the US
22 Department of Education underwent an extensive

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1 negotiated rulemaking process to review the issues
2 arising in the campus banking marketplace.

3 The final rule, which went into effect
4 in July 2016 made campus banking fairer for student
5 consumers and for responsible providers.

6 We stand ready to defend the need for
7 prohibition on fees, and the strong account
8 disclosures required by the rule, and ready to
9 enlist the thousands upon thousands of students who
10 have pushed back against the proliferation of these
11 accounts on their campuses in the effort to ensure
12 that the markets stay fair and responsible for
13 students. Thank you.

14 DR. MCARDLE: Thank you. Our next
15 speaker is Curt Decker from the National Disability
16 Rights Network.

17 One more time, can you hear me? This
18 is for Curt Decker from the National Disability
19 Rights Network.

20 No? Okay.

21 In that case, our speaker will be Ashley
22 Reich, from the Financial Aid Compliance, Director

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1 of Financial Aid Compliance.

2 MS. REICH: Good morning everyone. My
3 name is Ashley Reich, and I'm the Senior Director
4 of Financial Aid Compliance and State Approvals at
5 Liberty University, located in Lynchburg,
6 Virginia.

7 I'm grateful for yet another
8 opportunity today to advocate for enforcing the
9 regulatory reform agenda. Many of the topics --
10 excuse me -- discussed today are items that I've
11 testified on previously, as these issues are
12 extremely important not only to our institution,
13 but to higher education institutions throughout
14 the country.

15 The goal should be to reduce
16 over-regulation and unnecessary overreach in
17 multiple areas, while still allowing proper means
18 for students to obtain the aid needed throughout
19 their education, and promote quality higher
20 education programs.

21 I won't spend much time on the first two
22 set of regulations, due to the upcoming negotiated

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1 rulemaking sessions later this fall. But with
2 borrower defense to repayment, these regulations
3 and guidance should be completely rescinded, as
4 previous and fully adequate avenues of enforcement
5 already exist.

6 To restore due process, reduce
7 overregulation, and unnecessary overreach, and
8 provide students with an effective means to bring
9 allegations of abuse from schools, a repeal of
10 these regulations is in order.

11 With gainful employment, as well as
12 duplicative and excessive consumer information
13 regulations and guidance, these should be
14 completely rescinded, with the authority placed
15 back into the hands of regional accreditors.

16 Institutions of higher education
17 already report graduation rates through various
18 avenues, including but not limited to: the National
19 Center for Education Statistics, or NCES, by way
20 of the College Navigator, state reporting,
21 accrediting bodies, government websites, college
22 scorecard, Net Price Calculator, and the federal

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1 shopping sheet. In addition, separate
2 calculations, deadlines, and databases are being
3 used to upload and report this data to ensure its
4 reliability.

5 Personally, I'm looking forward to the
6 scheduled negotiated rulemaking sessions
7 surrounding both of these items later this fall,
8 and I applaud the Department for allowing the
9 opportunity to revisit these crucial items that
10 need to be done effectively.

11 With third-party servicers, I echo a
12 previously colleague that spoke on this. Recent
13 Ed guidance expanding and attempting to clarify the
14 definition of third-party servicer should be
15 completely rescinded. This expansion was, in
16 part, spurred by at least one bad actor
17 institution, but its implications will be felt
18 across several thousand colleges and universities.

19 The Department has also shown a lack of
20 understanding of the complexity of integrated
21 information systems, and an unwillingness to
22 clarify definitions to reduce unnecessary

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1 regulatory burden.

2 With fraud enforcement, this
3 particular concept is one that is near and dear to
4 my heart, as I have 11 of my staff members that are
5 solely devoted to proactively tagging potential
6 fraud on a daily basis. This is their full-time
7 job. It is imperative that the Department
8 develops a nationwide, uniform, and one-record
9 system to properly track Title IV fraud with
10 integrated state and local law enforcement
11 measures.

12 One idea that we had is to add a tab in
13 NSLDS to serve as an indicator of potential fraud
14 to prompt a review. The tab and an indicator
15 should be present in NSLDS, even for individuals
16 who did not receive a disbursement of Title IV. It
17 would also be helpful to have an ad hoc report that
18 could be downloaded from NSLDS that would show
19 prospective matches.

20 An examination of leveraging existing
21 federal systems or developing a new system to house
22 the data on potential student aid fraud and stolen

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1 identity accounts is necessary.

2 With state authorization, the
3 Department has recently pressured states to
4 increase regulatory requirements and burdens on
5 institutions of higher ed, in contradiction to Ed's
6 previous stance of accepting state autonomy on
7 these matters.

8 The ability for a state to enforce its
9 own laws in addition to Ed's oversight would create
10 unnecessary confusion for students and
11 institutions alike, and has the potential to
12 increase costs and lengthen the approval process.

13 In addition, many institutions and
14 organizations agree with the recommendation to
15 remove federal oversight of the entire state
16 authorization process, as this would reduce
17 excessive administrative burden, and promote the
18 availability of more affordable and accessible
19 higher education.

20 The federal role in state approvals and
21 authorizations should be eliminated by removing
22 the July 1, 2018 set of regulations to allow states

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1 to retain the ability to enforce their own
2 requirements. The Department oversight in this
3 area is cumbersome and unnecessary.

4 With the accrediting agency oversight,
5 accrediting agencies should be given full
6 authority over curricular designs, outcomes, and
7 consumer information compliance enforcement, as
8 part of each accrediting agency's unique
9 perspective and process. The established
10 accreditation process exists for the dual purpose
11 of evaluating the quality of higher education for
12 improvement.

13 In closing, our institution has already
14 submitted detailed comments on regulatory reform
15 agenda, and I thank you for your time and
16 consideration today.

17 DR. MCARDLE: Thank you. Our next
18 speaker is Tanya Ang from the Veterans Education
19 Success.

20 MS. ANG: Good morning. I am Tanya Ang,
21 Director of Policy and Community Engagement at
22 Veterans Education Success. Our mission is to

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1 protect and defend integrity, the integrity and
2 promise of the GI Bill, and other federal education
3 programs for veterans and service members.

4 I appreciate the opportunity to share
5 with you how both the gainful employment and
6 borrower defense rules helps ensure necessary
7 student protections, as they work to successfully
8 accomplish post-secondary education, and
9 contribute to a stronger workforce.

10 For the past 17 years, I have had the
11 privilege, in some capacity or another, to support
12 military-connected students navigate
13 post-secondary education. I have worked directly
14 with the students as their academic advisor,
15 helping them prepare for graduation, and then at
16 a more national level, where I supported
17 institutions of higher learning on building out and
18 enhancing support systems for these students.

19 Through that process, I have learned a
20 significant amount about these students, and the
21 various challenges they may face. Approximately
22 67 percent of all military-connected students are

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1 first generation, low income, minority and/or
2 other underserved student populations who have
3 very little understanding of the complexities of
4 higher education.

5 To them, all education is created
6 equal, and they believe that the programs approved
7 by the government to accept Title IV funding,
8 tuition assistance, or GI Bill benefits are
9 trustworthy institutions. They pursue education
10 with the hopes of helping improve the socioeconomic
11 standing of their family, and trust that at the end
12 of their academic tenure, they and their families
13 will reap the benefits of a college education.

14 Unfortunately, these are many of the
15 students who have found out the hard way that all
16 higher education programs are, in fact, not created
17 equal, and that the return on investment for their
18 hard work, dedication, and often incurred debt was
19 less than satisfactory.

20 They find it difficult to find a job in
21 their field of study, and are still saddled with
22 significant debt that must be paid off. Others,

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1 unfortunately, do not even have the opportunity to
2 finish their degree program due to school closures.

3 Last year, I worked with thousands of
4 students who had their higher education ripped,
5 dreams ripped out from underneath them as ITT Tech
6 closed its doors. Some students were just getting
7 ready to start their program. Others were halfway
8 through, and others were getting close to
9 graduation.

10 Even though they had military benefits,
11 many still had to take out loans to help cover the
12 costs of their programs. When the school closed,
13 they were left with no degree, wasted benefits, and
14 now debt, with no job to help pay off their loans.

15 Consider a 31 year old combat veteran
16 who was unable to join us today, but asked to share
17 his personal experience. This gentleman served in
18 the Army National Guard from 2004 to 2013, and
19 deployed to Iraq and Afghanistan. He was
20 interested in pursuing a career in IT, so after
21 leaving the Army, he used his GI Bill benefits at
22 ITT Tech.

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1 Here's some of what he shared with us:
2 I maintained a 3.67 grade point average, but I
3 noticed that me and my fellow students weren't
4 getting the best education at all. Why are we
5 getting outdated course material? Why are
6 instructors not even competent in what they teach?
7 How can I know more about the subject than my own
8 instructor?

9 I brought these concerns to the
10 attention of the faculty, but to no surprise, they
11 weren't any help at all. Fast forward months
12 later, ITT Tech closes down for good. I knew this
13 was going to happen, and I left before they closed
14 their doors on all of us.

15 What more can I do, since they lied to
16 me? They didn't explain a lot about the loan which
17 was taken out, and now I owe almost \$5000 to Nolnet.
18 My experience of ITT sometimes brings me to tears.
19 You try so hard to get your education in order, and
20 then this happens.

21 Why are schools like ITT Tech taking so
22 much money from Post-9/11 GI Bill that me and my

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1 fellow veterans have earned by volunteering to
2 defend this great country? What more can we do
3 about this, because at the end of the day, veterans
4 are the ones taking the biggest hit. We can't
5 recoup our GI Bill, and we've lost time away from
6 our family and friends, and have nothing to show
7 for it.

8 Unfortunately, the experience of this
9 gentleman is not unique. Thousands of students
10 have been impacted by predatory institutions
11 looking to take advantage of them. Due to the
12 90/10 rule, many of these military-connected
13 students have a target on their back.

14 They are left without a quality
15 education, and are saddled with debt they cannot
16 pay off due to their inability to find gainful
17 employment. This is not only unfair to these
18 students, but to the American taxpayer whose money
19 is subjected to the waste, fraud, and abuse of these
20 predatory institutions. This has got to stop.

21 Post-secondary education offers an
22 opportunity for those who might not otherwise have

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1 it better, have it, to better their life, and the
2 lives of their families. Many served in the
3 military not only to serve our country, but with
4 the dreams of being able to one day go to college,
5 and change the trajectory of their family.

6 These students want to contribute to
7 the American economy, find a viable career, and
8 provide opportunities for their children they
9 never had. Instead, they are left with debt,
10 limited ability to further their career, and at
11 best, a poor education.

12 Thank you.

13 DR. MCARDLE: Thank you. Next we have
14 Bethany Keirans from the Vietnam Veterans of
15 America.

16 MS. KEIRANS: Good morning. My name is
17 Bethany Keirans. I'm an Assistant Director for
18 Policy and Government Affairs at Vietnam Veterans
19 of America, and on behalf of our more than 80,000
20 members, I appreciate the opportunity to come in
21 and speak to you today on gainful employability and
22 borrower defense.

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1 In June of this year, Secretary DeVos
2 announced the Obama-era borrower defense rule that
3 allowed defrauded students to have their
4 educational loans forgiven would be suspended.
5 DeVos stated the rule was simply a way for students
6 to, quote, raise his or her hands to be entitled
7 to free money, unquote.

8 But for student veterans, nothing about
9 having student loans forgiven is free. Their GI
10 Bill, or voc rehab entitlements weren't earned for
11 free. The sacrifices they made for our country
12 weren't free. There's no monetary replacement for
13 scholarships, grants, private loans taken out in
14 order to complete their degree plans.

15 In fiscal year 2014, 11.5 percent,
16 which is almost 600,000 students, defaulted on
17 their student loans. Adding that to the number of
18 students already in default, the total reached 8.5
19 million. Ladies and gentlemen, that's 12 times
20 the population of Washington, DC.

21 The decision to freeze the review of
22 predatory institutions, along with Secretary

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1 DeVos' remarks, devalues the hard work that tens
2 of thousands of veterans, single parents, and young
3 people have done to better themselves in continuing
4 their education.

5 The very defense this regulation
6 intended to provide has been stripped away. Every
7 day, more veterans are being scammed by predatory
8 institutions, while this Department, along with
9 the Trump administration, sits by in inaction.

10 VVA has heard countless stories of
11 benefits wasted on bogus degree programs, such as
12 institutions as ITT Tech and Corinthian, veterans
13 left holding the proverbial bag -- a worthless
14 degree, a wasted opportunity to achieve their
15 goals, and an unfathomable amount of debt they were
16 deceived into taking on.

17 By undermining the gainful employment
18 regulation that enforces Higher Education Act's
19 requirement that all career education programs
20 receiving federal student aid prepare students for
21 gainful employment in a recognized occupation, and
22 by loosening limits on the ability of students, I'm

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1 sorry, the ability of schools receiving federal aid
2 to use pre-dispute arbitration clauses and class
3 action waivers to evade accountability, this
4 Department is doing a disservice to our student
5 veterans.

6 It's obvious to us that the Department
7 of Education's willful ignorance of fraud has
8 poisoned the well, and our student veterans are,
9 have no choice but to drink from it. I stand before
10 this body today to remind you that this is not what
11 helping student veterans get an education is about,
12 and that it's time that you set the standard
13 regarding protections for both our students and our
14 taxpayers.

15 Thank you.

16 DR. MCARDLE: Thank you. Our next
17 speaker is William Hubbard from the Student
18 Veterans of America.

19 MR. HUBBARD: On behalf of Student
20 Veterans of America, an, a higher education
21 nonprofit representing over 1.1 million student
22 veterans in post-secondary education, I stand

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1 before you strongly urge this body to stand with
2 students.

3 The intent of Executive Order 13777 is
4 to alleviate unnecessary regulatory burdens placed
5 on the American people. We fully support this
6 intent. We do not, however, interpret this intent
7 to mean the decimation of student protections.
8 And I appreciate this opportunity to further
9 explain our position.

10 My name is Will Hubbard. I am a former
11 chapter leader of Student Veterans of America at
12 American University, and now serve on the national
13 headquarters staff as Vice President of Government
14 Affairs.

15 I also served as a non-federal
16 negotiator in the original borrowers defense
17 rulemaking in 2015, representing the perspective
18 of our military-connected students, and have been
19 nominated by nearly 30 military and veteran
20 organizations for the upcoming rulemaking
21 negotiations.

22 With rumors of hard-won victories to

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1 protect students from being at risk, we delivered
2 a letter this spring on behalf of dozens of military
3 veteran and family organizations to the chairman
4 of the Senate Health Committee and the House
5 Education and Workforce Committee citing our
6 concerns.

7 We also testified before this body in
8 July on these same issues to demonstrate the
9 importance of each.

10 It would be hard to find anybody who
11 likes the idea of streamlining government more than
12 me. Decision-making processes that are slow, and
13 overburdened with regulatory tape are a
14 significant hindrance to protecting student
15 veterans from predatory schools.

16 As a member of the military, I learned
17 about the concept of Commander's intent, a
18 leadership philosophy which dictates that
19 decision-making should occur at the most local
20 level possible, with individuals being empowered
21 to execute a mission. All too often,
22 unfortunately, Commander's intent is obfuscated

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1 like a game of Telephone, the purpose of an order
2 being lost in translation.

3 Mis-application of intent is a
4 dangerous possibility. Interpreting the intent
5 to alleviate unnecessary regulatory burdens does
6 not mean rolling back crucial protections for
7 students.

8 The Executive Order specifically cites
9 that those burdens should be reduced on behalf of
10 the American people. Are not students the
11 American people?

12 Therefore, we highlight several
13 critical protections which should be considered
14 for modification through strengthening. First,
15 the gainful employment rule. This rule enforces
16 the Higher Education Act's requirement that a
17 career education program receiving federal student
18 aid must prepare the student for gainful employment
19 in a recognized occupation. This common sense
20 requirement applies to career education programs
21 at all types of colleges, and protects both
22 students and the taxpayers from fraud, waste, and

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1 abuse.

2 Second, new regulations on federal
3 student loan relief. These regulations for
4 defrauded borrowers and college accountability,
5 which make it harder for schools to hide fraud, and
6 clarify avenues for students to receive loan relief
7 they are entitled to under the Higher Education
8 Act.

9 These regulations should be modified to
10 be inclusive as possible, with the benefit of the
11 doubt being given to students who attended programs
12 that consistently demonstrate a pattern of
13 intentional deception of their enrollees.

14 Third, the incentive ban compensation.
15 This ban was enacted in the Higher Education Act
16 as well, more than 20 years ago, with broad
17 bipartisan support. School is a major life
18 decision, not a trip to the supermarket. Let's
19 take it seriously. Any school that says, as a rule
20 of thumb, that students should enroll today, it's
21 a point of concern.

22 We remain, we maintain that schools

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1 that achieve strong outcomes ought to be openly
2 embracing the idea of student protections. These
3 protections only negatively affect schools who
4 appear committed to defrauding taxpayers,
5 students, and the broader American public.

6 On behalf of national organizations
7 representing our nation's military service
8 members, veterans, survivors, and families, we
9 vehemently urge this Department to ensure
10 important laws and regulations protecting students
11 are not watered down or eliminated. We hope that
12 agreement is possible in order to protect America's
13 military heroes and their families. Thank you.

14 DR. MCARDLE: Thank you. Next we have
15 Pam Lightfoot. Is she here? Ah. Thank you.

16 MS. LIGHTFOOT: Hi. Good morning. I,
17 I guess I took that last spot. I, I said maybe if
18 there's something I can say, I'll go ahead and do
19 it.

20 I am a mom. I am also a veteran. I
21 gave my GI Bill benefits to my older son. His
22 not-real-name is Jerry, say, and he has been

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1 dealing with being accused of stalking at a
2 Virginia university.

3 If I, if it wasn't for my just old
4 woman-ness, my hard headedness, and my background,
5 over 36 years of federal government service, as
6 well as 26 years in the military, I don't think he
7 would be alive today.

8 The allegation against him was
9 crushing. It's still crushing. It's something
10 that you wouldn't want to wish on your worst enemy.

11 As a lot of people ahead of me have said,
12 and, mainly it's, again, I wrote, started to write
13 down names, but most of the people were, I think
14 you understand from where they came from.

15 I have been involved with the process,
16 and it has been atrocious. There has been no due
17 process any stage of the matter. I've been through
18 everything to the provost, and now the matter has
19 been concluded, as far as the university is
20 concerned, but we'll probably be seeking to sue the
21 university in federal court.

