Written Testimony on H.R. 4283, the College Access and Opportunity Act

U.S. House of Representatives Committee on Education and the Workforce
Hearing on the College Access and Opportunity Act

May 12, 2004

Thank you for the opportunity to submit this testimony on H.R. 4283, the *College Access and Opportunity Act*. The Center for Law and Social Policy (CLASP), The Workforce Alliance (TWA), and the National Consumer Law Center (NCLC), on behalf of its clients, have proposed a number of key changes to help modernize the Higher Education Act (HEA) to support economic development and better meet the needs of business and workers. These proposals are summarized in the attached document.

Our written testimony today focuses primarily on the importance of preserving key provisions that protect borrowers from fraud and abuse. We hope to have the opportunity in the future to comment in more detail on other aspects of the proposed legislation, in particular student loan repayment and issues related to services and grant aid that increase enrollment and persistence by working adults and older youth.

For now, we commend provisions in H.R. 4283 that remove barriers to postsecondary education for non-traditional students, such as allowing year-round Pell Grants, simplifying access to financial aid for those who have already documented financial need for other federal means-tested programs, decreasing origination fees, and ending the unfair distribution of campus-based funds by changing the allocation so that funds follow the neediest students.

But we cannot support provisions that open the door to fraud and abuse in the name of increasing access for non-traditional students, as we detail below. Instead, we encourage you to consider the following ways to increase enrollment and persistence by working adults and older youth through services and grant aid that help them better balance school, work, and family. These include:

- Reducing the "work penalty" so that single, independent students and students with dependents keep a greater share of their earnings. Exclude the Earned Income Tax Credit from the need analysis;
- Strengthening ties between colleges and business workforce needs;
- Streamlining access to financial aid for dislocated workers; and
- Expanding on-campus services that support success for working adults and older youth, including Federal Supplemental Educational Opportunity Grants and Student Support Services.

Borrowers Must Be Protected From Fraud and Abuse

During reauthorization of HEA, Congress has the opportunity to make higher education more accessible for non-traditional students, including many working adults and older youth. We urge you to seize this

opportunity, but with caution. Innovations and reforms must be balanced against the danger of repeating past abuses.

Congressional hearings during the 1990s documented extensive abuses, primarily by proprietary schools participating in federal student loan and grant programs.[1] Congress and the Department of Education eventually addressed these abuses, passing targeted protections to assist victims and prevent future problems. The good news is that many of these laws were aggressively enforced and helped curb fraud and abuse. The bad news is that serious problems still exist.

As recently as 2003, the Department of Education's Office of Inspector General (OIG) made public seven audits documenting serious fraud and abuse in school administration of federal student aid programs. The Department recommended that those schools cumulatively return over $15 million to the Department, lenders and students. Also in 2003, the Department's Office of Hearings and Appeals, in 10 separate decisions, ordered schools to return over $3.3 million. And these are just the schools that the Department investigated.[2]

Problems cited included:

- Schools closing without warning;
- Routine fabrication of financial aid documents;
- Falsification of ability-to-benefit test results;
- Widespread failure to comply with the 90/10 rule;
- Overstating program length; and
- Disbursing funds to ineligible students.

In addition, in an August 2002 audit, the OIG found that the Department did not have an effective monitoring system in place to ensure that approved ability-to-benefit test publishers comply with applicable laws.

The *Chronicle of Higher Education* documents further problems in a recent article.[3] The article describes numerous federal and state investigations of abuse within the for-profit college sector. Among other issues, according to the article, the California attorney general is examining whether for-profit colleges are misrepresenting the value of their programs and graduates' job prospects.

These problems are not confined to the federal loan programs. Especially in the last few years, serious problems have emerged in the private student-lending sector. For example, a 2003 survey by the National Association of State Administrators and Supervisors of Private Schools showed that in 2002 over 100 computer training schools closed in the 23 states that responded to the survey. Of those schools, only 25 provided any advance notice of the closing.[4]

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[1] See, e.g., "Abuses in Federal Student Grant Programs, Proprietary School Abuses," Hearing before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, 104th Cong. 1st sess., July 12, 1995.
[2] These numbers are based on a review of the audits and hearing decisions related to "Federal Student Aid" that were posted on the Department's website. In many cases, the schools did not agree with the audit results.
[3] Goldie Blumenstyk, "For-Profit Colleges Face New Scrutiny," *The Chronicle of Higher Education*, May 14, 2004.
[4] As of May 2004, the study was available online at: http://www.nasasps.com/Computer-Survey-NASASPS-4-22-03.pdf.

