



Testimony of

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Before the U.S. Department of Education, Office of Postsecondary Education

in response to

Notice of Establishment of Negotiated Rulemaking Committee
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San Diego, California

Good morning. My name is Mary Mowdy. I am Executive Director of the Oklahoma Guaranteed Student Loan Program and currently serve as Chairman of the Board of Directors of the National Council of Higher Education Loan Programs (NCHELP). NCHELP is a nonprofit association of guaranty agencies, secondary markets, lenders, loan servicers, collection agencies, schools, and other organizations involved in the administration of the Federal Family Education Loan Program. I represent NCHELP in my testimony today.

In its October 22 Federal Register notice, the Department of Education requested suggestions for issues that should be considered for the negotiated rulemaking agenda. I am pleased to offer some comments and recommendations.

I. Support for Negotiated Rulemaking.

NCHELP believes that negotiated rulemaking provides an invaluable opportunity to engage stakeholders in the regulatory development process. We believe that active, in-person negotiation allows for real input and that the ultimate result is better rules. For this reason, we commend the Department for undertaking this negotiated rulemaking endeavor. The benefits of the process, however, are limited if real negotiation does not occur. We were disappointed that the negotiated rulemaking that preceded the publication of the loan regulations earlier this month was cut short, ending without consensus. We believe that a consensus rule could have emerged had the process been permitted to continue. We would hope for a better outcome in the upcoming negotiation and encourage the Department to support the process.

2. Composition of the Negotiated Rulemaking Committee.

Approximately eighty percent of federally sponsored education loans are made in the Federal Family Education Loan Program (FFELP). NCHELP recommends that the negotiated rulemaking committee include representatives of each of the principal constituencies within the FFELP, specifically guaranty agencies, guaranty agency servicers, collection agencies, for-profit lenders, nonprofit lenders, and loan servicers. NCHELP will be making specific nominations to the Department for negotiators from each of these groups. Also, we recommend that the school representatives at the negotiated rulemaking table include a representative group from those schools that participate in the FFELP. The negotiated rulemaking committee for the negotiation that was conducted earlier this year was unfairly weighted towards representatives from schools that participate in the William D. Ford Federal Direct Loan Program rather than the FFELP. Those schools that participate in the FFELP cannot be adequately represented on the committee if a majority of the negotiators representing educational institutions come from schools that participate in the Direct Loan Program.

3. Preemption.

The October 22 notice states that the Department expects to conduct negotiated rulemaking on other regulatory issues, including potential Federal preemption of State laws that may conflict with the Department's regulations on improper inducements and the use of preferred lender lists in the FFELP. NCHELP supports adding this to the agenda, as we believe there is a real need for federal preemption in these areas.

The final regulations for the federal student loan programs published by the Department on November 1, 2007 contain comprehensive sets of rules governing both prohibited inducements and preferred lender arrangements. However, in the absence of federal rules, a number of states passed their own legislation pertaining to one or both of these subject areas. Others are considering similar legislation. While the Department's rules and the various state laws deal with common issues, the way these issues are addressed is not uniform. The federal student loan programs are national in scope. Participating educational institutions typically enroll students from across the country. Many student loan providers operate on a national or regional basis. Even those whose student loan program is localized regularly lend to residents who attend out-of-state schools. It is common for lenders located in one state to make loans to students attending school in a different state. The student may be a resident of a third state. What law applies in these cases?

The willingness of some states to enforce their laws against out-of-state educational institutions if any state resident attends the school, and against out-of-state student loan providers, underscores the dilemma faced by educational institutions and lenders alike. The Department's regulations are both tough and comprehensive. The various state laws deal with essentially the same issues, but with different wrinkles. The confusing pattern of requirements makes both compliance and enforcement difficult. Because of the need for uniformity and consistency, NCHELP strongly believes the Department should by regulation preempt State laws in these areas.

4. Income-based Repayment.

NCHELP has been a supporter of legislation to help those who are having difficulty meeting their student loan repayment obligations. While we believe the student loan program is of tremendous benefit to the vast majority of borrowers, we recognize that debt is a challenging burden for some. For this reason, we supported efforts to address this subject in the College Cost Reduction and Access Act of 2007 (CCRAA). The new income based repayment option enacted in the CCRAA represents a significant step forward. However, the legislation was developed without specific input from the loan community on operational issues. We believe the operational issues imbedded in the legislation can be worked out as part of negotiated rulemaking and strongly endorse including this subject as part of the upcoming negotiation.

5. Parent PLUS Loan Auction.

The CCRAA directs the Department to auction off the rights to make parent PLUS loans, beginning July 1, 2009. NCHELP strongly opposed student loan auctions within the FFELP. The foundation of the FFELP is that borrowers have a choice of lender. This pro-consumer competition has driven down borrower cost and increased innovation and efficiencies within the program. Instead, under the CCRAA borrowers and schools borrowers no longer will be able to choose their lender, but rather will be required to utilize a lender selected by the government – the one with the winning auction bid.

NCHELP recognizes, however, that between now and July 1, 2009 the Department must plan and implement an auction process for parent PLUS loans in FFELP. FFELP participants, educational institutions participating in the FFELP and representatives of parent PLUS borrowers all should be part of this process. To the extent implementing regulations are contemplated, they should be developed through negotiated rulemaking.

6. Reauthorization.

The October 22 notice states that if legislation to reauthorize the Higher Education Act (HEA) is completed prior to the first negotiation session, the Department may also include on the negotiation agenda additional changes to the regulations. While it is possible if not likely that HEA reauthorization will not be completed prior to a January negotiating session, we believe in any case that final legislation will be enacted soon thereafter. NCHELP recommends that the Department consider expanding the negotiating agenda even after the first session if legislation is enacted. These negotiations are major undertakings by the negotiators and organizations they represent. It would be unfortunate if the Department failed to take advantage of the negotiation in progress to address additional regulatory issues stemming from the reauthorization.

Thank you for the opportunity to provide these recommendations.