22 The, I am a Democrat, which is odd,

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1 being in the military and whatnot, and, and don't
2 particularly agree with a lot of things that
3 Secretary DeVos is, has done. But I had no idea
4 about this Title IX at all until my, my son was
5 accused of all this.

6 It just totally came out of left field,
7 and, and, and was just outrageous. And the
8 continuation of Vice President Biden to insist, and
9 other Democratic senators and whatnot, it's just
10 amazing to me that they don't believe in due
11 process. That is the basis of what our government
12 is, our, you know, our, our criminal justice
13 system. Any sense of fairness.

14 The, you know, I, for remedies, you
15 know, I would like to, the, for the Department to
16 hopefully put a lot of this stuff for the serious
17 allegations of assault, rape, back, frankly, to the
18 police. Campus police have no business taking
19 care of these kind of things whatsoever.

20 Stalking, again, the officer had
21 mentioned that for, that different states
22 definitions, it varies. In fact, Virginia's does

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1 not agree with the, the act's definition of that.

2 And I'm, obviously, as my son is, his
3 issues concluded, I'm interested in what's going
4 to happen for those children who have been
5 disciplined so badly in the past. We need to
6 rectify what has been done to those kids.

7 And I'll tell you, even if we can't
8 find, can't afford an attorney, and a few of the
9 speakers here had said that, gee, my son received
10 such a small discipline, to not even worry about
11 it. I'm like, you know, that's not the point.

12 Any unfair discipline, any unfair
13 discipline is not right. And, you know, I'm going
14 to, if I have to be pro bono, or you know, get my
15 son up there by himself, and a federal judge, I will
16 do it -- because if the Department of Education
17 doesn't fix this, and help remedy what has been done
18 to the students in the past, I guarantee the federal
19 judiciary will.

20 And they have been. They have been a
21 lot, and I recognize a lot of these people speaking
22 from tweets, and readings, cases and stuff like

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1 that, and I applaud them making the trip here. I
2 just live in, in Virginia. It's not that far for
3 me, to speak out for their kids.

4 Now, for the, you know, the, the
5 financial aid, just a totally different subject,
6 FAFSA requires a person to, a young person to have
7 their financial, the parent's financial aid
8 information up to age 24. I have, my son has a,
9 a friend whose parents refuse to give them
10 information, and the FAFSA website nicely says, oh,
11 we're so sorry if your parents don't want to give
12 you your information. There's nothing we can do.
13 Maybe you can get one of your counselors at the
14 college to speak to your parents.

15 And I'm thinking, oh my God, just let
16 these children, who want to continue their
17 education, and have no financial basis to allow
18 them to, to do an affidavit, or something said,
19 somebody said about --

20 Thank you very much.

21 DR. MCARDLE: Thank you. Thank you.

22 That concludes our morning session. We will take

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1 an hour break for lunch, and reconvene again at
2 1:00. Thank you.

3 (Whereupon, the above-entitled matter
4 went off the record at 12:01 p.m. and resumed at
5 1:01 p.m.)

6 MS. SMITH: Hi, everybody. The crowd
7 has dwindled.

8 DR. MCARDLE: At least for now.

9 MS. SMITH: At least for now. Couple of
10 quick announcements. One, and you're going to go,
11 roll your eyes, but please don't go out the
12 emergency exit. I was wondering why I was hearing
13 beep-beep-beep-beep-beep before. So we, you
14 can only go out where the, where the guard entrances
15 are, okay? So these big, red lettering across the
16 door. It will set off alarms, and cause a little
17 havoc.

18 The second announcement is, around --
19 and I'm going to try and do this as, with the least
20 disruption -- but I am going to be, or a little after
21 2:00, leaving. A colleague will come in and take
22 my place, and then I'll be back. I just have a,

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1 a meeting upstairs. I didn't want it to, whoever's
2 speaking around that time, please don't be
3 offended. But we just need to make a quick switch,
4 and then I'll be back.

5 And then we're going to get started.
6 Okay?

7 DR. MCARDLE: Absolutely. Welcome
8 back, everybody. Our -- I don't have that quiet
9 of a voice. I'm not sure why it's not --

10 Our first speaker this afternoon is
11 Harrison Wadsworth from the International
12 Education Council. If Harrison is here. And we
13 do not see Harrison. Unless that's --

14 MS. SMITH: Oh, I hear his voice
15 actually, maybe --

16 DR. MCARDLE: I know, that's why I was
17 like, is somebody out there, maybe?

18 Thanks, Conway. Just going to check
19 and see if he's there. He's going to check. The,
20 I see some people who are just wandering in.

21 (Pause.)

22 MS. SMITH: If not, we'll have to move

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1 on. Yep.

2 DR. MCARDLE: All right. Okay. In
3 that case, we will move on to the next speaker, who
4 is Cheryl Dowd, from WCET State Authorization
5 Network. Hi, Cheryl.

6 MS. DOWD: Thank you. Thank you very
7 much for this opportunity today.

8 My name is Cheryl Dowd. I'm the
9 Director for the WCET State Authorization Network,
10 SAN. The State Authorization Network is a
11 nonprofit membership organization representing
12 approximately 700 higher education institutions
13 nationally. We provide training, advocacy,
14 analysis, best practices, and networking for
15 institutions managing regulatory requirements for
16 their out of state activities.

17 SAN is an operational unit of WCET,
18 which is the WICHE Cooperative for Educational
19 Technologies, which supports higher education
20 institutions in their creation and use of
21 educational technology.

22 SAN wishes to address the release of the

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1 regulations for state authorization that came out
2 last December, that are to go into effect July 1,
3 2018. SAN would like to make three points
4 regarding the state authorization regulations.

5 SAN, first, SAN supports the intent of
6 the federal regulation, to provide additional
7 consumer protection by requiring institutions
8 follow state laws where the institution serves
9 students -- excuse me. We believe these
10 regulations tying Title IV funding to the
11 requirement that institutions verify that they are
12 following applicable laws in the states where the
13 institutions are serving students is important to
14 protect these students from fraudulent actors.

15 As a part of the responsibility to
16 distribute and oversee title IV funds, it seems
17 reasonable that the Department of Education expect
18 institutions disbursing aid to follow the laws and
19 regulations in each state in which it serves those
20 students.

21 Despite calls for less regulation and
22 oversight, the elimination of federal regulation

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1 for state authorization would not eliminate the
2 responsibility of each institution to be compliant
3 with state regulations in each state where the
4 institution offers activities to students, such as
5 online courses and field experiences.

6 States have their own regulations which
7 must be followed. And so within this, this second
8 point, we note that the vacated version of the
9 federal regulation for state authorization of
10 distance education was what opened the door for
11 states to enforce the various aspects of their
12 regulations -- the application process, fees,
13 renewal requirements, and definition of activities
14 that are regulated, which vary so widely state to
15 state. Additionally, failure to comply with state
16 regulations can rise to a violation of federal law
17 for misrepresentation.

18 The State Authorization Reciprocity
19 Agreement, SARA, created an avenue for
20 participating institutions to follow one set of
21 requirements for compliance in all SARA member
22 states. This agreement allows institutions to

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1 conduct distance education-related and limited
2 additional activities, as uniformly defined by the
3 SARA agreement.

4 As a result, SARA's consumer
5 protections are extended to students of more than
6 1500 institutions participating in the agreement.
7 These institutions have seen costs stabilize due
8 to a uniform annual fee to participate in SARA.
9 The growth of SARA has greatly reduced the
10 compliance costs, while providing more consistent
11 oversight of activities of the institution.

12 In addition to providing a single set
13 of requirements for state authorization
14 compliance, SARA requires the institutions
15 participating in SARA to provide notification and
16 disclosures related to programs leading to
17 professional licensure, and an elimination of the
18 new federal notification disclosure requirements
19 under these new state authorization regulations
20 would not eliminate SARA's institutions'
21 commitments to comply with SARA requirements to
22 provide students with notice related to programs

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1 leading to professional licensure or certification
2 in the states where the institution serves those
3 students.

4 Again, failure to provide notification
5 could also, in some circumstances, rise to the
6 level of misrepresentation, or run afoul of similar
7 state-based rules.

8 And the third point is, if the
9 Department chooses to move forward with the
10 regulations with no changes, clarification of the
11 language is needed as soon as possible for
12 institutions to properly implement the
13 requirements directed by the regulations to be
14 compliant with the effective date of July 1, 2018.

15 There are five questions we wish the
16 Department to address if they choose to move
17 forward with these regulations. First, will the
18 Department enforce the regulation as of July 1,
19 2018? That is the effective date, will, but will
20 it also be the enforcement date?

21 The Department of Education recently
22 delayed enforcement and/or compliance

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1 requirements on the gainful employment, borrower
2 defense and cash management regulations. The
3 first two were delayed only days before the
4 implementation date, and cash management was
5 delayed a few days after its effective date.

6 Institutions would appreciate early
7 notification about whether the Department will
8 enforce, further interpret, clarify, delay, or
9 redevelop this regulation well in advance of the
10 July 1, 2018 deadline.

11 Second question is about compliance
12 location. When one reads the regulation, it's
13 hard to determine what is the exact requirement by
14 the regulation. There is language in regard to the
15 use of the word reside.

16 And so, and finally, so there are
17 several, the Department will be able to review the
18 questions that we have provided within the document
19 that we submitted several months ago, in July.

20 But in final, I would like to point out,
21 we encourage the Department to strongly encourage
22 maintaining the state authorization of distance

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1 education requirements. But we recommend that
2 these basic tenets of the regulations remain, but
3 simplified in its most current form, and guidance
4 provided in a timely fashion due to the current
5 effective date of July 1, 2018.

6 Thank you.

7 DR. MCARDLE: Thank you very much.

8 MS. SMITH: Ladies and gentlemen, we
9 really do, we're, not to be obstreperous, we really
10 do need to stick to the time, because we have
11 literally somebody every five minutes. So please
12 don't be offended when I call time. I really do
13 need you to wrap it up, okay? Thank you.

14 DR. MCARDLE: Our next speaker is Emily
15 Garrett with the Feminist Majority Foundation.

16 MS. GARRETT: Thank you for having me
17 here today. My name is Emily Garrett, and I am
18 currently a sophomore at the George Washington
19 University.

20 Although this public hearing is not
21 about the Office of Civil Rights, OCR never
22 provided a forum for students like myself to

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1 express our comments on the Title IX guidance in
2 a public hearing. I felt as if it was my duty to
3 do so today.

4 It is essential to ensure the success
5 of all students on college campuses. All students
6 deserve the right to a safe, meaningful education.
7 The rights of students are currently being
8 infringed upon by the Trump administration,
9 specifically the Secretary of Education, Betsy
10 DeVos.

11 DeVos recently withdrew two crucial
12 Obama-era guidelines, the 2011 Dear Colleague
13 Letter, and the 2014 questions and answers on Title
14 IX and sexual violence. Both guidelines served to
15 clarify institutional responsibility to protect
16 survivors of sexual assault.

17 These rollbacks allow colleges and
18 universities to use mediation and cross
19 examination methods, as well as to deny survivors
20 their right to appeal a decision. Due to these
21 changes, the emotional trauma, and triggering
22 manner in which these cases can now be handled have

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1 even longer-lasting emotional trauma for the
2 survivors.

3 These inhumane measures take away the
4 rights of students to have access to education free
5 from violence. Our country cannot continue to put
6 aside the sexual assault and violence epidemic that
7 has become a normalized practice on college
8 campuses.

9 The current administration is trying to
10 silence the right of survivors by giving more
11 attention and rights to assailants - or as Betsy
12 DeVos has stated - the rightfully un-accused.

13 We need to believe survivors, and
14 create a society in which survivors feel safe to
15 share their stories and pursue legal processes if
16 they so choose to do so.

17 The current climate within the US, with
18 the unbelievable backlogs of rape kits in the
19 criminal justice system, the lack of
20 representation for survivors, the lack of
21 accountability on college campuses, the lack of
22 preventative measures, and the lack of access to

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1 medical and mental healthcare after it has occurred
2 to someone is disheartening.

3 It is proven that students who have
4 experienced some form of sexual violence do not
5 perform as well academically afterwards. This
6 could be due to the fact that their assailant is
7 in their class, they don't feel comfortable going
8 back to their dorm, because that is commonly where
9 the act of violence occurred, or even walking
10 around campus because of the fear that they might
11 run into their assailant.

12 Until the lasting effects of sexual
13 assault and violence are brought to light among all
14 people, especially government officials like the
15 Department of Education, we will continue to go
16 nowhere. We cannot ensure the well-being of our
17 communities without taking into consideration the
18 harms that lots of students face on college
19 campuses, as they are part of our population, and
20 need to be heard.

21 As a student at the, at the George
22 Washington University, and as a member of Students

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1 Against Sexual Assault on our campus, I have seen
2 firsthand the lack of accountability and the lack
3 of support that the schools provide for someone who
4 has undergone this form of trauma. This is one of
5 the reasons why so many students do not report their
6 experiences.

7 I believe that we need to hold
8 universities and college campuses accountable.
9 All of my fellow peers that have experienced sexual
10 assault deserve the rights that colleges are said
11 to provide for the injustices that they have faced.

12 Thank you.

13 DR. MCARDLE: Thank you very much. Our
14 next speaker is now Harrison Wadsworth from the
15 International Education Counsel.

16 MR. WADSWORTH: Thank you very much.
17 These, thank you for the opportunity to comment to
18 the Department of Regulatory Reform Task Force.
19 My comments today are to supplement written
20 comments submitted to the Task Force on September
21 19 on behalf of the member institutions of the
22 International Education Counsel, a trade

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1 association of eligible foreign colleges and
2 universities that participate in the direct loan
3 program.

4 The direct, the regulations upon which
5 we are commenting generally are included in
6 sections 34 CFR Part 668, although there may be
7 other regulatory sections that also the effect the
8 ability of foreign schools to participate in the
9 direct loan program. All, of course, derive from
10 the Higher Education Act.

11 The members of IEC are some 60 public
12 and nonprofit institutions of higher education in
13 14 countries outside of the United States that are
14 eligible under the HEA for the direct, Stafford,
15 and Plus loans in order to make high quality,
16 international education available to thousands of
17 American students. IEC dedicates itself to
18 ensuring that student loan programs continue to be
19 available to US students who need them to finance
20 their international educations.

21 It's critical to remember that a
22 foreign institution is regulated first and

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1 foremost by its home country's government. The
2 HEA requires as a basic, an eligible institution
3 to be in a country whose regulatory oversight is
4 considered to be at least equivalent to that in the
5 United States.

6 IEC recognizes that regulatory
7 oversight of the use of US government loans is
8 necessary, but we have found that treating a
9 foreign institution almost as if it was in the
10 United States for regulatory purposes makes it
11 increasingly difficult for foreign institutions to
12 offer places to American students who need to
13 borrow to finance higher education.

14 I'd just like to highlight a few of the
15 important issues that are imposing an expensive and
16 unproductive burden on institutions, and which
17 have resulted from Department interpretations in
18 the past, and importantly, expansions of the
19 requirements of the HEA that are closing off
20 opportunity for US students to study at high-level
21 institutions, including medical schools - and in
22 many cases, have turned American students into

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1 second-class citizens by shutting them out of
2 programs of study that are open to others who don't
3 have to borrow student loans to attend.

4 Let me clarify that to add, let me
5 clarify that it's Americans who need to borrow
6 student loans who are cut off from these programs
7 that are available to Americans who don't need to
8 borrow, as well as students from other countries.

9 First, the Higher Education Act gives
10 the Department broad authority to determine
11 regulations, whether a foreign institution is
12 comparable to a US institution of higher education.
13 The current regulations in this matter
14 specifically in regard to written arrangements and
15 distance education are out of date, and should be
16 revised to reflect modern practices in higher
17 education.

18 The Department has no regulation
19 prohibiting students from receiving direct loans
20 to enroll in a program of study that includes any
21 component taken in the United States, with a very
22 limited exception for doctoral students, or at

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1 another foreign institution, unless that
2 institution is also a foreign school that's itself
3 eligible for direct loans.

4 There are about 400 schools worldwide
5 that are eligible for direct loans. Obviously,
6 there's a lot more schools in the world than, than
7 400 that are, would be good places for a student
8 to maybe do a study abroad semester - even take a
9 class, one class at that, an eligible institution,
10 or in the United States.

11 Home in summer, want to take a class to
12 continue their studies, graduate faster, then they
13 are excluded. They lose access to loans or the
14 rest of their program of study. To think that's
15 a bit of an extreme position, and that, that needs
16 to be reviewed, and modified to meet modern, to,
17 to deal with the way higher education is operated
18 today.

19 Also, there is conflicting education,
20 conflicting language within the HEA on the, on
21 distance education. To date, the Department's
22 taken the position that an entire program is

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1 ineligible for American students receiving federal
2 loans if any component is taught via distance
3 education.

4 IEC believes the intent of the
5 statutory language is to ensure that a student
6 enrolled abroad actually attends classes abroad,
7 and is not, for example, sitting at home in the
8 United States.

9 One subsection of the Higher Ed Act says
10 that no more than half of a program taught at a
11 foreign institution can be taught via distance
12 education, while another subsection says, an
13 eligible program cannot include distance education
14 in whole or in part.

15 Congressional intent is contradictory.
16 Did Congress mean no more than half, or none at all?

17 In such a situation, unless Congress
18 clarifies its intention, the Department's
19 regulations, in our view, should follow the best
20 public policy, and not simply defer to the most
21 restrictive policy, as is now the case.

22 We would ask that the Task Force and the

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1 Department review this, this rule, and, and we
2 believe that a better policy would be 50 percent,
3 the 50 percent rule only - or some other rule,
4 whatever the percentage may be that ensures that
5 a student is actually abroad, not sitting at home
6 in the US, but does not have this, this rule that
7 only, any one class eliminates them from being able
8 to receive direct loans at all for the rest of the
9 foreigner's, for the rest of the program of study.

10 There's some other aspects that are in
11 the written comments that me submitted,
12 particularly with regard to medical schools, that
13 we would ask the Task Force to take a look at.
14 Thank you.

15 DR. MCARDLE: Thank you very much. Our
16 next speaker is Dr. Quintin Bullock, President of
17 the Community College of Allegheny County.