Key Protections

We limit our comments today to two key protections that would be eliminated by H.R. 4283. The first is the 90/10 rule, which requires that proprietary institutions derive no more than 90 percent of their revenues from HEA program funds. The primary rationale for the rule, as confirmed by a GAO study, is that schools that rely more heavily on student assistance tend to have poorer student outcomes, including lower completion and placement rates and higher default rates.[5] The rule does not prohibit students from receiving full financial aid to attend school. It simply requires a school to derive at least 10 percent of its revenues from other sources.

In recent years, investors have flocked to purchase education-industry stocks. The industry is, for the most part, prospering like never before. According to the *Chronicle of Higher Education*, the eight largest education companies now have a combined market value of more than $36 billion.[6] The simple logic of the 90/10 rule is that these prospering private-sector businesses should be able to attract a small, reasonable percentage of their revenues from sources other than public HEA funds.

A second critical set of protections that would be eliminated are the so-called 50 percent rules. These rules prohibit schools from providing half or more of their students' coursework through correspondence or telecommunications classes or having half or more of their students enrolled in such classes.

We support the idea of allowing more students to access distance education courses. Distance education can provide important benefits for students, particularly "non-traditional" students who work outside of school. The problem is that this bill proposes to open up the system without any safeguards. Potential abuse could be unacceptably high.

We urge Congress to proceed with caution. Presently, the distance education pilot project, administered by the Department of Education, allows many schools relief from the 50 percent rules and other requirements. This project should be expanded and monitored closely. In the meantime, essential questions must be asked and answered. For example, how is the quality of distance education measured? Are all courses appropriate for distance education? What about hands-on training such as auto mechanics or cosmetology? How can we be sure that students that enroll in distance education have the proper technology at home so that they can benefit from the courses?

Past fraud and abuse in the proprietary sector caused immeasurable harm. Students trying to achieve their dreams too often ended up with nothing but mountains of debt. The door to this type of fraud cannot be reopened. At the same time, fear of fraud alone is not a reason to inhibit innovation and progress. Instead of the wholesale elimination of these protections, we recommend that Congress immediately undertake a non-partisan study of current fraud and abuse in federal financial aid programs and of the effectiveness of the various protections, including the 90/10 rule, the 50 percent rule, default rate sanctions, incentive compensation rules, and minimum instructional time and completion and job placement requirements. In the meantime, it is critical to preserve those protections that have been effective in curbing fraud and abuse and

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[5] See General Accounting Office, "Proprietary Schools: Poorer Student Outcomes at Schools that Rely More on Federal Student Aid," GAO/HEHS-97-103, June 1997.
[6] Goldie Blumenstyk, "For-Profit Colleges Face New Scrutiny," *The Chronicle of Higher Education*, May 14, 2004.

restore to full strength those protections, such as default rate sanctions and incentive compensation rules, that have been weakened over the years.

Disability Cancellation

As we stated at the outset of this testimony, we would like to have the opportunity to comment in the near future about other key aspects of this legislation, particularly student loan repayment and various grant aid issues. In closing, however, we want to note one other provision that, although well-intended, will not achieve its desired result.

The bill amends the disability cancellation determination process so that borrowers who have been found disabled by the Social Security Administration (SSA) or Veterans Administration (VA) may submit documentation of these determinations to qualify for a student loan disability cancellation. We support the intent of this provision, but the provision as drafted would only allow borrowers who have been found to be "permanently and totally disabled" by these other federal agencies to submit documentation to the Department of Education. This will not be effective because the SSA and VA utilize a tiered system when making disability determinations. They do not use the same terminology as the Department of Education.

The bill should be amended so that borrowers may submit evidence of any type of disability determination by the SSA or VA to qualify for a student loan disability cancellation. Qualified borrowers will then be monitored by the Department of Education during the three year conditional cancellation period. If drafted effectively, this provision will streamline the disability determination process, save money, and more efficiently allow qualified borrowers to cancel their loans.

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The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government, and private attorneys, as well as community groups and organizations nationwide that represent low-income and elderly individuals on consumer issues.

The Center for Law and Social Policy (CLASP) is a national, nonprofit organization founded in 1968. CLASP conducts research, policy analysis, technical assistance, and advocacy on issues related to the economic security of low-income families with children.

The Workforce Alliance (TWA) was founded in 2000 to bring experts from the field into Washington debates about federal welfare, workforce development, and higher education policies. TWA is a national coalition of local leaders advocating for federal policies that invest in the skills of America's workers--including those who are low-income, unemployed, or seeking advancement--so they can better support their families and help American businesses better compete within today's economy.