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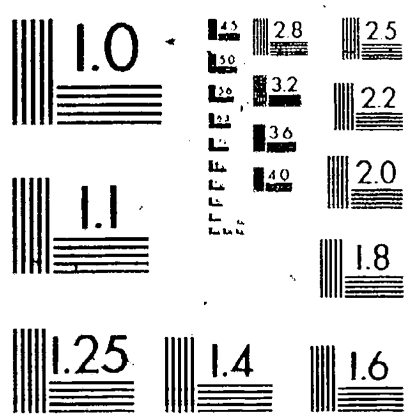

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ABSTRACT

Hearings on the Solomon amendment regulations proposed by the U.S. Department of Education are presented. The Solomon amendment requires that any student be registered under the military's Selective Service Act in order to receive Title IV federal student assistance. H.R. 1286 and H.R. 1567 would repeal the provision of the Military Selective Service Act prohibiting the furnishing of federal financial assistance for postsecondary education to persons who have not complied with registration. H.R. 1622 and H.R. 2145 would delay the effective date for the denial of federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983, to July 1, 1984. Attention is directed to the following concerns: whether the proposed rule agrees with congressional intent and the desire to eliminate unnecessary administrative work and paperwork for colleges; whether enforcement responsibility is allocated to postsecondary institutions rather than to the Selective Service System; whether the Selective Service System can provide timely notification to students of the completion of their registration responsibilities; and the constitutional and legal problems created by the Department's proposed rule. The texts of the bills are included. (SW)

LEGISLATIVE HEARING: REGULATIONS ON THE SOLOMON AMENDMENT TO THE DEFENSE ACT OF 1983

HEARINGS

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1286 AND H.R. 1567

TO REPEAL THE PROVISION OF THE MILITARY SELECTIVE SERVICE ACT PROHIBITING THE FURNISHING OF FEDERAL FINANCIAL ASSISTANCE FOR POSTSECONDARY EDUCATION TO PERSONS WHO HAVE NOT COMPLIED WITH THE REGISTRATION UNDER THAT ACT

AND

H.R. 1622 AND H.R. 2145

TO DELAY THE EFFECTIVE DATE FOR THE DENIAL OF FEDERAL EDUCATIONAL ASSISTANCE TO STUDENTS WHO HAVE FAILED TO COMPLY WITH REGISTRATION REQUIREMENTS UNDER THE MILITARY SELECTIVE SERVICE ACT FROM JULY 1, 1983, TO JULY 1, 1984

HEARINGS HELD IN WASHINGTON, D.C., ON FEBRUARY 23, 24; MARCH 23, 1983

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LEGISLATIVE HEARING: REGULATIONS ON THE SOLOMON AMENDMENT TO THE DEFENSE AUTHORIZATION ACT OF 1983

WEDNESDAY, FEBRUARY 23, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 340, Cannon House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Kogovsek, Harrison, Boucher, Coleman, Gunderson, Petri, and Packard.

Staff present: William Blakey, majority staff director, Maryln McAdam, majority legislative assistant, John Dean, assistant minority counsel, and Betsy Brand, minority legislative associate.

Mr. SIMON. Good morning. The Subcommittee on Postsecondary Education is called to order.

We have under consideration the Solomon amendment regulations proposed by the Department of Education. The Solomon amendment was included in the Department of Defense Authorization Act of 1983. It requires that any student be registered under the military's Selective Service Act in order to receive title IV Federal student assistance.

Let me just add I have some philosophical concerns here, and I am speaking for myself alone and not for the subcommittee. I supported registration. I supported it when the Carter administration opposed it. I supported it when the Carter administration supported it. But there has been a long tradition in our country of recognizing the scruples of conscience that some have in regard to military service. I fear that the fundamental problem we face is not so much the Solomon amendment as whether we can, in some more effective way, recognize that there are people who for reasons of conscience do not want to comply with draft registration.

But our purpose here today is not to examine that fundamental philosophical problem, but to see how we can work out something that is effective with the regulations. We expect to be letting the Department of Education know of any modifications that we may wish to see in the regulations.

Our concerns are basically these four: No. 1, does the proposed rule comport with congressional intent and does it address Congress concern that unnecessary administrative and paperwork burdens not be placed on institutions of higher education.

Number two, has the regulation allocated enforcement responsibility for this law to postsecondary institutions rather than to the Selective Service System.

Number three, does the Selective Service System have the demonstrated capacity to keep its commitment to timely notify students by letter of the completion of their registration responsibilities under the law.

And finally, what constitutional and legal problems have been created by the Department's proposed rule?

I am concerned that we may be creating some very real problems for the colleges and universities as well as for potential students.

The experience I had with my own son registering and not receiving notification for some time that he was registered is an indication of the kind of problems we have and I am sure that General Turnage will speak to these problems.