18 DR. BULLOCK: Good afternoon, and thank
19 you for allowing me to appear before you to outline
20 the benefits of maximizing and enhancing the Pell
21 program.

22 My name is Dr. Quintin Bullock, and I

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1 have the pleasure of serving as the president of
2 the community college of Allegheny County, located
3 in Pittsburgh, Pennsylvania.

4 The college's annual total enrollment
5 is 26,782 credits, and 16,370 non-credit, with a
6 total of 43,152 unduplicated head count.

7 I'm here today to speak to you regarding
8 the important effect of the Pell Grant program has
9 upon our students, and the college students across
10 the country. I'm especially urging you to
11 consider to remove the sliding scale reward
12 mechanism, and replace it with a flat rate for all
13 students who qualify, to increase the return on
14 investment of Pell, preserve Pell availability, to
15 boost completion rates, and significantly increase
16 lifetime earning potential of awardees, and to
17 support year-round Pell.

18 As I'm sure you are aware, the federal
19 Pell grant program is grounded in the principles
20 of advancing equity and access economically
21 disadvantaged students, who already face increased
22 challenges that hinder their ability to access, and

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1 to succeed in their pursuit of higher education.

2 Pell Grant also plays an important,
3 significant role with community college students,
4 given the fact that many of our students are amongst
5 those with the lowest income. In fact, one third
6 of all Pell Grant recipients attend community
7 colleges, and of the 8 million students attending
8 community colleges, 3.2 million of them receive
9 Pell Grants.

10 Pell Grants will also cover more
11 expenses for community college students, and those
12 attending other sectors of higher education, who
13 also help to minimize students' borrowing and
14 student debt post-degree.

15 Pell Grants are also credited with
16 boosting the completion and graduation rates,
17 lifetime earning potential, and social welfare for
18 low income students, according to a working paper
19 published in the National Bureau of Economic
20 Research most recently.

21 The Pell Grant program targets grant
22 aid for low-income college students, and not only

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1 improves the likelihood that degree completion
2 rates will be increased, but also that students who
3 benefitted from the Pell awards have increased
4 their earnings for graduation.

5 The author of the study further states
6 that the Pell awardee also experienced improved
7 social welfare for years following graduation or
8 completion. Specific findings include that
9 students eligible for the Pell Grant are 13 percent
10 more likely to graduate within four years than
11 students with incomes just above the threshold.

12 The study also found that eligibility
13 for the maximum Pell Grant award also had
14 significant effects on annual earnings after
15 college, with increases between 5 percent and 8
16 percent.

17 In conclusion, I respectfully
18 recommend that you consider increasing the return
19 on investment by removing the sliding scale award,
20 and replacing the flat rate for those who qualify.
21 While Pell Grants are very important across all
22 sectors of higher education, the grant awards are

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1 particularly critical to community college
2 students, and can mean the difference between
3 attending and dropping out.

4 The Pell Grant for a full-time student
5 can cover full costs and tuition for many students
6 at CCAC, but many of our students earn just enough
7 money to limit their Pell eligibility, and thus
8 limit their access to post-secondary education.
9 These students are not eligible for a full Pell,
10 but have a relatively large gap between their final
11 cost for attendance, and the amount of Pell Grant
12 for which they are eligible.

13 Further, this group of students are
14 often left with no other option than to borrow, or
15 to try to utilize their own resources to address
16 their bills. Many of these students may also
17 struggle to put food on their table and provide
18 shelter for themselves and their families.

19 Also preserve Pell availability, and
20 support year-round Pell. In the years since the
21 recession, Pell spending has decreased according
22 to the statistics of US Department of Education.

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1 The implementation of the year-round Pell Grant
2 availability would be a great advantage to students
3 by allowing them an additional semester of Pell
4 coverage in the same academic year.

5 In closing, I would like to thank you
6 again for allowing me to speak to you about the
7 federal government investment in Pell. Thank you.

8 DR. MCARDLE: Thank you. Our next
9 speaker is Daniel Elkins from the Enlisted
10 Association of the National Guard.

11 MR. ELKINS: Thank you. The Enlisted
12 Association of the National Guard represents the
13 interests of more than 452,000 women and men in the
14 Army and Air National Guard, and we deeply care
15 about protecting the Post-9/11 GI Bill.

16 We firmly believe that every student
17 veteran has earned the right to utilize their
18 benefits at a reputable, affordable, high-quality
19 institution. Good schools help our veterans
20 pursue their life aspirations and career goals.
21 Unfortunately, when institutions fall short,
22 student veterans are hurt, period.

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1 As a country, we're better than this,
2 and it's our duty to fulfill our commitment to those
3 who have served. We believe the upcoming
4 negotiated rulemaking process for gainful
5 employment presents an opportunity to work
6 collaboratively to achieve meaningful, lasting
7 protection to all student veterans.

8 There is no doubt the Department of
9 Education and those who are at the negotiating
10 table will face a tough challenge. Reaching
11 consensus will be difficult. The mere words
12 gainful employment elicit strong reactions from
13 various stakeholders.

14 Unfortunately, the process has become
15 intensely political, and that needs to change.
16 Sure, we need to move forward. But had we reached
17 consensus around the table last time around, we
18 would not be going through this process again. And
19 even though it will be difficult, I believe
20 reaching consensus, and establishing a strong set
21 of protections to ensure all student veterans are
22 well-served by all institutions is the best way to

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1 achieve better higher education as a whole.

2 All legitimate, quality,
3 high-performing institutions should welcome this
4 outcome, and those that show excellence should be
5 highlighted. At the same time, predatory,
6 low-quality institutions at all levels must be
7 identified and eliminated, regardless of sector.

8 If there's no consensus this time, the
9 process will continue to be politicized,
10 needlessly delayed, and most importantly, student
11 veterans will become victims, again and again, of
12 predatory practices.

13 When we work together, we can achieve
14 powerful results. And I'd like to point to an
15 accountability tool that's reached results because
16 of collaboration. HR 4057 and Executive Order
17 13607 led to the establishment of a comprehensive
18 complaint tracking system aimed to gather
19 real-time direct input from veterans, service
20 members, and their family.

21 The Department of Veteran Affairs, the
22 Federal Trade Commission, the Department of

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1 Justice, and the Department of Defense, the
2 Department of Education, and the Consumer
3 Financial Protection Bureau all came together to
4 implement an integrated system that is now
5 available to 2000 law enforcement agencies
6 nationwide.

7 The system has already read to
8 sanctions on institutions for fraudulent and
9 deceptive practices targeted toward service
10 members and veterans.

11 This law had its early beginnings in a
12 collaboration that reached consensus against
13 insurmountable odds. In front of me today, this
14 morning - or I should say this afternoon - is a
15 signed letter by multiple stakeholders across
16 higher education in the veterans community. Just
17 to name a few, the letter includes the American
18 Council on Education, the National Association of
19 College Admission Counseling, the University of
20 Phoenix, the Association of Private Sector
21 Colleges and Universities, the Veteran of Foreign
22 Wars, the American Legion, and Student Veterans of

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1 America.

2 Isn't it amazing what can be
3 accomplished when stakeholders work together
4 collaboratively? Nobody's talking about
5 re-evaluating, or starting over on the complaint
6 tracking system, because our outcome was
7 accomplished in a collaborative way.

8 Is it perfect? No. Is more needed?
9 Yes. Is it sound, meaningful, and has it had a
10 positive impact? Absolutely, and that's what
11 matters.

12 We believe now is the time to improve
13 accountability across the board. Negotiated
14 rulemaking on gainful employment are opportunities
15 to build a strong framework of protections based
16 on collaboration and consensus. I strongly
17 believe consensus can be reached, and the goal
18 should be to protect all students, all veterans,
19 and all service members at all institutions.

20 Together, we can achieve meaningful,
21 lasting protection for all students if we work
22 earnestly to select negotiators who will work

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1 collaboratively to reach a consensus. Select
2 negotiators who are committed to protecting all
3 students, and use the process to truly examine
4 legitimate ways to protect veterans at every
5 institution.

6 Thank you.

7 DR. MCARDLE: Thank you. Our next
8 speaker is Gisela Ariza from the Leadership
9 Conference on Civil and Human Rights.

10 MS. ARIZA: My name is Gisela Ariza, and
11 I am a Policy Analyst at the Leadership Conference
12 on Civil and Human Rights in Washington, DC. We
13 are a coalition charged by our diverse membership
14 of more than 200 national organizations to promote
15 and protect the civil and human rights of all
16 persons in the United States. We work toward the
17 goal of a more open and just society, an America
18 as good as its ideals.

19 Today, I am not only here as a
20 representative for my organization, but also as a
21 first generation college graduate, a daughter of
22 two immigrant parents, and as a counselor who has

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1 worked with students at the high school and college
2 level, and have helped them navigate their higher
3 education journeys.

4 I'm here to talk about some of the
5 experiences the students of color I worked with
6 encountered during the process of pursuing a higher
7 education degree, including the harmful practices
8 they experienced when they became student loan
9 borrowers for the first time.

10 During my time as an educational
11 counselor with the Educational Opportunity Center,
12 the EOC, a federally funded TRIO program that helps
13 non-traditional students with college admission
14 and financial aid, I quickly learned that for many,
15 many for-profit colleges were taking advantage of
16 some of our most disadvantaged students.

17 During their short period of time
18 enrolled in these for-profit schools, they
19 acquired massive student loans, a decision they had
20 hope would pay off in the future upon finding
21 employment. However, for most, this was never the
22 case.

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1 Many were already facing financial
2 hardships. A lot of them were primary
3 breadwinners, or they had children to feed, and in
4 many instances, they worked two jobs.

5 When the students came to the Center,
6 they brought in past due statements and letters
7 from agencies promising to take legal action
8 against them. They showed me the calling history
9 in their cell phones to demonstrate the high number
10 of calls they were receiving from debt collection
11 agencies that harassed them at all hours of the day.
12 In some instances, the students left my office in
13 tears, feeling defeated and frozen, and not being
14 able to do anything about their debt.

15 As a young counselor, I felt helpless.
16 Our Center was our final resort, but unfortunately
17 for most of our students, the harm had already been
18 done. Their credit had already been affected, the
19 interest rate on their debt had already gone up,
20 and the hole of debt was only getting deeper.

21 I was disgusted, and I continue to be
22 disgusted today, by the unethical marketing

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1 tactics that many for-profit colleges use to lure
2 in students of color. We've all seen and heard the
3 commercials and radio ads, with the emotional
4 messages that remind students about their
5 unfortunate circumstances.

6 These abusive strategies and outright
7 assault on our most vulnerable students is
8 something we should all stand against, including
9 Secretary DeVos, as the leader of the Department
10 of Education.

11 The Department of Education recently
12 posted a notice in the Federal Register indicating
13 its intent to re-open regulations, and weaken
14 protections for marginalized students. These are
15 regulations that the civil rights community fought
16 hard for. The borrower defense regulation was put
17 in place to protect students who had been deceived,
18 and the gainful employment regulation was in place
19 to help prevent this from happening to students in
20 the future.

21 On September 19, the Leadership
22 Conference co-authored a letter along with 39 other

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1 organizations urging the Department of Education
2 to protect student loan borrowers of color. In the
3 letter, we provided extensive data that
4 demonstrates the different ways that borrowers of
5 color experience disproportionate levels of debt,
6 especially among students who attend for-profit
7 schools.

8 They are likely to have higher rates of
9 debt and default than their peers at other schools.
10 We know that students who attend these schools are
11 also less likely to graduate, and unable to find
12 well-paying jobs. I urge the Department of
13 Education to protect student loan borrowers of
14 color and their peers, and provide federal
15 oversight so that we can put an end to the damage
16 that for-profit colleges do to thousands of
17 students throughout the country. The Department
18 has a responsibility to protect borrowers of color
19 from companies that continue to prey on them, and
20 without hesitation, crush their dreams for a better
21 life.

22 I learned a lot from the students while

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1 I worked at the EOC, and one thing my students
2 taught me was that they were determined to make a
3 better life for themselves. For many of them, the
4 path to college attainment was a primary route out
5 of poverty, and it is that determination which has
6 inspired me to speak out today.

7 I want my students to know that the
8 civil rights community will continue to fight for
9 them, and the right to a high-quality education.
10 We will push hard against any leader who sides with
11 the for-profit companies over students. I want my
12 students to know that you are not alone, that your
13 dreams matter, and we will fight for you, and an
14 America that is as good as its ideals.

15 Thank you.

16 DR. MCARDLE: Thank you. Our next
17 speaker, David Baime, from the American
18 Association of Community Colleges.

19 MR. BAIME: Good afternoon. My name is
20 David Baime, and I'm here representing the American
21 Association of Community Colleges, which includes
22 the Community College of Allegheny County. It's

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1 great to see you here.

2 On behalf of the 1100 community
3 colleges across the country, we thank the
4 administration for undertaking this badly needed
5 review.

6 We have submitted detailed comments on
7 particular regulations that we believe should be
8 altered or eliminated, and we've endorsed the ACE
9 Task Force report on recalibrating regulation.

10 I'm not going to focus, today, so much
11 on regulations themselves, but more on the way that
12 they're actually administered by the Department.
13 Regulations did not exist in a vacuum in the CFR.
14 Their actual impact depends to a significant degree
15 on how they're put into practice, which involves
16 sub-regulatory guidance, formal administrative
17 actions, and countless numbers of day to day
18 decisions made by Department staff.

19 We will remind you, however, that the
20 latest edition of the Student Aid Handbook is
21 almost 1400 pages altogether, and there's a
22 separate handbook for the Clery Act. That's a lot

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1 for colleges to keep track of.

2 An example of how implementation of a
3 regulation on the books can create additional
4 complications and expense for community colleges,
5 I just mentioned the gainful employment regulation
6 - undoubtedly a very complicated regulation, but
7 the fact the Department issued 108 Dear Colleague
8 letters in the implementation of that meant that
9 it was all the more onerous for implementation. Of
10 course, we have another iteration of that rule
11 coming up.

12 Another major problem in the regulatory
13 process for our institutions is the unevenness of
14 program reviews. It is well-known that personnel
15 at certain regional offices are much more likely
16 to enforce certain aspects of Title IV regulations
17 than others, and this variation is simply
18 unacceptable, and needs to be changed.

19 Another issue that our colleges are
20 experiencing are what they believe are inordinate
21 delays in having changes to their program
22 participation agreements approved to add new

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1 programs. In particular, what happens is that
2 students are denied aid while the, while the
3 paperwork languishes. We therefore encourage the
4 Department to provide greater resources for
5 program administration. We're well-aware of the
6 fact that it's not exactly a, a hot political item,
7 to provide more money for this, but it's
8 nevertheless an essential function of government,
9 and that we ask the Department to request needed
10 resources.

11 Another issue in the regulatory process
12 for our colleges is the institutional liabilities
13 that colleges incur when they fall out of
14 compliance with Title IV, as is almost inevitably
15 going to happen from time to time.

16 What we do here, more than we'd like,
17 to have colleges that have made inadvertent
18 mistakes in program administration are then
19 subjected to what they believe are unreasonable and
20 disproportionate and liabilities - and of course,
21 it's students who ultimately pay.

22 For all the necessary responsibility

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1 the Department has executing the, the public trust
2 in the form of making sure the programs are
3 administered with integrity, the impression of
4 many colleges is the Department views itself
5 primarily as enforcers rather than partners, and
6 they hope that that would change.

7 The bottom line is the community
8 colleges are not out to game or scam the student
9 aid system.

10 We're pleased the Department often
11 makes representatives available to stakeholders,
12 both formally and informally, but we also suggest
13 that the Department provide access for officials
14 in high positions of responsibility on a periodic
15 basis, perhaps quarterly, to receive feedback from
16 institutions about the issues they encounter with
17 Title IV programs. This will help the Department
18 better provide quality service, and ensure that the
19 stakeholders and their concerns are being
20 registered.

21 And although it might sound quaint, we
22 do believe that Department officials should be more

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1 easily available by phone, as they are at present.
2 We all, at times, have to resort to the, to the Help
3 Desk, and we like a person to be there very
4 occasionally. Communications often don't even
5 have phone numbers with them.

6 Finally, as public institutions,
7 community colleges believe that their oversight
8 should, in some ways, differ from private
9 institutions - particularly private for-profit
10 institutions. This goes well beyond the fact that
11 they're fully backed, that they're backed by the
12 full faith and credit of the state.

13 It's the oversight that is inherent in
14 their being publicly chartered, and subject to
15 constant scrutiny by the public. The public views
16 community colleges as being very much of their own,
17 perhaps even more than four-year colleges and
18 universities, and generally keeps them on a very
19 short list.

20 The colleges are far from perfect in all
21 their administration, but when you've got a
22 legislature and publicly appointed boards looking

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1 over your shoulder, it makes for a very different
2 outlook in how you do your business, and what your
3 priorities are. And we believe this should be
4 reflected in federal policy.

5 Thank you for this opportunity to
6 comment, and we look forward to working with you
7 in this very important effort. Thanks.

8 DR. MCARDLE: Thank you very much. Our
9 next speaker is Edward Coleman.

10 MR. COLEMAN: It is indeed a privilege
11 to speak with you today in this historic city
12 regarding a subject that is of great importance to
13 me and my family.

14 My name is Edward Coleman, and I live
15 in Wilmington, North Carolina. I had originally
16 intended to spend the five minutes you have so
17 graciously allotted me to describe, in as much
18 detail as possible, the pain, humiliation,
19 anxiety, and fear my entire family has so closely
20 experienced during the 202 days between February
21 2 of this year, when my son Ward was arrested and
22 charged with sexual battery while a student at

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1 Davidson College, and the subsequent dismissal of
2 that charge on August 22 due to a lack of evidence.

3 However, the issue before us today is
4 more important than just my family's plight.
5 Before I address what I believe to be the
6 fundamental and in fact detrimental flaw in the
7 Title IX process as advanced by the prior
8 administration, I want the record to reflect that
9 I recognize sexual assault is real.

10 Sexual assault is a crime, and those who
11 are guilty of sex offenses should be punished. It
12 is equally true that false allegations of sexual
13 misconduct are real. It is these false
14 allegations, and the indescribable impact they
15 have on the wrongly accused, that has compelled my
16 travel to our nation's capital today.

17 As we sit here this afternoon, there are
18 terrified young men on college campuses across our
19 country who have been falsely accused of sexual
20 misconduct, that do not have the advantages my son
21 did. They do not have a parent or a family member
22 to support them emotionally, and offer the

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1 unconditional love that is so critical in coping
2 with such a life-altering event.

3 They do not have the financial
4 resources that my son was afforded to hire
5 competent counsel to ensure that the truth is
6 revealed. I speak for those young men today.

7 On August 31, 1837, one of America's
8 greatest writers, Ralph Waldo Emerson, delivered
9 the Phi Beta Kappa address at Harvard University.
10 Emerson's speech, the American scholar, serves as
11 a reminder of the worthy goals and ideas that have
12 for so long served as a cornerstone of higher
13 education in the United States.

14 Emerson stated 180 years ago, and I
15 quote: The office of the scholar is to cheer, to
16 raise, and to guide men by showing them facts amidst
17 appearances.

18 I submit to this panel, with respect to
19 sexual misconduct cases, our current group of
20 scholars has failed miserably to meet the standards
21 so pointedly espoused by Emerson. An environment
22 has been firmly established on our college campuses

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1 where guilt, as opposed to innocence, is presumed
2 in sexual misconduct cases.

3 I have witnessed first-hand how
4 students ignore facts - or even worse, do not seek
5 to learn the facts, before carelessly and
6 recklessly acting to ruin the life of a fellow
7 student.

8 I have seen a college president, within
9 days of having a student arrested on their campus,
10 lead their student body in a rush to judgment by
11 very publicly opining that, and I quote again, if
12 a girl tells you she's been sexually assaulted,
13 believe her.

14 Disbelieve the accuser. Period,
15 paragraph, end of discussion. Do not seek the
16 facts. Do not use your ability to reason. Simply
17 believe the accuser. That is a truly remarkable
18 position taken by a college president that flies
19 in the face of the very underpinnings of our
20 democracy, and further confirms the presumption of
21 guilt that prevails on college campuses in sexual
22 misconduct cases.

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1 Getting into and paying for college is
2 not easy. Getting into college requires a dream,
3 and the requisite hard work to make the dream a
4 reality. You all know this to be true.

5 For those that are athletes, they, too,
6 are chasing a dream - the blood, sweat, and tears
7 that are woven into their athletic journey are as
8 real as the pain they suffer when that dream is
9 wrongfully taken from them.

10 Does this mean that a college student
11 or athlete is somehow innocent of sexual misconduct
12 simply by virtue of prior hard work? Certainly
13 not. However, I submit to this panel that the hard
14 work demands that there be a policy in place that
15 protects and respects the presumption of
16 innocence, that affords those accused in Title IX
17 case an opportunity to retain legal counsel, and
18 that legal counsel be allowed to cross-examine the
19 accuser in front of the triers of fact.

20 If a college education is to be ended,
21 it should not be at the hands of a panel of students
22 and administrators who are predisposed to believe,

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1 predisposed to believe that the accuser is telling
2 the truth.

3 We can and must do better.

4 DR. MCARDLE: Thank you. Our next
5 speaker is Jennifer Coleman.

6 MS. COLEMAN: Thank you for this
7 opportunity.

8 My husband is an attorney, and I am a
9 psychologist, and I'm going to talk about my
10 family's experience this last year, going through
11 this.

12 We live in a small coastal town, and we
13 have been blessed with two children, Ward, who's
14 now 20, and Francis, who's 15. We're a fairly
15 typical American family. We worked very hard to
16 instill in our children the importance of helping
17 others, working hard, being responsible,
18 respecting authority, and always choosing to do the
19 right thing.

20 Ward played football and baseball in
21 high school, and Francis plays tennis and soccer.
22 When it came time for Ward to go to college, he chose

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1 to pursue baseball, and he was thrilled to receive
2 an offer to play for Davidson College, a
3 prestigious academic school within four hours of
4 our hometown.

5 Playing at the Division level, I level,
6 fulfilled a childhood dream for him, and I remember
7 his ecstatic excitement when he told me he was
8 admitted. Ward's life has been shaped and blessed
9 by the discipline of sports and the joy of strong
10 friendships. And to that, I am eternally grateful
11 as a mother, because I do not feel that he would
12 have been able to handle the trauma that he
13 experienced over the last nine months without them.

14 Ward was excited to return to Davidson
15 after Christmas break this past year. He had
16 worked very hard, and believed that he had earned
17 a starting position, fulfilling another dream.
18 His life took a terrible detour on February 2, 2016,
19 when he was charged with sexual battery, and
20 arrested on campus in front of his teammates and
21 coaches while at practice.

22 He spent a night in jail, terrified and

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1 confused, and our family entered a nightmare of an
2 experience that we are just now waking up from.
3 The survivors on campus saw this situation as a
4 platform for their cause, and I present to you a
5 petition that they developed in the next days,
6 seeking his removal from the baseball team. The
7 last sentence in the position, the petition says,
8 please set an example, and show the Davidson
9 community through his suspension that sexual
10 predators should never be tolerated.

11 The petition generated 896 signatures,
12 which is just under half of the student body
13 population. As the next months ensued, I watched
14 Ward lose himself in the aftermath of a false
15 accusation. I also watched my husband, daughter,
16 and other family members suffer every day. I woke
17 up every single morning feeling heartbroken, and
18 I continue to feel emotional pain daily.

19 To be, to be accused of something so
20 shameful and horrific leads to emotional trauma,
21 and we also had to brace ourselves for the fight.
22 We are fortunate that Ward's case was adjudicated

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1 by the criminal justice system in a fair,
2 reasonable, and impartial manner. As a mother, I
3 watched my child face the adversity that he
4 experienced.

5 I also witnessed him lose joy, the
6 spring in his step, and confidence. He remained
7 stoic throughout, deciding to remain on campus.
8 He practiced baseball by himself, he spent a lot
9 of time alone in his dorm room, and he focused on
10 his grades and future.

11 Even though the charge against Ward was
12 dismissed on August 22, 2016, we can't remember
13 what true happiness feels like. We have been told
14 that joy may come with healing and the passing and
15 time, but for now, we are still reeling from the
16 pain of how Ward was treated in this process.

17 My daughter said it very succinctly: I
18 can't remember anything about my life before this
19 happened to Ward.

20 Ward stayed at Davidson due to the
21 support from the baseball team and close friends.
22 However, Ward was treated as if he was guilty from

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1 the moment that the news was released on campus.
2 As if the petition was not enough, the Charlotte
3 Observer published an opinion piece written by the
4 President of Davidson College, Carol Quillen, 11
5 days after his arrest.

6 Please read Carol Quillen's article
7 that is attached at your convenience. It makes a
8 powerful statement about her views on sexual
9 assault. As you will see, the president believes
10 that we live in a society that believes that there
11 is a possibility of innocence, as opposed to the
12 presumption of innocence. She opines that we
13 should simply take the words of an accuser as fact.

14 We have been advised that Ward will be
15 treated as if he was guilty by a vast number, even
16 after being exonerated, and we have found this to
17 be true. Only one of the 896 students has bothered
18 to express some form of apology. President
19 Quillen has said nothing to Ward through this
20 process, even though she lives --

21 Let me just say one more thing. As
22 Title IX policy is implemented, safeguards must be

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1 put in place to ensure that due process is afforded
2 to the accused, and that the accused not be
3 subjected to the retaliatory conduct that Ward and
4 our family have had to endure.

5 Thank you.

6 DR. MCARDLE: Thank you. Our next
7 speaker is the Reverend Dr. Ken Brooker Langston
8 from the Disciples Center for Public Witness.

9 REV. DR. BROOKER LANGSTON: Good
10 afternoon. I'm a minister in the Christian
11 Church, Disciples of Christ, and I'm here today to
12 talk about student loans and communities of faith.

13 As diverse people of faith who share a
14 vision of the beloved community, part of our shared
15 mission is to apply faith-based ethical values to
16 those laws and policies that shape our common life
17 as a people, and as a nation.

18 Education is a key value to use in all
19 our traditions, including the Christian tradition,
20 where our faith is based largely on the words and
21 teachings of a teacher named Jesus. And woven into
22 the very fabric of the faith as given to us by our

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1 teacher is the concept of the forgiveness of debts.
2 It is a mission of our teacher gave us. It is a
3 prayer he taught us. And it's our hope for our own
4 spiritual and physical deliverance.

5 That is why we must join with other
6 people of faith and conscience to speak out about
7 education, to speak out about debt, and therefore
8 speak out about student loans. So let's take a
9 look at the situation.

10 The cost of higher education continues
11 to skyrocket. Student loan debt increases
12 exponentially, and default rates also continue to
13 rise. We see that student loan debt
14 disproportionately impacts women and communities
15 of color, including those persons seeking to serve
16 the faith community.

17 Without such programs as income-based
18 repayment plans and public service loan
19 forgiveness, many faith leaders would not be able
20 to heed the call that they feel God has placed on
21 their lives. However, these programs are only as
22 good as one's ability to access them.

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1 This is the crucial role that student
2 loan servers play, though often they are not
3 playing it very well. Indeed, even with such
4 programs, many faith leaders are struggling under
5 the crippling weight of student loan debt.

6 Just listen to this. According to the
7 Auburn Theological Seminary, in 1991, more than
8 half of Master divinity students graduated with no
9 educational debt. This increased significantly
10 to 37 percent in 2001, but the rate declined, slowed
11 to 36 percent with no educational debt upon
12 graduation. The average level of debt for those
13 graduates who borrowed grew from \$11,043 in 1991
14 to \$25,018 in 2001, and \$38,704 in 2011.

15 The major concern for many is the rapid
16 rise in those who are most indebted. In 2001, 20
17 percent of graduates borrowed \$30,000 or more.
18 This had grown to 35 percent in 2011. Of added
19 concern is more theological students are entering
20 seminary with undergraduate debt. A recent survey
21 of student financial aid conducted by the US
22 Department of Education found that in 2011/2012

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1 academic year, nearly 70 percent of students who
2 graduated with a Bachelor degree incurred debt for
3 their education, and those with loans owed \$29,400
4 on average.

5 Now, for, this goes other places too.
6 For example, many orders, religious orders,
7 mandate that applicants be debt-free before
8 joining their ranks, leaving many financially
9 incapable of pursuing their spiritual calling. A
10 2010 survey found that 42 percent of young people
11 who tried to join religious orders were rejected
12 because they were, quote, too poor to take the vow
13 of poverty.

14 Now, this situation has only worsened,
15 but it's not just about people of faith. We're
16 talking about a \$1.4 trillion industry that covers
17 over 44 million, not only people of faith, but
18 students of all kinds.

19 In closing, I want to turn to - and I'm
20 preaching a little, I know - the Book of Psalms and
21 the Book of Ezekiel - texts shared by two religions,
22 and honored by many others. It is well with the

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1 person that deals generously, and lends well, and
2 conducts all affairs with justice. And the
3 righteous person is the one who does not oppose
4 lending, but returns to debtors their pledge, and
5 does not rob the poor.

6 All we ask as people of faith is that
7 these faith-based principles be applied to public
8 policies dealing with education, debt, and student
9 loans. And so, we ask that the Department of
10 Education to improve current regulations and
11 increase access to quality educational
12 opportunities, not deregulate a space that is
13 already filled with problems, issues, and bad
14 actors.

15 To do otherwise would be not only
16 unfair, unwise, and fiscally irresponsible. It
17 would, in our view, be immoral.

18 Thank you.

19 DR. MCARDLE: Thank you. Our next
20 speaker is Faith Ferber.

21 MS. FERBER: Hi, everyone. My name is
22 Faith Ferber, and I'm in my last semester of

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1 undergrad at American University.

2 I was sexually assaulted my sophomore
3 year of college. The weeks after the assault were
4 the hardest of my college career. I could barely
5 sleep, and struggled to make it through class
6 without panicking. I found myself avoiding campus
7 as much as possible, often skipping classes, and
8 never venturing out at night.

9 Despite my best efforts, I couldn't
10 shake the overwhelming fear of running into my
11 perpetrator on campus. My education didn't seem
12 worth the risk.

13 Data show that the vast majority of
14 survivors do not report to their school, and of the
15 group that do report, few opt for a formal
16 investigation process. For example, at Yale
17 University, 88 individuals reported an experience
18 of sexual assault or harassment in the first six
19 months of 2016, and of those 88 people, only five
20 opted for a formal investigation and disciplinary
21 process.

22 I am one of the few survivors who opted

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1 for a formal investigation. Unfortunately, my
2 experience clearly showed me why survivors
3 hesitate to report, when schools fail to
4 sufficiently protect a student's Title IX rights.

5 I reported the assault to American
6 University in early April of 2015. The
7 investigation was completed April 9, giving me hope
8 that AU would follow the guidance outlined in the
9 2011 Dear Colleague letter, and ensure a speedy and
10 fair process.

11 I was very, very wrong. My conduct
12 case was closed on December 9, exactly eight months
13 after the investigation was completed. All
14 throughout, AU failed to provide me with the
15 procedural protections that are outlined by the
16 Dear Colleague letter and the Clery Act.

17 My fall semester consisted of meeting
18 after meeting with the Student Conduct Office,
19 constantly waiting for next steps, being told I
20 couldn't have the advisor of my choosing, being
21 forced to sign a confidentiality agreement, and
22 finally, being threatened to have conduct charges

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1 brought against me for speaking out about my
2 frustrations.

3 Plain and simple, had I known reporting
4 to the school would have led to over 245 days of
5 trying to hold my perpetrator accountable, I
6 wouldn't have reported.

7 The investigation was demanding. I
8 was expected to tell my story over and over. As
9 my case dragged on, I thought about giving up. I
10 know other survivors who have hit their breaking
11 point, and subsequently terminated an
12 investigation because it was taking too long.

13 In my case, for 245 days, I worried
14 about seeing my perpetrator on campus, and feared
15 that he would hurt someone else. During that time,
16 my classes had to be put on the back burner, as I
17 was consumed by prepping for the hearing and
18 worrying about the outcome.

19 Finally, my perpetrator admitted
20 during the hearing that he had assaulted me. He
21 received a year of disciplinary probation, a
22 warning to not assault again. I was devastated.

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1 I had gone through this incredibly long and taxing
2 process simply so I could feel safe at my own
3 school. But I wasn't even allowed that.

4 As a result of my perpetrator remaining
5 on campus, I stopped participating in
6 extracurricular activities that would have
7 required me to spend more time on campus. A busy,
8 student-filled quad on a sunny spring day no longer
9 made me feel happy.

10 Instead, I hurried through the crowds,
11 anxious to get home, constantly scanning every face
12 I passed out of fear for running into my
13 perpetrator.

14 I hope my school will be held
15 accountable for dragging out my Title IX process,
16 and violating my rights as articulate by the Dear
17 Colleague letter and the Clery Act. But with the
18 Department of Education's decision to eliminate
19 the 60 day recommended timeline for
20 investigations, I fear that my experience will
21 become the new norm.

22 The Department of Education shouldn't

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1 be making it easier for schools to drag their feet
2 on sexual assault. It should restore the 60 day
3 recommended timeline, and hold schools accountable
4 when they violate Title IX's requirements that
5 investigation be prompt and equitable.

6 Thank you.

7 DR. MCARDLE: Thank you. Our next
8 speaker is Christopher Perry from Stop Abusive and
9 Violent, I don't have the rest of it here.

10 (Pause.)

11 Oh! You're right. I did miss one.
12 Sorry. Yeah. Sorry. Neal Heller, American
13 Association of Cosmetology Schools. Sorry about
14 that.

15 MR. HELLER: Good afternoon, everybody.
16 I'm Neal Heller, and I'm the owner of three
17 cosmetology schools in the state of Florida, and
18 I am here today representing the American
19 Association of Cosmetology Schools, which is an
20 association that represents over 800 schools
21 throughout the United States.

22 First, I'd like to thank the Department

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1 for revisiting the gainful employment rule and the
2 borrowers defense to repayment rule, as well as
3 financial responsibility rules, through the new
4 negotiated rulemaking. And we look forward to
5 that process taking place, and we certainly look
6 forward to a better product being crafted, coming
7 out of the negotiated rulemaking.

8 Today, AACCS is here to submit our
9 comments with respect to Executive Order 13777
10 enforcing the regulatory reform agenda. Our
11 comments cover everything from the definition of
12 clock hour, recognized high school diplomas, state
13 authorization, accreditation, and a whole laundry
14 list of other issues, and we respectfully hope that
15 the Department will consider our comments and
16 suggestions as these reforms take shape.

17 This afternoon, I'd like to especially
18 highlight and address the matter of the new audit
19 guidelines. These guidelines were one of the last
20 parting shots at our schools from the previous
21 administration, and they actually went into effect
22 on July 1.

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1 So they are currently already affecting
2 our schools, and creating some difficulties for our
3 schools, in that these guidelines are just
4 completely overburdening us, they're cumbersome,
5 they, they're impractical, they don't make much
6 sense.

7 Everything from the new way they want
8 the auditor to calculate 90/10, the way they want
9 auditors to get a certain percentage of student
10 confirmation, which goes way beyond the typical and
11 historical data, which shows that less than 10
12 percent of students respond to these types of
13 inquiries - and when they do respond, a lot of the
14 responses are inaccurate.

15 There's just a, a whole host of, of
16 items in the new audit guidelines which are, quite
17 frankly, just completely untenable. The, the
18 auditors themselves have stated they can't
19 complete this process. They can't do an audit
20 under these guidelines. So for both the schools
21 and the independent auditors, there's a tremendous
22 burden.

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1 It's unnecessary duplicating so much
2 information that is already in the system, and now
3 asking to, the school to somehow, you know, over
4 and over, duplicate the same information. It's
5 impractical, and what we are asking the Department
6 to do, and in similar fashion to Title IX and Clery,
7 where you have not gotten rid of the rule, but you
8 have simply put a moratorium on it, you've entered
9 some interim guidance until such time as you can
10 come up with a more practical and thoughtful audit
11 guideline for the future.

12 We would urge the Department to please
13 take a look at this matter, as it is already in
14 effect, and reverie back to the old guidelines
15 until such time as you have crafted new guidelines
16 which make sense for everybody.

17 I thank you.

18 DR. MCARDLE: Thank you very much. And
19 now, Christopher Perry.

20 MR. PERRY: Good afternoon, everyone.
21 Thank you very much, members of the Regulatory
22 Reform Task Force. I appreciate the time here

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1 today, and your consideration in allowing me the
2 opportunity to submit testimony regarding the,
3 what I believe to be ineffective Title IX campus
4 sexual assault policies from the Department of
5 Education.

6 As you stated, my name is Christopher
7 Perry. I'm a former criminal defense attorney,
8 and currently the Deputy Executive Director for
9 Stop Abusive and Violent Environments, also known
10 as SAVE. SAVE is a nonpartisan 501(c)(3)
11 organization dedicated to protecting all victims,
12 ensuring due process, and producing reliable
13 outcomes in campus sexual assault cases.

14 SAVE has been working for the last
15 several years with students, attorneys, lawmakers,
16 and other advocates to develop a campus sexual
17 misconduct policy that affords an equitable
18 process, and protects the interests of both
19 complainants and accused students.

20 During that time, we have identified
21 serious concerns regarding the harmful effects of
22 the Dear Colleague letter from 2011 on college

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1 campuses. In the six years following the issuance
2 of that letter, complaints by victims to OCR have
3 risen dramatically, and lawsuits by accused
4 students have skyrocketed.

5 As the Secretary noted in her speech on
6 September the 7th, the system established by the
7 prior administration has failed too many students.

8 Survivors, victims of a lack of due
9 process, and campus administrators have all told
10 the Secretary recently that the current approach
11 does a disservice to everyone involved. And we
12 actually commend the Department for rescinding
13 that flawed guidance, and looking for new policies
14 which will provide an equitable process.

15 To improve the response for students,
16 protect the community at large, and hold offenders
17 accountable, SAVE believes that any guidance or
18 regulation should encourage law enforcement
19 involvement in felony-level criminal allegations.

20 The professional investigators and
21 special prosecutors in the sexual victim unites
22 across the country have received years of extensive

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1 training to better assist victims through the legal
2 process, and offer specific protections
3 unavailable at the college level.

4 Leaving the investigation process in
5 felony-level offenses to campus personnel, who
6 sometimes lack the requisite resources and
7 experience, has sadly led to erroneous findings for
8 both accusers and the accused.

9 Just to give you a few examples. At the
10 University of Wisconsin Whitewater, two identified
11 victims filed a Title IX complaint against the
12 school, saying that administrators failed to
13 interview key witnesses in their cases. One
14 student charged, I don't think anybody should be
15 treated the way that I was. It was worse than the
16 assault, a lot worse. I regret with everything,
17 coming forward and saying anything.

18 Another at Amherst College, one of the
19 more egregious miscarriages to date. The
20 complainant claimed that she was forced to perform
21 sexual acts by the accused. So the college
22 conducted an investigation, and held a

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1 disciplinary hearing before three administrators,
2 and expelled the accused student. But the hearing
3 failed to uncover, the hearing and investigation
4 failed to uncover or include key exculpatory
5 evidence - in this case, text messages - that
6 clearly showed the complaint was actually false.
7 Further, none of the panel members asked the
8 complainant to address the multiple contradictions
9 between her, her testimony and the investigation
10 notes.

11 And then finally, at Cornell, at a
12 recent meeting to discuss sexual assault
13 proceedings, participants charged that the
14 university Title IX office cared more about
15 avoiding litigation than seeking justice.
16 Respondents had no ability to examine evidence, ask
17 questions of the witnesses or the accuser, be
18 represented by an attorney, and complainants were
19 not kept informed of the investigation's timeline.

20 To address these problems facing
21 universities and students, SAVE has developed
22 model legislation that we think would help

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1 regulation as well, the Campus Equality, Fairness,
2 and Transparency Act, also known as CEFTA.

3 The purpose of CEFTA is to consider the
4 legitimate interests of the rights of both the
5 complainant and the accused students to assure fair
6 adjudication processes, and achieve reliable
7 outcomes.

8 It would allow for equal access to
9 support services, confidential advisors for both
10 parties, active participation by advocates,
11 voluntary dispute resolution, while also
12 encouraging, with the consent of the complainant,
13 referral of felony sexual violence cases to local
14 law enforcement.

15 I am hopeful that this task force will
16 appreciate the serious need for competent
17 regulations that afford students an effective
18 response to these campus sexual assault issues.
19 As you've heard today from several speakers, the
20 students deserve better.

21 Thank you very much.

22 DR. MCARDLE: Thank you very much. Our

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1 next speaker is John McDonald with the American
2 Federation of Teachers.

3 MR. MCDONALD: Good afternoon. My name
4 is John McDonald. I have served as President of
5 the Henry Ford Community College Federation of
6 Teachers since 1978. I also serve as an AFT
7 National Vice President. Thank you for the
8 opportunity to speak to higher education
9 regulations, and their contributions to student
10 success.

11 First, one critical role, as you know,
12 of higher education regulations and regulators is
13 to protect students and taxpayers from
14 irresponsible post-secondary proprietary
15 institutions. And higher education regulations
16 benefit, let me repeat, those regulations benefit
17 responsible proprietary institutions as well.

18 Not only do bad institutions tarnish
19 the proprietary education industry as a whole,
20 these institutions draw student enrollment from
21 the very proprietary institutions that do provide
22 solid training and education.

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1 The irresponsible institutions resist
2 regulations that embody transparency, and that
3 impose consequences on bad practices, all for the
4 sake of property at the taxpayer's expense.

5 In the absence of regulation, bad
6 institutions diminish the standing of all.

7 Secondly, I frequently hear from our
8 career education faculty about ill-prepared
9 students who come from the now-defunct ITT, and
10 hear, likewise, about students coming from highly
11 questionable proprietary schools still in
12 operation.

13 Our faculty see that these students
14 have been ill-served and poorly prepared. They
15 have exhausted perhaps all of their federal
16 financial aid, and now these students must start
17 all over, with diminished or no federal aid.

18 Most often, these are the most
19 economically vulnerable students we face. Few of,
20 few people in this room have ever had to overcome
21 their socioeconomic challenges to better their
22 lives and their children's lives. Unlike most in

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1 this room, an inconvenience for us is often a crisis
2 for them.

3 Child care, sick child care, single
4 parent households, car breakdown - assuming
5 they're not relying on unreliable public
6 transportation - work shift changes, heavy
7 workloads, and a myriad of other impediments, plus
8 being conned out of limited federal aid by
9 fraudulent institutions - all of this leads to
10 greater student debt, to stop-outs, to drop-outs,
11 to failing grades, and in turn, delayed completion,
12 and ultimately, even greater cost.

13 To say that a student who has expected
14 training leading to gainful employment, and who is
15 now in dire need of borrower's protection and
16 relief from fraud - to say that such a student is
17 merely chasing money is tantamount to accusing a
18 theft victim seeking restitution from the thief as
19 a person chasing free money.

20 In short, the victim becomes the thief;
21 the thief becomes the victim.

22 Third, most of my college career

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1 programs and faculty have business and advisory
2 boards consisting of business and industry leaders
3 who advise our faculty in the programs about their
4 needs in business and industry, and how to improve
5 our career offerings to better serve their needs.

6 On several occasions, these private
7 sector business and industrial leaders have told
8 our career faculty, and our program leaders, that
9 the employees they have hired from proprietary
10 institutions are seriously lacking in proper
11 training and education.

12 They have said that the biggest
13 challenge these face with these students is that
14 these students do not have as much experience, in
15 terms of classroom and laboratory hours, and that
16 their curriculum is not as well-developed.

17 Again, these are private sector
18 employers who have serious concerns about students
19 coming from irresponsible proprietary
20 institutions.

21 In conclusion, it's in the interest of
22 all of us, and most certainly in the interest of

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1 responsible proprietary schools, to support
2 regulations that support students, that protect
3 students, that contribute to student success, and
4 that ensure that public tax dollars serve this end.

5 Thank you again for this opportunity.

6 DR. MCARDLE: Thank you very much. Our
7 next, our next speaker is Karen Strickland, also
8 from the American Federation of Teachers.

9 MS. WEINGARTEN: So if it's okay, I'm
10 going to switch positions with Karen. My name is
11 Randi Weingarten, and with, together with
12 Professor McDonald, Professor Ramsey, and
13 Professor Strickland, all of whom are tremendous
14 educators, and activists, and trade unionists in
15 their own right, we are testifying here about how
16 the regulations that are being proposed to be
17 eliminated, how they actually very much help the
18 students we serve, and the institutions that we
19 love.

20 My name is Randi Weingarten. I have
21 the great honor of representing the 1.7 million
22 members of the AFT, and the AFT is the nation's

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1 largest union of college and university and
2 faculty. And as Professor McDonald was talking
3 about before, and you'll hear this again from
4 Professor Ramsey and Professor Strickland, our
5 members understand and confront firsthand the most
6 pressing issues in higher education, and the, and
7 the issues of the students that we serve, and they
8 often see and feel the impact of regulations from
9 the Department of Education.

10 So we're here to provide input to the
11 Regulatory Reform Task Force, as described in the
12 Federal Register. We understand the Task Force
13 and this entire administration's approach to
14 accountability. Or I should say that we may
15 understand it. But we completely disagree with
16 it, because it is at odds with the Department of
17 Education's historic mission and purpose as a civil
18 rights agency.

19 We believe that the hearing, that,
20 that, that, that, what, what this hearing is doing,
21 with all respect, is that it gets the relationship
22 backwards between quality education and

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1 regulation.

2 And this is what I mean. The Federal
3 Registry said that the first four responsibilities
4 of the Task Force are to target rules that, a.,
5 eliminate jobs and/or inhibit job creation, b., are
6 outdated, unnecessary, or ineffective, c., impose
7 costs that exceed benefits, and d., create a
8 serious inconsistency, or otherwise interfere with
9 regulatory reform initiatives and policies.

10 So if the Department was really
11 interested in actually doing those four things,
12 they would strongly enforce the gainful employment
13 rule. They would actually make sure the borrower
14 defense rule was enforced. And they would
15 actually revisit the decision to, to get rid of the
16 rules concerning sexual assault.

17 Why do I say that? Removing quality
18 standards like the gainful employment rule will not
19 create jobs. What it will do is allow for-profit
20 college shareholders to profit from the Federal
21 Student Aid program by withholding information
22 from these students. That is, after all, one of

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1 the reasons we pushed for the rule in the first
2 place.

3 The stories of fraud and abuse revealed
4 in the previous rulemaking processes are shocking,
5 and they are reinforced by the comments that we have
6 been told, have been made here today.

7 The only thing that's worse than
8 ripping students off is knowingly denying them an
9 opportunity to relieve their debt, and allowing
10 for-profits a way of continuing to prey on these
11 same students. That was the point of the borrower
12 defense rule, and frankly, it never had a chance
13 to become outdated, because the administration has
14 refused to implement it.

15 Shamefully, the Department has not
16 processed one single application for a loan
17 discharge, despite the thousands and thousands of,
18 of kids who have been hurt by the Corinthian
19 bankruptcy, and the ITT bankruptcies. It has
20 abandoned tens of thousands of students who just
21 want to get a surer financial footing.

22 And the last regulation, people will

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1 not be surprised for me to say, or talk about, is,
2 in my judgement, the Department's abandonment of
3 its civil rights mission.

4 I am very personal about the issue of
5 Title IX, because as a survivor of sexual assault,
6 this issue is deeply personal to me. I am stunned
7 - stunned - to watch the Secretary of Education
8 recite arguments that I've heard for decades of
9 race, of rape deniers who want to roll back the
10 clock, and revive the culture of silence that
11 survivors of campus sexual assault have endured.

12 Look, one in five undergraduate women
13 is sexually assaulted. Fewer than 10 percent of
14 all sexual assaults are reported because survivors
15 are afraid to come forward. Eighty-nine percent
16 of colleges and universities report no incidents
17 of rape on campus in 2015.

18 We can't look away. How can we do this
19 in 2017?

20 So that is why we are here today, and
21 I hope you take our comments, and the comments of
22 the students who have been here beforehand, and

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1 will be here testifying afterward seriously.

2 Thank you very, very much.

3 DR. MCARDLE: Thank you very much. Our
4 next speaker is Elizabeth Ramsey for the American
5 Federation of Teachers.

6 MS. RAMSEY: Good afternoon. Good
7 afternoon. My name is Elizabeth Ramsey, and I am
8 proud to represent UFMDC, the union of full-time
9 professors at Miami Dade College.

10 With an undergraduate enrollment of
11 167,000 students, Miami Dade College is the largest
12 institution of higher learning in the United
13 States, and we are especially proud of our School
14 of Nursing at MDC's medical campus. It confers
15 more Associate in Nursing degrees than any other
16 college in the nation.

17 In 2012, a for-profit college was
18 founded by Ernesto Perez, who is a high school
19 dropout with a long criminal record. He opened his
20 school about two blocks from our homestead campus,
21 and he named it Dade Medical College.

22 The logo had a blue and white color

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1 scheme, and that made it very easy to confuse with
2 Miami Dade College.

3 It would not be an exaggeration to say
4 that many people believed Dade Medical College's
5 tactics, from their advertising to recruitment to
6 financing, were deceptive in every possible way.

7 According to some reports, the high
8 pressure sales staff, who were known as academic
9 advisors, promised prospective students that they
10 could finish a degree faster at Dade Medical than
11 at Miami Dade College.

12 The students weren't required to prove
13 proficiency in English in order to enroll, even
14 though all their classes, and the course materials,
15 were delivered in English. They also did not
16 require them to show proficiency in basic
17 mathematics, even to enroll in programs like
18 nursing, where the ability to accurately calculate
19 dosages for medications is literally a matter of
20 life and death.

21 Predictably, the pass rates at Dade
22 Medical were abysmal, and few of their graduates

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1 were able to pass the state licensing exams. At
2 some campuses, the pass rate was as low as 13
3 percent.

4 So students weren't qualified to take
5 jobs in their chosen field, and in spite of the
6 public investment of over \$100 million in Pell
7 Grants and student loans, Dade Medical did nothing
8 to address the critical shortage of qualified
9 medical professionals that is so common in our
10 state, and nationwide.

11 At Miami Dade College, we worked very
12 hard to contain tuition costs. Fewer than 10
13 percent of Miami Dade College graduates finish
14 school with any student debt. But at Dade Medical
15 College, the percentage of students taking out
16 student loans was close to 90 percent.

17 By the time Dade Medical College
18 abruptly closed its doors in 2015, and the founder,
19 Ernesto Perez, pleaded guilty to a campaign finance
20 fraud, students and former students owed an average
21 of \$28,769 in student loans.

22 Mr. Perez was convicted of contributing

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1 illegally to the campaigns of Florida state
2 legislators from both parties. In exchange, they
3 had relaxed academic standards, and halted the
4 enforcement of regulations.

5 The story of Dade Medical College is
6 just one example of why some federal regulation of
7 higher education, especially around deceptive
8 sales tactics, is necessary.

9 Some functions of government are best
10 carried out at the state and local level, but
11 regulation of student financial aid dollars is not
12 one of them.

13 I want to sincerely thank you for
14 considering this case in your review of higher
15 education regulations, and I urge you to retain and
16 enforce the federal gainful employment regulations
17 moving forward.

18 Thank you.

19 DR. MCARDLE: Thank you very much. Our
20 next speaker is Karen Strickland, also from the
21 American Federation of Teachers.

22 MS. STRICKLAND: Good afternoon, and

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1 thank you for the time to speak to you today.

2 My name's Karen Strickland, and I was
3 a 20-year faculty member at a community college in
4 Seattle, Washington. Now I have the honor of
5 serving as President of the American Federation of
6 Teachers in Washington State, and I'm here to
7 represent roughly 6,500 education employees, the
8 majority of whom work in higher education.

9 For decades, women and allies have
10 fought to end sexual assault. In spite of the
11 courageous testimony from many survivors, the
12 legislative advocacy to protect the rights of
13 survivors, increased enforcement of laws against
14 sexual assault, and efforts to raise awareness and
15 educate the public, we continue to live in a country
16 in which it's estimated that 20 percent of women
17 and 6 percent of men will be sexually assaulted
18 while at college.

19 The effort made to end sexual assault
20 has been monumental and continuous. Some progress
21 has been made, such as laws that prevent blaming
22 the victim, and policies that provide greater

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1 support services for survivors.

2 Sexual assault is now a subject that we
3 talk about publicly, as opposed to the secrecy that
4 surrounded it decades ago. And yet, the progress
5 made is not proportionate to the effort made to end
6 it, or to the seriousness of the problem.

7 We continue to see high rates of many
8 forms of sexual assault at schools and colleges,
9 as well as in the workplace. The lives of
10 survivors are at best disrupted, at worst
11 destroyed. Educational careers are interrupted
12 or discontinued, and the effects of the assault
13 typically linger for many years into the future.

14 Secretary DeVos's proposed rollback of
15 the very regulations that help us to reduce sexual
16 assault is unconscionable and counterproductive.
17 The changes being proposed turn back the clock to
18 a time when victims couldn't acknowledge they'd
19 been assaulted, or seek the help they needed for
20 fear of retaliation, humiliation, and blame.

21 These rollbacks send a message to
22 perpetrators that they need not take full

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1 responsibility for their behavior, and to victims
2 that speaking out is practically pointless, and
3 puts them at risk of re-victimization.

4 We figured out years ago that
5 interrogating a victim and blaming her for being
6 assaulted, either implicitly or explicitly, is
7 unjust, reduces the likelihood of pursuing legal
8 redress, and worsens the consequences of the
9 assault. I think we've heard testimony today that
10 speaks to that.

11 I volunteered on a rape hotline back in
12 the 1980s, and when doing educational workshops,
13 we would often share the analogy of a man in a nice
14 suit, wearing an expensive watch, and with a wallet
15 full of cash being robbed. The big difference
16 between that image and sexual assault, of course,
17 is that this man wouldn't have been questioned as
18 to why he was wearing that nice watch, or those
19 expensive clothes, or for God's sake, why would he
20 carry so much cash?

21 I want to share with you the goals of
22 a bill passed in Washington State, passed with

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1 bipartisan support. SB-5719 was passed in 2015,
2 with the goals to promote the awareness of campus
3 sexual violence, reduced its occurrence, and
4 enhance student safety. Also, to develop
5 recommendations to improve institutional campus
6 sexual violence policies and procedures, and
7 finally, to develop recommendations for improving
8 collaboration on these issues among institutions
9 of higher ed, and between institutions of higher
10 ed and law enforcement.

11 The task force set up to figure out how
12 to achieve these goals was made up of college
13 presidents, community members, law enforcement,
14 and more. These are people who understand the
15 issue of sexual assault and higher education.

16 The 17 recommendations of the task
17 force are all about making greater investments in
18 addressing the issue of sexual assault. Really,
19 just the opposite of what the current plan of the
20 DOE, to do less.

21 These recommendations reflect the will
22 to finally stop the sexual assault of college

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1 students. The Department of Education should
2 similarly commit itself to stopping the sexual
3 assault of college students. To do that,
4 maintaining the regulations is essential, and
5 shows young people, whether perpetrator or victim,
6 that sexual assault is a serious matter that will
7 not be tolerated.

8 Thank you.

9 DR. MCARDLE: Thank you very much. At
10 this time, we will be taking our 10 minute break,
11 and so we will be reconvening at -- what time is
12 it now? Let's call it -- what time does that even
13 say? 2:40, sorry. Can't see in the dark. 2:40,
14 and that -- that will be time that we will
15 reconvene, at 2:40.

16 (Whereupon, the above-entitled matter
17 went off the record at 2:30 p.m. and resumed at 2:41
18 p.m.)

19 DR. McARDLE: Welcome back everybody.
20 We're going to start the afternoon session at this
21 point. Our first speaker is Aaron Shenck from
22 PAPSA.

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1 MR. SHENCK: Good afternoon. Again, my
2 name is Aaron Shenck. I'm with PAPSA. We're a
3 state trade association in Pennsylvania that
4 represents about a hundred different technical
5 colleges and post-secondary trade schools.
6 Within our membership we have both non-profit and
7 for-profit members. I personally visited almost
8 all 100 of these campuses in PA. What I've heard
9 over and over again from many administrators and
10 school leaders is the need for regulatory reform
11 at the federal level.

12 It's one of their top concerns, and --
13 and so I'd like to thank the Department for, you
14 know, starting this process and hopefully it
15 results in some good product in the end. We
16 actually surveyed our members going into this
17 basically saying look we know the Department wants
18 some specific ideas on specific sites, specific
19 rules, send them to us. So we got in about a dozen
20 different real substantive ideas for reform.

21 I'll just quickly read these off. I
22 won't go in detail of each, but timing of campus

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1 crime reports, the audit guides, a common set of
2 consumer information, definition of credit hour,
3 ECAR time lines, verification and financial aid
4 changes, R2T4 simplification, loan limitations,
5 re-certification time lines and changes to the
6 appeal process.

7 We previously submitted these ideas in
8 more detail to the Department, so I'm not going to
9 go over that. I do have a copy that I want to give
10 you, if I can, of those specific changes as well.
11 So I'm not going to go into those any further.
12 We've submitted online, and also we'll give a hard
13 copy today.

14 I just want to spend my last, you know,
15 2, 3 minutes, whatever I've got just doing some
16 general points. One is whatever we do here we
17 think there should be flexibility in the
18 regulations, higher ed and the workforce are
19 changing at a pace that are often too fast for
20 regulators to keep pace. Higher education in the
21 next 5, 10, 25 years will look nothing like it does
22 today.

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1 Some examples of how it's already
2 changing is online learning, digital tools
3 replacing text books, enrollment declines in brick
4 and mortar campuses, more interstate reciprocity
5 across state lines, competency based education
6 models, new and alternative core scheduling
7 models, 18, 20 -- 18 to 22 year old students no
8 longer being the traditional student sometimes,
9 stronger need for skill training and industry
10 certifications and countless other changes that
11 are -- that are already impacting higher ed.

12 Whatever regulatory structure we adopt
13 to this process I recommend that it be flexible
14 enough to account for other changes that we can't
15 see yet. And if I, you know, give any concrete
16 example that -- a current thing in the news, most
17 people probably aware of some discussion around
18 Western Governors University. They're not one of
19 our members, but been following it and there is a
20 model that is pretty, you know, popular with
21 students, competency-based model. But because,
22 you know, some people argue it doesn't comport to

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1 decades old regulations, it's now under question.
2 So there'll be other examples like that if we don't
3 keep these regulations flexible enough to
4 accommodate for change.

5 The next general point I'll make is
6 ending the arbitrary application of rules based on
7 tax status and institutions. Too many
8 regulations, particularly several large
9 regulations from previous administration, were
10 applied unequally and have stricter rules for
11 institutions based simply on their tax status. If
12 a rule makes sense and is effective then it should
13 be applied across the board to all sectors of higher
14 ed.

15 If the rule does not make sense or is
16 ineffective then it should not apply to anybody.
17 The third point I just want to make generally is
18 in our specific comments we provided we didn't
19 touch upon either the gainful employment rule, the
20 borrower's defense rule, or Title IX, and that's
21 simply because we know the Department is engaging
22 in other conversations on those that will get into

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1 those in more detail. So we're going to save our
2 comments for those processes, and so I just want
3 -- but it's not -- the issue is not concern to us.
4 I just feel that the negotiated rule-making is a
5 better place. So that's all I have. Thank you
6 very much.

7 DR. McARDLE: Thank you. Our next
8 speaker will be Melissa Bryant from the Iraq and
9 Afghanistan Veterans of America.

10 MS. BRYANT: Thank you. On behalf of
11 Iraq and Afghanistan Veterans of America, or IAVA,
12 and our over 400,000 members I would like to thank
13 you for the opportunity to speak today at this
14 hearing on educational regulatory reform.

15 My name is Melissa Bryant, and I am the
16 Director of Political and Intergovernmental
17 Affairs at IAVA. I'm also a former Army captain
18 and an Iraq war veteran who has used my Post-9/11
19 GI Bill benefit to obtain a master's degree from
20 -- in policy from Georgetown University. After 13
21 years IAVA has become the preferred empowerment
22 organization for post-9/11 veterans.

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1 IAVA's big four policy priorities
2 outlined in our annual policy agenda are to one,
3 fully recognize and improve services for women
4 veterans. Two, battle military and veteran
5 suicide. Three, government reform for better
6 service for our nation's veterans. And, of
7 course, number four, defending veteran's education
8 benefits, particularly what is now referred to as
9 the Forever or Colmery GI Bill.

10 In defending veteran's education
11 benefits, IAVA believes the most pressing issues
12 discussed here today, are ending the 90/10
13 loophole, protecting the gainful employment rule,
14 and all other rules that protect students and
15 taxpayers from fraud. And killing the intended VA
16 waiver, that could open the door for VA employees
17 to profit from for-profit colleges.

18 A key change IAVA continues to support
19 is closing the 90/10 loophole, which rewards poor
20 performing schools that intentionally target
21 veterans for their education benefits.
22 Currently, no more than 90 percent of a for-profit

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1 school's revenue can be generated from federal
2 funds with the intention that they prove their
3 value for the final 10 percent through the free
4 market.

5 However, a loophole exists where
6 federal GI Bill benefits are counted as private
7 dollars on the 10 percent side and then problems
8 continue to persist. The primary consequences of
9 this loophole are that it incentivizes predatory
10 actors to target veterans for their GI Bill
11 benefits, and it wastes taxpayer money by
12 financially sustaining bad for-profit schools.

13 The 90/10 loophole could be closed by
14 simply including VA and DOD education benefits in
15 the category of government funds. IAVA has a
16 vested interest in defending the GI Bill from bad
17 policies like the 90/10 loophole, and so we not only
18 have fought for the creation of the Post-9/11 GI
19 Bill in 2008, but also champion upgrades in 2010,
20 2014, and this year.

21 Our members remain deeply engaged in
22 the future of this landmark benefit, and often

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1 share their opinions with us. In our most recent
2 member survey 66 percent of respondents have used
3 or are using the GI Bill while another 24 percent
4 intend to. We strongly encourage the Department
5 of Education to work with Congress in removing bad
6 policies like the 90/10 loophole, and further
7 improving the utility of the GI Bill.

8 Also a strong concern to IAVA is the
9 delayed implementation of the gainful employment
10 rule. This rule implemented in 2015 requires that
11 all career education programs which receive
12 federal student aid prepare students for
13 employment in worthwhile jobs. This rule was
14 established to protect students from the predatory
15 practices of inadequate schools that seek to sell
16 them useless education programs, and burden them
17 with large student debt and little access to the
18 jobs they wanted.

19 We cite examples of these predatory
20 practices directly in our policy agenda. As we
21 describe in section 2.1, defend the new GI Bill
22 against cuts, fraud, waste, and abuse, in 2015 and

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1 in 2016 the risks associated with for-profit
2 education companies targeting student veterans
3 further materialized with the sudden closures of
4 all Corinthian Colleges and ITT Technical
5 Institute campuses. The closures of these and
6 other for-profit education companies have left
7 thousands veterans unable to complete their degree
8 programs.

9 While we're glad that veterans will see
10 a remedy to these closures granted under the recent
11 Forever GI Bill expansion, we should fully enforce
12 the gainful employment rule to reduce the odds of
13 situations like this from occurring again.

14 Regulations like the gainful
15 employment rule encourage reforms at for-profit
16 schools that will work toward preventing these
17 closure situations by distinguishing the worst
18 actors in the for-profit sector from those that are
19 delivering quality education programs. By doing
20 so this policy helps veteran education programs
21 like the GI Bill do what they were meant to do, help
22 veterans transition from the military to a civilian

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1 career and life.

2 Lastly, while this issue is not
3 directly related to the Department of Education we
4 feel that it is critical to address here that it
5 could -- as it could adversely affect the education
6 of student veterans. The VA has recently decided
7 to apply a waiver that could allow for VA employees
8 to unduly profit from for-profit schools.

9 This waiver which casts aside a
10 50-year-old anti-corruption law that has prevented
11 officials who administer the GI Bill from accepting
12 funds from for-profit schools that take taxpayer
13 money. IAVA is greatly concerned that such a
14 waiver would open the door to abuse and conflicts
15 of interest regarding VA employees, and the
16 veterans education programs that they administer
17 and have enormous influence over. Under this
18 sweeping change it would be possible for a VA
19 employee to run or own a for-profit college that
20 takes GI Bill money.

21 We understand that the justifications
22 the VA in applying this waiver such as the VA lab

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1 technician taking a class at for-profit college,
2 or a VA doctor teaching a class in adjunct -- at
3 a for-profit school, that these are acceptable.
4 However, in its current form this waiver would
5 unduly expand beyond those situations as it applies
6 to all VA employees who receive such wages. This
7 cannot be tolerated.

8 Thank you, again, for the opportunity
9 to speak at this hearing today, and we look forward
10 to engage with you on these issues.

11 DR. McARDLE: Thank you. Our next
12 speaker will be Nelson Soto.

13 MR. SOTO: Good afternoon. My name is
14 Nelson Soto, I'm the Provos and Vice President for
15 Academic Affairs with Union Institute and
16 University. We are a national non-profit
17 accredited private university specializing in
18 adult education since 1964. We are based out of
19 Cincinnati, Ohio with additional physical presence
20 in Vermont, Florida, and California.

21 Union's proud to say that we perfected
22 the adult delivery model specializing in distance

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1 education programs that combine both online and
2 classroom course work with a high touch faculty
3 attention designed for students regardless of
4 where they live or work.

5 Our mission is to engage, enlighten,
6 and empower adult students to pursue a lifetime of
7 learning and service and social responsibility.
8 We offer over 51 programs including programs in the
9 Bachelor's completion, or undergraduate programs,
10 and also Master's MPHD and interdisciplinary
11 studies.

12 I'm here before you because we have some
13 concerns with current regulations as they include
14 focusing on IPEDS. IPEDS is basically consumer
15 protection and we're -- we're looking at how data
16 is used as the career navigators to understand the
17 institution in terms of their different outcomes.

18 Currently at Union if you would review
19 College Navigator and look at Union you would say
20 this is a horrible school. As you look at the
21 requirements -- IPEDS focuses on first time
22 freshmen -- full time, first time freshmen. At

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1 that rate we're at 6-year award rate of 20 percent,
2 part time 33 percent.

3 But in -- in actuality let me be clear,
4 at our undergraduate level we're a degree
5 completion institution. So our full time,
6 non-first time student graduation rate is actually
7 at 71 percent. Our part time, non-first time
8 graduation rate is actually at 73 percent. Again,
9 vastly different than what's being purported by
10 IPEDS' data.

11 The other areas that concern our
12 institution is around the area of accreditation.
13 The core function of accreditation is to ensure the
14 quality of American higher education. We are
15 concerned that accreditation is losing its
16 independence and becoming an agent of federal
17 compliance. We strongly support the independence
18 of higher education accreditation in order to
19 protect the diversity and quality of higher
20 education in the United States.

21 The third area would be the area of
22 student aid funding. We encourage the continuous

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1 work towards a final budget that funds student aid
2 at the highest levels possible. Federal student
3 aid programs work in concert with each other to help
4 low income students get into, stay in, and complete
5 college. As such send bills to increase Pell Grant
6 maximum to 6,020, provides funding for FSEOG,
7 Federal Work-Study, and TRIO programs. We look
8 forward to be continuous advocates for those
9 programs.

10 And then finally the area of Deferred
11 Action of Childhood Arrivals. As we know as the
12 Obama administration program is coming to an end
13 many DACA students are understandably nervous
14 about their future in this country. We support any
15 bipartisan legislation action such as the
16 undertaking of Senators Graham and Durbin to
17 protect DACA enrollees and create a fair pathway
18 to citizen -- citizenship for these students.
19 Thank you.

20 DR. McARDLE: Thank you very much. Our
21 next speaker is Joseph Shaw from the Council for
22 Education.

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1 MR. SHAW: Hello. My name is Joseph
2 Shaw and I'm presenting a speech on behalf of the
3 Council for Education. The Department should
4 consider new regulations in which the agency
5 information collection activity is a state mandate
6 under the enumeration clause in the federal
7 statutory provisions.

8 These regulations will provide real
9 time and accurate data in the analysis of risk
10 assessment to a third party insurance companies,
11 which is in line with Executive Order 13777. The
12 statute of limitations under the suspended
13 borrower defense should not either repealed,
14 replaced, or modified. The Council for Education
15 projects an estimated \$4.8 billion dollars in
16 unregulated federal subsidies and the admissions
17 of non-residential students by the University of
18 California school system from 2006 to 2016, which
19 is in line with Executive Order 13777 -- excuse me.

20 A copy of this report is available at
21 auditor.ca.gov. Thank you. And if you have any
22 questions send an email message to

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1 director@cfored.com. Thanks.

2 DR. McARDLE: Thank you very much. Our
3 next speaker is Alex Morey from the Foundation for
4 Individual Rights in Education.

5 MS. MOREY: Good afternoon. My name is
6 Alex Morey, and I am an attorney with the Foundation
7 for Individual Rights in Education, or as we are
8 better known FIRE. FIRE is a non-partisan,
9 non-profit organization dedicated to defending
10 core constitutional rights on our nation's
11 university campuses. These rights include
12 freedom of speech and freedom of assembly, legal
13 equality, due process, religious liberty, and
14 sanctity of conscience. The essential qualities
15 of liberty and dignity. Everyday FIRE receives
16 requests for assistance from students and
17 professors all over the country who find themselves
18 victims of administrative censorship or unjust
19 punishment.

20 I'm here today to thank you for
21 soliciting input on how the Department might revive
22 the rules, regulations, and guidance documents

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1 under its purview. One of the core constitutional
2 rights that FIRE defends is due process. Sexual
3 assault on America's college campuses is a problem
4 that must be addressed, and there is no doubt that
5 Universities are both morally and legally
6 obligated to respond.

7 Public universities are also bound by
8 the constitution to provide meaningful due process
9 to students accused of sexual assault. These
10 obligations providing effective responses to
11 sexual misconduct and providing due process are
12 sometimes presented as being in conflict with one
13 another. But the truth is that these obligations
14 need not be in tension.

15 Nevertheless until the recent
16 rescission of the April 4th, 2011 Dear Colleague
17 letter and the accompanying 2014 guidance document
18 the Department of Education's approach to
19 enforcing Title IX compromised the fundamental
20 fairness of campus procedures in the name of
21 addressing campus sexual misconduct. This
22 undermined the credibility of those laudable

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1 efforts.

2 As we told the White House in 2014, the
3 stakes are extremely high for both student -- the
4 student complainant and the accused student in
5 campus disciplinary proceedings. And it is
6 essential that neither student's ability to
7 receive an education is curtailed unjustly. When
8 a university dismisses an accusation of sexual
9 assault without adequate investigation it has both
10 broken the law, and failed to fulfill its moral
11 duty. Recent headlines indicate that far too many
12 schools have taken this path.

13 Similarly when a college expels an
14 accused student after a hearing that includes few,
15 if any, meaningful procedural safeguards, it too
16 has failed to fulfill its legal and moral
17 obligations. Far too many schools have taken this
18 path as well. During her recent speech announcing
19 that the Department would be revisiting its
20 approach on this issue, Secretary DeVos stated,
21 every survivor of sexual misconduct must be taken
22 seriously. Every student accused of sexual

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1 misconduct must know that guilt is not
2 pre-determined. And nearly three quarters of
3 Americans agree with the statement according to a
4 recent survey conducted by Rasmussen. The public
5 will not stand for one-sided approaches to this
6 issue any longer.

7 So today we are urging the Department
8 to stay true to its word. When notice and comment
9 is soon initiated we hope that the Department hears
10 the voices of all who are impacted by this issue.
11 Victims of sexual assault need the Department to
12 remain vigilant in enforcing Title IX. They need
13 the Department to continue to assist colleges and
14 universities in delivering essential resources to
15 these complainants so that they can continue their
16 studies.

17 At the same time accused students need
18 the Department to promote frameworks for
19 addressing this issue that are fundamentally fair
20 and don't undermine the credibility of the entire
21 system. The warnings of civil libertarians must
22 not go unheeded again, and we urge the Department

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1 to invite experts in other fields, medical
2 professionals, legal professionals, and law
3 enforcement to participate in this process. They,
4 like many others, undoubtedly have many valuable
5 contributions to offer.

6 We firmly believe that the best
7 policies are crafted when all the voices are given
8 a seat at the table. FIRE is looking forward to
9 participating in the notice and comment process
10 once it has been formally initiated, and we
11 appreciate this opportunity today to share with you
12 our perspective on this critically important
13 issue. Thank you.

14 DR. McARDLE: Thank you. Next we have
15 Sean Marvin from the Veterans Education Success.

16 MR. MARVIN: My name is Sean Marvin, I'm
17 the Legal Director at Veterans Education Success,
18 or VES. I am also a veteran myself. VES is a
19 non-profit organization that provides free legal
20 services to veterans who've been defrauded by their
21 school.

22 Since we were created in 2012 thousands

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1 of veterans have contacted us. They regularly
2 tell us about aggressive and misleading marketing
3 techniques that various schools use, and
4 misrepresentations that schools make about their
5 education including the cost, whether credits will
6 transfer, accreditation, program requirements,
7 and job prospects upon graduation.

8 Here's just what a few veterans have
9 told us about their school: they offer a veteran
10 rate, but when you look at what they actually charge
11 it's the same as they charge everyone.

12 Another veteran: I was told by the
13 recruiters that my credits would transfer and be
14 recognized. They were complete liars.

15 Another veteran: they made promises of
16 reduced tuition costs for veterans, no application
17 fee, guaranteed job placement program, and more.
18 I have no more knowledge than I already had and no
19 job with a mountain of new debt. I struggle every
20 day to pay my basic bills with no career as they
21 promised. And now I'm supposed to pay student
22 loans for an education that I never received.

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1 Another veteran: I was told that my GI
2 Bill benefits would cover the cost of my tuition
3 in full, and that I would have no out-of-pocket
4 expenses. Now, 2 years after graduating I still
5 have \$50,000 left on my student loans.

6 Another veteran: I enrolled under the
7 pretense the degree I eventually earned could stand
8 next to the other state and private institutions.
9 This was not the case.

10 Another veteran: they lied about the
11 costs. The tuition fees were outrageous. There
12 was no support system. I was promised a military
13 grant that would pay over 25 percent of my tuition
14 and fees and now I'm overwhelmed with loan debt.
15 So many lies.

16 These veterans didn't go to schools
17 like ITT Tech and Corinthian that have been forced
18 to close. All of these veterans went to schools
19 that still operate today. And when the promises
20 that these schools make don't bear out veterans are
21 often left with no remaining GI Bill, and in many
22 cases student loan debt that they have no ability

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1 to pay.

2 Some tell us about how this has led to
3 severe depression, homelessness, and even
4 sometimes suicide attempts. The other day
5 Secretary DeVos said that under the most recent
6 borrower defense regulations all one had to do is
7 raise his or her hand to get free money.

8 The Secretary should listen to these
9 veterans who didn't raise their hand to be victims
10 of fraud, but who did raise their hand to be -- to
11 serve our country. They deserve better treatment
12 from our colleges and from our government.

13 The Department should be enforcing and
14 strengthening rules like borrower defense and
15 gainful employment, and cracking down on schools
16 that take billions of dollars in taxpayer money and
17 operate on deception and fraud. Thank you.

18 DR. McARDLE: Thank you very much. Next
19 we have Lindsey Gardner on behalf of Ivy Tech
20 Community College.

21 MS. GARDNER: First off, I want to thank
22 you for holding this hearing today. I'm here

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1 representing Ivy Tech Community College of
2 Indiana. Ivy Tech is the nation's largest
3 community college system. My comments today are
4 regarding the Clery Act and the Department's
5 enforcement of the law.

6 First off, institutes of higher
7 education want to comply with regulations and
8 rules, and we do our very best to do so. However,
9 compliance is difficult as the Clery Act rules are
10 convoluted and contradict each other. This lack
11 of clarity is compounded by the fact that not all
12 program review findings are posted on the
13 Department's web site.

14 As such, institutes of higher education
15 are left to use only fine activity to determine the
16 Department's interpretations of the rules. No
17 large scale program reviews that have resulted in
18 a complete pass have been posted, which limits our
19 institutes of higher education's access to best
20 practices of successful programs.

21 Secondly, while the intent of the Clery
22 Act is to inform the campus community and consumers

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1 about campus safety, this intent has been lost in
2 the complex rules and over complicated reports that
3 are not easily consumed by our students or their
4 families.

5 It's even more difficult for consumers
6 to compare annual security reviews because
7 statutes and criminal -- criminal definitions vary
8 by their jurisdiction. For example, under aged
9 possession of alcohol laws vary from state to
10 state. Compliance varies even more. This can
11 cause some campuses to appear to have a higher rate
12 of underage drinking when really they're just
13 subject to stricter laws or stricter local police
14 enforcement than a comparable campus.

15 Another item affecting these statistics
16 is that we're required to report certain crimes that
17 occur while students are studying abroad. For
18 example, we operate a culinary arts program that
19 brings our students to Paris for a week. If a
20 robbery occurs in the hotel lobby where we're
21 staying in Paris, we have to report that robbery as
22 a non-campus crime in Indianapolis. How does

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1 reporting a crime in a Paris hotel lobby help inform
2 students and parents about crimes in campuses in
3 Indiana.

4 Lastly, as a community college system we
5 have 19 self-defined campuses. However, by the
6 Department's definition and counting, which is
7 unique only to the Clery Act, we have nearly 70
8 campuses. Our students and staff understand the
9 classical definition of a campus, but when the
10 Education Department counts campuses in different
11 ways under different laws this becomes very
12 confusing.

13 Thank you again for your time. We
14 sincerely hope that you'll take these comments into
15 account, and we look forward to a continued dialogue
16 with the Department regarding these matters.

17 DR. McARDLE: Thank you. Our next
18 speaker is Gaylynn Burroughs from the Feminist
19 Majority Foundation.

20 MS. BURROUGHS: Thank you. My name is
21 Gaylynn Burroughs, and I am the Director of Policy
22 and Research at the Feminist Majority Foundation,

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1 a national organization dedicated to women's
2 equality, gender equity in education, and the
3 empowerment of women and girls in all spheres.

4 We actively work with students and
5 faculty through feminist student groups on hundreds
6 of college campuses, including public and private
7 colleges and universities and community colleges
8 across 45 states and the District of Columbia.
9 These groups are committed to gender equality,
10 civil and human rights, equal access to educational
11 opportunities, and the elimination of gender based
12 violence. Their voices inform these comments.

13 Today I would like to focus my comments
14 on how the Department of Education can work to help
15 ensure success for women who are pursuing
16 post-secondary education at our nation's colleges
17 and universities. This should be a concern for
18 every office in the Department, but I hope that
19 these comments will be transmitted in particular to
20 Secretary DeVos and to Candice Jackson and Office
21 of Civil Rights.

22 In short, I have a simple message. The

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1 Department of Education must ensure robust
2 enforcement of Title IX of the Education Amendments
3 of 1972. Which means working to end the epidemic
4 of campus sexual assault by protecting the rights
5 of survivors and holding institutions of higher
6 education accountable for ending the hostile
7 environments that have allowed this epidemic and
8 robbed survivors of sexual assault, the majority of
9 whom but not all of whom are women, the educational
10 opportunities to which they are entitled.

11 I appreciate that these concerns are not
12 the focus of this current hearing, but
13 unfortunately the Department of Education has not
14 given survivors, their parents, or advocates the
15 opportunity to engage in a public hearing on this
16 topic before it withdrew its April 2011 Dear
17 Colleague letter on sexual violence and the April
18 2014 Title IX guidance document.

19 There is also no way for the Department
20 to achieve its mission without addressing the fact
21 that around 1 in 5 women are raped or sexually
22 assaulted in college. The students that we talked

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1 to know that 1 in 5 is not just a statistic, it's
2 their lives, their friends, their classmates.
3 Almost all the students we interact with have been
4 personally affected by this epidemic, or know
5 someone who has.

6 Sexual violence can have a devastating
7 impact on survivors physically, psychologically,
8 and financially and interferes with their ability
9 to participate in, or benefit from, educational
10 opportunities. The impact of sexual assault goes
11 beyond the survivor as well, affecting the larger
12 campus community.

13 And when survivors are not listened to,
14 trusted, or believed, when their assailants are
15 allowed to flourish on campus without consequences
16 while they are belittled and degraded it sends not
17 only a disturbing message to the larger community
18 about the worth of women and the LGBT community, but
19 it prevents other survivors from speaking out,
20 leaving many to suffer in silence and inhibiting the
21 ability of these students to achieve their full
22 potential.

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1 Just like OPE, OCR requested written
2 comments from the public on regulations and
3 significant guidance documents like the 2011 and
4 2014 Title IX guidance that may be appropriate for
5 repeal, replacement, or modification. Hundreds of
6 thousands of people told Secretary DeVos and the
7 Department that they wanted to keep these guidance
8 documents intact.

9 We expected our comments to be heard and
10 considered. They were not. Instead less than 48
11 hours after the comment period ended the Department
12 withdrew those very same guidance documents, and
13 issued new interim guidance that revealed a
14 shocking lack of understanding of the needs of
15 student survivors.

16 Withdrawing these documents was nothing
17 short of reckless. This interim guidance will
18 confuse schools, discourage survivors from coming
19 forward, and make campuses less safe.

20 Title IX requires fair process for
21 investigation and resolution of complaints for all
22 students. The 2011 and 2014 guidance documents

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1 recognize that if schools fail to provide a fair
2 process to survivors or to accused students they are
3 violating Title IX. For too long survivors had
4 nothing to point to that clarified their rights and
5 provided them with the information they needed to
6 ensure that their civil rights were protected.

7 The 2011 and 2014 Title IX guidance did
8 just that. By withdrawing these documents and
9 replacing them with interim guidance that is not
10 trauma informed and attempts to weaken Title IX, the
11 Department of Education has pulled the rug out from
12 underneath survivors. Through this action we are
13 left wondering whether Secretary DeVos takes equal
14 access to education for survivors seriously. For
15 many, of course, sexual violence is deadly serious.

16 By withdrawing the 2011 and 2014
17 guidance this administration has unfortunately
18 sent the message that women's education is
19 disposable. They can either put up with sexual
20 violence or get out. We call on the Department to
21 reverse course, to listen to survivors, and to hold
22 public hearings on this critical issue. Thanks for

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1 the opportunity.

2 DR. McARDLE: Thank you very much. Our
3 next speaker is Amelia Collins from UnidosUS.
4 Amelia Collins? Okay, moving on. Our next speaker
5 then will be Annie Clark from End Rape On Campus.
6 Annie Clark, I think? Yes.

7 MS. CLARK: Good morning -- good
8 afternoon. My name is Annie Clark, and I am the
9 Executive Director of the national non-profit
10 organization End Rape On Campus. And I want to
11 direct my comments specifically towards the
12 Department of Education's Office for Civil Rights
13 and Title IX.

14 As we just heard and all know, one in
15 five female students will graduate, drop out,
16 transfer, or take their own lives with the title of
17 sexual assault survivor or victim. Those numbers
18 are higher for LGBT students, particularly trans
19 students, and students of color. Yet somehow in
20 the past few weeks this Department has justified
21 rolling back the very protections that protect our
22 most vulnerable students, and many of those voices

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1 are not allowed or present in this room. They were
2 physically shut out of the building earlier when --
3 where Betsy DeVos made this announcement.

4 If this department claims to listen to
5 survivors why did repeal of the 2011 Dear Colleague
6 letter happen a mere two days after a public comment
7 period closed, which expressed overwhelming
8 support for this guidance. This Department by
9 their words and actions instead of being committed
10 to fairness, as it purports to do, has silenced
11 survivors, trans students, and women and has given
12 a platform and a megaphone to men, men's rights
13 activists, and perpetrators of violence.

14 To be clear the 2011 DCL did not invent
15 rules it merely clarified them, and made them
16 accessible to students who needed to understand
17 what their rights were. By rescinding the guidance
18 and referring to guidance nearly 16 years old this
19 Department is quite literally moving us backwards
20 to a time where sexual violence was swept under the
21 rug and students were afraid and many did not know
22 how to report.

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1 Rolling back the transgender guidance
2 earlier this year and then rescinding the 2011 DCL,
3 this Department, and in particular Secretary DeVos,
4 is issuing a very clear leadership signal that
5 somehow student's lives, the most marginalized and
6 vulnerable are somehow worth less than those who are
7 privileged. Moreover, this Department is taking
8 active steps to allow students to choose, excuse me,
9 to allow schools to choose to discriminate by their
10 recent interim guidance.

11 Allowing schools to use the clear and
12 convincing evidentiary standard flies in the face
13 of what we know about how schools operate in their
14 own conduct procedures, and also civil rights law.
15 Civil rights law already uses the preponderance
16 standard and this is allowing discrimination by
17 creating a special class just for sexual assault.
18 This is active discrimination and it simply does not
19 make sense.

20 2011, in particular, leveled the
21 playing field and this new guidance tips it.
22 Things like only allowing the accused to appeal and

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1 doing away with recommended -- not -- recommended,
2 but not a required time line of 60 days and the
3 allowance of cross-examination are clear signs not
4 of equal rights, but of special privileges to one
5 side.

6 Many said that the 2011 DCL was unfair,
7 but it sort of speaks to that old adage of when you
8 are privileged equality can feel like oppression.
9 That is exactly what we're seeing here today.
10 Again, if some of these false allegations are true,
11 if they are true, the Department should be using the
12 Dear Colleague letter to help schools understand
13 how to implement these best practices rather than
14 confusing them. Instead of rolling back guidance
15 we should be enforcing what is already in place.

16 I now want to read a story from a parent
17 who's one of our clients at EROC. "While rape of
18 adult men on college campuses is not nearly as
19 common as it is for women, the protections in place
20 from Title IX and the Cleary Act apply equally to
21 men as to women.

22 My son understood the ramifications of

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1 pressing criminal charges and he decided he was not
2 ready to give up the time and privacy required for
3 criminal investigation, so he decided to file with
4 the university. My heart broke as he told us he saw
5 his assailant on campus the day after, disclosing
6 the assault to us.

7 He called to say he couldn't focus on his
8 work like he used to, he didn't want to go out to
9 parties, and that he went for a run and broke down
10 crying. Title IX provided protection for him.
11 Fortunately, due to the guidance of the DCL his
12 hearing occurred within the 60-day period that was
13 recommended.

14 Two months is a lifetime for a 20 year
15 old who has just been sexually assaulted, and is
16 trying to go to class. I don't know what would
17 happen if our son's assault occurred now. I cannot
18 imagine our son being able to have stayed at school
19 much longer without his case being resolved.
20 Perhaps if Ms. DeVos had taken as much time to meet
21 with survivors and parents of survivors as those
22 accused of assault she would have better understood

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1 what she had done and the potential harm to
2 survivors yet again.

3 Thank you for hearing me.

4 DR. McARDLE: Thank you. Next we have
5 Jeff Schrade on behalf of the Paul Mitchell Schools
6 Franchise Association.

7 MR. SCHRADER: Thank you. My name is Jeff
8 Schrade, and I represent the Paul Mitchell Schools
9 Franchise Association, whose members include small
10 business owners of 112 schools throughout the
11 country. We appreciate the president's executive
12 order which brought us here today, and appreciate
13 this opportunity to submit comments.

14 We fully support the administration's
15 efforts to review, evaluate, modify and perhaps
16 eliminate regulations pertaining to both gainful
17 employment and borrowers defense to repayment.
18 Several Paul Mitchell School owners have submitted
19 applications to serve on the two committees that are
20 being formed to address those issues. We hope that
21 one or more of the applicants from the Paul Mitchell
22 school system will be granted a full seat at the

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1 table and that others may be chosen as alternates
2 for both committees.

3 As the current rules for gainful
4 employment were being written, and before the rules
5 were finalized members of our association warned
6 the department that the cosmetology sector was much
7 different from other for-profit schools, largely
8 because our graduates rely on tips and are often
9 paid in cash. As a result we expressed the concern
10 that the data the Government would rely on for
11 gainful employment for cosmetology schools would be
12 inaccurate and unreliable.

13 In our real world experience that has
14 proven the case, and the courts further supported
15 our position with a federal judge ruling in favor
16 of a group of cosmetology schools. We appreciate
17 the Department's decision to apply that decision to
18 the entire cosmetology school sector. Last year
19 over 9600 future professionals, as they're called
20 by Paul Mitchell, graduated from Paul Mitchell
21 Schools and we ended the year with over 13,000
22 schools -- excuse me, students enrolled.

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1 Of our graduates 97 percent receive
2 their state licenses each year, and nationwide we
3 have a job placement rate of 77 percent, meaning
4 eight out of every ten graduates has a job upon
5 graduation. Many move up within a few years to
6 start their own cosmetology businesses. While
7 graduates from cosmetology schools are in high
8 demand the unique characteristics of a job
9 involving cash and tips means that many under report
10 their income. That is a fact well-known to the IRS.

11 In 1994 Congressional Quarterly
12 reported that all cash businesses were under
13 reporting their income by 60 percent. Ten years
14 later in 2014 Dr. Eric Bettinger from Stanford
15 University published a paper that reiterated that
16 data that 60 percent of cash wages are under
17 reported.

18 In our real world experience and in
19 costly compliance with the gainful employment
20 regulations we learned that our schools that were
21 listed in the failing category had graduates who
22 under reported their income by an average of 65.5

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1 percent. That's a huge margin of error, and that
2 error has in turn cost our franchise owners and
3 corporate partners hundreds of thousands of
4 dollars, great worry, and for some needless
5 heartache as we work to comply with the Department's
6 compliance and appeals process.

7 When we applied the new accurate income
8 data to our schools in the failing and warning zones
9 nearly all of them moved into the passing category
10 and then were in the failing zone. But even with
11 the relaxed standards the Department has
12 implemented, this burden will only receive a
13 marginal reduction in effort, cost and pain for our
14 school. Simply put, the cost to comply to prove
15 that we were right in the first place is now over
16 \$600,000.00.

17 To further highlight our concerns about
18 gainful employment the Department will soon receive
19 a petition signed by nearly 15,000 people asking for
20 the gainful employment regulations to be fixed.
21 Regarding borrower defense to repayment we believe
22 the whole regulation should be re-worked and are

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1 again grateful that the administration is taking
2 action to address this issue.

3 As you know, before it was enacted,
4 many, if not all associations that represent
5 post-secondary education, expressed serious
6 concerns and reservations about the new rules. We
7 join them in submitting comments about BDTR that
8 were -- that we feel were completely ignored. We
9 now appreciate the opportunity to make the
10 regulation better for students and schools. Until
11 they are changed the owner's financial requirements
12 under the regulations are enough to put many schools
13 out of business however.

14 Thank you once again for allowing us to
15 present the comments.

16 DR. McARDLE: Thank you very much. Our
17 next speaker is Dr. Julianne Malveaux, President
18 Emerita of Bennett College.

19 MS. MALVEAUX: Thank you. Good
20 afternoon. It's my pleasure to be here this
21 afternoon. I'm Dr. Julianne Malveaux, President
22 Emerita of Bennett College for Woman. We are

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1 America's oldest historically black college for
2 women, and I was president there from 2007 until
3 2012. During my tenure we received a 10-year
4 reaffirmation from the Southern Association for
5 Colleges and Schools.

6 We embarked on the first in 28 years
7 improvement in facilities, building four building
8 in 5 years which as many of you may know is
9 unprecedented in the HBCU community. And we also
10 enjoyed an enrollment high in 2009. I am an
11 economist by training and academic higher education
12 administrator and student advocate, and I'm here to
13 encourage the department to improve the higher
14 education regulatory schemes, not to dismantle
15 them.

16 I'm deeply concerned, as I think we all
17 are, about the increasing unaffordability of
18 college, the rising student debt in this country,
19 which now exceeds \$1.2 trillion dollars, the
20 current prevalency -- prevalence of predatory
21 for-profit institutions that too often target
22 communities of color. African American Students

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1 disproportionately attend these for-profit
2 colleges, borrow more for higher education, and
3 have lower graduation rates, which makes them more
4 likely to be victims of harm from for-profit
5 institutions.

6 I'm even more concerned that the
7 Department is spreading -- spending this crucial
8 moment, this crucial moment in time discussing ways
9 to further unleash bad actors rather than focusing
10 on affordability and access and strengthening
11 institutions that have consistently proven their
12 ability to educate students of color for less HBCUs.

13 In order to protect students,
14 particularly students of color, and to provide
15 actual opportunity the Department should focus on
16 enacting and implementing strong, smart
17 regulations like the gainful employment rule, which
18 is critical, that promote strong outcomes for
19 students and to incur -- ensure strong results for
20 taxpayers.

21 Rather than focusing on regulation the
22 Department should, number one, focus on increasing

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1 the size of Pell grants. When Pell grants were
2 started they covered about half, actually more, of
3 tuition. Now it covers less than a third of the
4 cost of attendance. So we'd like to see more Pell
5 grants. We'd like to see better regulation of loan
6 services. Recent events have shown that many
7 borrowers are not receiving even basic servicing
8 help leading to default and delinquencies that can
9 impact their financial security for years to come.

10 We'd like better regulations for for-
11 profit organizations, Corinthian, ITT Tech, DeVry,
12 and the list goes on. We've seen some of these
13 folks go out of business, and we've seen students
14 of color pay the price. They've been far more
15 concerned with profits at the expense of students,
16 and few of them have the actual student services
17 that traditional colleges have.

18 What better regulation of accreditors.
19 Too often these agencies are complicit in allowing
20 bad schools to stay open to prey on more students.
21 We need more support for HBCU's MSIs and community
22 college. The Department should work with

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1 congressional leaders, state legislators, and
2 other stakeholders to increase funding for these
3 institutions and create programs that allow them to
4 serve more students. I would like to say that at
5 this moment in time this is especially critical.

6 Last month the Department of -- the
7 Department of Census, Bureau of Census released
8 data on income. We see that the average white
9 household has an income of about \$64,000.00
10 compared to an average income for African Americans
11 of about \$39,000.00. That gap is growing, and it's
12 tragic. With more education of African American
13 people we're still seeing discrimination in the
14 labor force, which leads to these income
15 differences.

16 And just this week, the Federal Reserve
17 Board released income -- income, excuse me, data on
18 wealth in our country. And, again, we see great
19 disparities between the overall population and the
20 African American population. One of the striking
21 disparities is that 73 percent of all whites own
22 their homes compared to 45 percent of all African

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1 Americans.

2 Part of the reason that many African
3 Americans do not own homes, especially younger
4 African Americans, is because they're so burdened
5 with student debt that they're not able to move into
6 the housing market already. And so we would employ
7 the Department of Education to pay attention to
8 what's happening to young black and brown people who
9 basically -- many are first generation.

10 I could tell you stories that would make
11 some of you cry about how hard it is for these young
12 people to finish, and how these loans -- these loans
13 that they're taking out can cripple them. I had a
14 student, as an example, that took 8 years to
15 graduate. So she didn't show up too well in my
16 statistics. But guess why it took her 8 years to
17 graduate, because she'd work every fall and come
18 back to school every spring because she was -- she
19 did not want to have large amounts of debt. She still
20 graduated with about \$25,000.00 worth of debt, but
21 she came back to D.C. every fall to work so that she
22 could come to school in the spring. That's just one

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1 of the stories I could tell you. There's so many
2 more.

3 Again, I encourage the Department to
4 utilize taxpayer resources more prudently and seek
5 ways to create opportunity and access for students
6 and not for predatory institutions. I thank you
7 very much for your time and attention.

8 DR. McARDLE: Thank you very much.
9 We're now going to have Amelia Collins from
10 UnidosUS.

11 MS. COLLINS: Good afternoon. My name
12 is Amelia Collins, and I'm a policy analyst at
13 UnidosUS, formerly known as the National Council of
14 La Raza. UnidosUS is the nation's largest Hispanic
15 Civil Rights organization, and we have been working
16 to improve opportunities for Hispanics for nearly
17 50 years. We rely on a network of nearly 300
18 community based organizations across the country to
19 inform our policy and advocacy work.

20 This uniquely positions us to bring an
21 on the ground perspective to both federal and state
22 policy discussions. Today I will focus my remarks

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1 on the gainful employment and borrower defense
2 repayment regulations.

3 The Latino population is the youngest,
4 and one of the fastest growing in the country.
5 Since 1999 the Hispanic high school dropout rate has
6 fallen. From 16 percent to 10 percent, and the rate
7 of Hispanic high school graduates enrolling in
8 college has reached parity with whites. As such,
9 record numbers of Latino students are enrolling in
10 post-secondary education.

11 The economy of the future depends on
12 equitable access for all students to earn
13 affordable high quality credential or degree
14 leading to a good paying job and opportunities to
15 build wealth. As a civil rights organization
16 UnidosUS has long recognized the importance of
17 equitable educational opportunity as a central
18 pillar in achieving the full realization of rights
19 for all Americans.

20 In pursuit of this goal, Congress passed
21 the Higher Education Act of 1965, a civil rights law
22 that is just as important today as it was then. Any

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1 regulatory agenda implementing the HEA must keep
2 equity as its North Star ensuring all students
3 regardless of race, ethnicity, origin, or
4 socioeconomic class of an opportunity to pursue
5 higher education.

6 While many post-secondary institutions
7 are serving students well others are not.
8 Specifically, some for-profit institutions have
9 exploited both students and the federal
10 government's investment in higher education. Many
11 make false promises to students, and leave them with
12 a low quality credential, few job prospects, and a
13 disproportionately high debt burden.

14 Black and Latino students are often
15 targeted by these programs where they represent
16 over 40 percent of all students enrolled, despite
17 being 30 percent of the overall student population.
18 Latino students are particularly vulnerable to
19 predatory practices. As many are first generation
20 college students navigating the higher education
21 space largely on their own.

22 The magnitude of this problem prompted

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1 the Department of Education to intervene and
2 provide students with critical protections
3 including the gainful employment and borrower
4 defense repayment rules. Together these
5 protections help ensure institutions offer quality
6 credentials while providing students with a path to
7 loan discharge if their institution defrauds them.

8 First, gainful employment. These
9 regulations implement a provision of the Higher
10 Education Act that allows students in programs
11 leading to gainful employment in a recognized
12 occupation to use federal financial aid. UnidosUS
13 along with several other civil rights organizations
14 authored a brief describing how students of color
15 were more likely to be enrolled in high cost, low
16 quality programs, and calling for strong
17 regulation.

18 Data show that students at
19 for-profit institutions are less likely
20 to graduate, more likely to default on their student
21 loans, and must borrow more to pay high tuition
22 costs. The final rule helps protect students from

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1 aggressive and deceptive recruiting, false claims,
2 and predatory lending practices.

3 The gainful employment regulation has
4 already been through a stringent and thorough
5 review process. Rather than re-opening critical
6 regulations, the Department should focus on
7 implementation. Moreover Department officials
8 should consider additional action to protect
9 borrowers including limiting enrollment at poorly
10 performing institutions until they improve, and
11 ensuring information provided to students is
12 transparent and accurately reflects career
13 outcomes.

14 The second regulation we are urging the
15 Department to maintain and implement is the
16 recently finalized borrower defense to repayment
17 rule. Borrowers defrauded by their post-secondary
18 institution have a legal right not to repay their
19 loans, called the defense to repayment. These
20 regulations were updated in November of 2016
21 establishing a new federal standard and process for
22 determining when borrowers had a defense to

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1 repayment, and requiring schools to explicitly
2 inform students of their options if schools close.

3 We are concerned the Department has
4 indefinitely delayed the rule from going into
5 effect, and has signaled a reopening of the rule
6 making process. Further, we are alarmed at reports
7 that the Department has not granted a single
8 borrower defense since the beginning of the current
9 administration.

10 Over 10,000 Latino students were
11 enrolled at Corinthian colleges when they were
12 forced to close. After the Department uncovered
13 fraud, including overstated placement rates and the
14 use of deceptive marketing. The Department has
15 determined these students are eligible for loan
16 discharge and they should expeditiously grant
17 complete relief. Discharging debt held by these
18 students is essential to help ensure they avoid
19 delinquency and default.

20 In establishing its regulatory reform
21 agenda, the Department should fully implement
22 regulations designed to protect students from fraud

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1 and abuse, and to ensure students have a
2 post-secondary path that leads to gainful
3 employment. Anything less would betray the intent
4 of Congress and the Higher Education Act, and would
5 constitute an abdication of the Department's
6 responsibility to advance equity in education.
7 Thank you.

8 DR. McARDLE: Thank you. Our next
9 speaker is Charlotte Hancock from Higher Ed, Not
10 Debt. Hi.

11 MS. HANCOCK: Good afternoon. Thank you
12 for this opportunity to speak with you today. My
13 name is Charlotte Hancock, and I am the program
14 director of the Higher Ed, Not Debt campaign. The
15 campaign is a multi-year, multi-organization
16 effort housed within Generation Progress, a
17 non-profit non-partisan organization.

18 Higher Ed, Not Debt advocates on behalf
19 of student loan borrowers based on the premise that
20 high quality -- that a high quality higher education
21 is a public good that should be affordable and
22 accessible to all. We are concerned about the

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1 purpose of rolling back safeguards, and so are the
2 students and borrowers that we work with.

3 Over the past several weeks nearly a
4 thousand of the individuals Higher Ed, Not Debt
5 works with have voiced concerns. They are worried.
6 They say they think that Secretary DeVos believes
7 she can sneak one past Americans who care about
8 affordable and high quality higher education.
9 They say she wants to repeal or weaken additional
10 regulations meant to protect college students and
11 taxpayers. They say she thinks these regulations
12 are too wonky for the average American to tune into
13 and have time for. But these nearly 1,000
14 individuals vehemently oppose cutting regulations
15 we're here to talk about today.

16 Eliminating these important regs would
17 be a huge win for special interest including large,
18 corporate and -- large, corporate predatory and
19 for-profit colleges, and would put financial
20 interest ahead of the good of students. We and the
21 nearly 1,000 students who submitted comments with
22 our help strongly oppose the elimination or

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1 weakening of the Department of Education
2 regulations meant to protect students and
3 taxpayers.

4 Specifically, we oppose any alteration
5 of the following regulations which hold corporate
6 interests accountable, and stop taxpayer money from
7 being used to support education programs that leave
8 students mired in debt with no good career
9 prospects. First, we ask that the Department of
10 Education not funnel more taxpayer dollars to
11 predatory or for profit programs by gutting the
12 gainful employment rule.

13 Gainful employment protects students
14 and taxpayers by not allowing federal financial aid
15 to go to programs where graduates earn too little
16 compared to their debt. This rule allows good
17 programs to persist while getting rid of those that
18 do a poor job with students. If this regulation
19 goes away career training programs in schools with
20 profit as their bottom line will go back to ripping
21 off students through low quality options.

22 Second, we ask that the Department of

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1 Education not open the flood gates for tuition
2 dollars to go to college recruiters rather than
3 academic resources by weakening the incentive
4 compensation rule. This rule prohibits colleges
5 from paying bonuses, or other commissions to
6 recruiters in exchange for getting students to
7 enroll. For-profit and predatory colleges make
8 more money as they enroll more students. This
9 regulation stops them from using tactics like the
10 now well-known pain funnels to enroll students
11 regardless of their qualifications.

12 And third, we ask that the Department of
13 Education not allow banks to take higher fees from
14 college students' earned financial aid dollars by
15 deepening the cash management rule. Financial aid
16 is for students to pay for college and necessary
17 expenses, not to get nickel and dimed by banks.
18 These regulations protect students from having
19 their financial aid refunds being eaten away by
20 fees, and ensures students get easy access to their
21 money.

22 We urge the Department to reconsider any

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1 plans to change these regulations that protect
2 millions of hardworking students and taxpayers.
3 We are watching and hoping for the right thing to
4 be done, and so are students and borrowers and they
5 will suffer the consequences if this Department
6 puts big businesses ahead of them. Thank you very
7 much for your time.

8 DR. McARDLE: Thank you. Next we have
9 Reverend Dr. Leslie Copeland-Tune from the
10 Ecumenical Poverty Initiative. Oh she's parking.
11 Okay, we'll give our last speaker a few minutes and
12 -- is there anyone who has -- we have a little bit
13 of time after our next speaker comes. Is there
14 anyone who hasn't spoken who wants to? We'll give
15 our last speaker a couple of minutes. You can talk
16 amongst yourselves.

17 (Pause.)

18 Hi. Come on up. The Reverend Dr.
19 Leslie Copeland-Tune from the Ecumenical Poverty
20 Initiative. Hi.

21 MS. COPELAND-TUNE: Good afternoon.
22 Glad to be here today. As I was just introduced,

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1 my name is Reverend Dr. Leslie Copeland-Tune, and
2 I serve as the director of the Ecumenical Poverty
3 Initiative, which is an anti-poverty ministry led
4 by an active partnership of ecumenical leaders from
5 diverse denominational, geographic, racial and
6 ethnic backgrounds.

7 EPI seeks to add a prophetic voice and
8 collective action to the fight to end poverty in our
9 nation. We are currently focusing our work on
10 ending predatory lending practices, advocating for
11 fair and just wages for low income workers,
12 mobilizing partners to advocate for national, state
13 and local policies that help to end poverty.

14 We've been doing a lot of work to protect
15 safety net programs. We examine ways to identify
16 and address the link between economic and racial
17 justice, and increasingly we're exploring ways to
18 address disparities in education and the ways in
19 which that can cause people to continue to live in
20 a cycle of poverty.

21 In addition, EPI has a Pastors Ending
22 Poverty initiative which galvanizes pastors to end

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1 the work -- end poverty nationwide. I'm here today
2 to speak about the gainful employment rule and
3 for-profit colleges. We take the education of
4 students and the protection of taxpayer investment
5 in that education very seriously. My own family
6 history personally makes me extremely committed to
7 this issue.

8 My grandparents like many others from
9 African American heritage were sharecroppers in
10 South Carolina barely finishing middle school, but
11 working so that each of their children, each of
12 their nine children, I should mention that, would
13 be able to go to college or a trade school. Today
14 as their granddaughter I stand here with four
15 degrees, and recognize that I am the answer to the
16 pray -- to the prayers of my grandparents. But I
17 am not alone. There are millions of people whose
18 family background is similar to mine. Children who
19 did not grow up with a silver spoon in their mouths,
20 but who have gifts and talent and want to use those
21 gifts and talent, not just for their families, but
22 to better our communities and our nation.

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1 As college becomes increasingly less
2 affordable we have witnessed a rise in student loan
3 debt, which can be crippling to students once they
4 graduate. This coupled with the unscrupulous
5 practices often found in the for-profit education
6 industry makes it even more difficult for people to
7 get out of poverty and build a better life for
8 themselves.

9 We have not only seen how this rise
10 disproportionately hurts the African American
11 community. From our students to historically
12 black colleges and universities, which have
13 consistently and effectively educated black
14 students for more than a century.

15 In order to protect students,
16 particularly students of color the Department of
17 Education should enact and implement strong
18 regulations like the gainful employment rule that
19 are clear, consistent and that provide necessary
20 relief for students who have been defrauded by these
21 harmful institutions and practices. Any new rules
22 should take into account the disproportionate

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1 impact of for-profits on students and communities
2 of color as well as the havoc these institutions
3 wreak on our economy as a whole.

4 Consider what we already know. African
5 American students disproportionately attend
6 for-profit colleges, borrow more and have lower
7 graduation rates, which makes them more likely to
8 be victims of harm for for-profit institutions. 28
9 percent of African American students enrolled in a
10 four-year institution attend a for-profit college
11 compared with just 10 percent of white students.
12 This disparity is present for 2-year, and less than
13 2-year colleges as well. Also nearly 80 percent of
14 African Americans do not complete for-profit
15 programs.

16 The cost of for-profit schools are much
17 greater than that of other institutions, so a
18 substantially greater share of students borrow to
19 pay for their education. The Center for
20 Responsible Lending found that in 2011 through 2012
21 academic year 35 percent of African American
22 students at for-profit colleges, 4-year

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1 institutions took out \$8,900.00 or more in federal
2 loans compared to just 28 percent at private
3 non-profit institutions, and 18 percent at public
4 institutions.

5 For-profit college students are more
6 likely to experience worse educational outcomes and
7 a higher incident of default. Thank you.

8 MS. SMITH: Sorry.

9 MS. COPELAND-TUNE: That's okay.

10 MS. SMITH: Thank you. Does anyone --
11 Oh, I'm sorry, go ahead.

12 MS. COPELAND-TUNE: I was going to say
13 and keep the gainful employment rule. Thank you.

14 MS. SMITH: So that concludes all the
15 speakers who have signed up today. We literally
16 have 4 minutes left to our prescribed time frame.
17 So I just want to thank everybody for attending, and
18 for being respectful of each other's time and
19 putting up with me saying time, time. So thank you
20 all for coming. If you have not -- if you have any
21 questions about this process you can let us know.
22 We'll be here for a few minutes, but have a safe

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1 drive home, and, again, thank you for your time and
2 attention we appreciate it.

3 (Whereupon, the above-entitled matter
4 went off the record at 3:56 p.m.)

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