Tomorrow we will be hearing from the higher education community. We will be hearing today from some of my colleagues in the House, from General Turnage and from the Assistant Secretary of Education.

I am pleased to call as our first witness Congressman Bob Edgar, a Member from Pennsylvania, who took an active part in debate on the floor on the amendment. Before I call on Bob Edgar let me just ask my colleagues if they wish to add anything before we begin.

Mr. Packard.

Mr. PACKARD. No, thank you.

Mr. SIMON. Mr. Kogovsek.

Mr. KOGOVSEK. No comment at this time, Mr. Chairman.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. No, thank you, Mr. Chairman.

Mr. SIMON. Fine.

We welcome you to our subcommittee.

STATEMENT OF HON. ROBERT EDGAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. EDGAR. Mr. Chairman, I want to say a word of appreciation to you and to your committee for holding timely hearings on this very important issue. We are here today to look primarily at the regulations that are being set forward to comply with the Solomon amendment.

As the lead-off witness, I must say that I have a slightly different perspective than some who will testify because I joined with you and others on the floor when the Solomon amendment was put forward last spring or last summer and was passed to public law. I opposed it then and I oppose it now, and I have introduced a bill to appeal the Solomon amendment.

And I have done so because I think that many of the arguments we used during the course of debate on the House floor are still very real. And after looking at the regulations that have been laid out for implementation of the Solomon amendment, I am even more concerned than I was then that the implications are very serious and very onerous to our society.

Under the Solomon amendment, any student who is required to register with the Selective Service and who fails to provide evi-

dence that he has done so may not receive Federal student aid after July 1 under title IV of the Higher Education Act. This includes Pell grants, NDSL and GSL loans, work-study aid, educational opportunity grants and State student incentive grants.

The regulations to implement the law are now under public consideration and under the consideration of this subcommittee. There are some real problems with the regulations, but with your permission, Mr. Chairman, I would like to discuss the basic problems with the law itself.

Other witnesses will undoubtedly discuss the regulations in great detail and I do hope we can alleviate the unnecessary burdens these regulations impose. However, I ask the subcommittee to keep in mind throughout the hearing the serious problems behind the regulations.

Even the best regulations, and the regulations proposed by the Department of Education are certainly not that, could not make this particular law a good law.

The Solomon amendment attempts to punish students who do not register for the draft, but it is misguided and unfair. Let me list four or five reasons why I believe that. First, the law is unfair. In my opinion, it places the burden only on young men, not on women or older men, and furthermore, only on young men who attend college and who need financial aid to do so.

What about wealthy nonregistrants? You do not need a long memory to recall the inequities of the draft during the Vietnam days when many white, well-placed, well-heeled young men avoided military service while many dutiful, but less fortunate Americans resentfully bore their burdens in that war.

Also, the law is unnecessary. There are already severe penalties for violators of the selective service law, up to 5 years imprisonment and up to $10,000 in fines.

Let me just pause here and point out the fact that we still have laws on the books for punishment for failing to register, failing to fill out this little card from the post office, the same penalties for failing to show up for the draft that we had during the late sixties and early seventies. No place on this card, Mr. Chairman, is there a box to check off for reasons of conscience your unwillingness to comply. No place on this card is there an opportunity for people to share their own personal reasons, by judgment or conscience, that they could not comply with the law.

And yet, for failing to give us their name, their address and some very basic information they are given these very, very severe penalties and punishments.

Those punishments are already there. If I had my way, I would make failure to register for the draft, which is not in existence, but failure to register, a penalty that had far less severe punishments than are already in law. The Solomon amendment lays up on top of that a selected, targeted punishment for those who are in need of student educational grants. The punishment imposed by this law does not fit the offense it is intended to correct. There is no logical connection between student aid and draft registration, but the Selective Service has found a convenient mechanism for enforcing the registration law—make colieges and universities the enforcers. This is clearly an inappropriate action in our society.

In my opinion, Mr. Chairman, the Government should not make Americans pass tests of patriotism before it extends the benefits of our system to them. We could enlarge the principle of the Solomon amendment not just to include student aid, but also countless other benefits we all receive from our Government.

Imagine the outcry, if we tried to enforce tax laws by requiring every applicant for social security to present a letter from the IRS certifying compliance. How many other tests of good citizenship we could impose? Have they paid their taxes? Do they salute the flag? The next logical question would be, and I shudder to think, have you taken a loyalty oath?

Of course, young men should serve their country. By the way, I support a system of universal national service that will allow every one to serve his or her country. Now the law is for men to register.

But let us impose a law not for just men to register. But let us impose a penalty on lawbreakers only after the offense, not before. Under this law, we would presume the young men have violated the registration laws unless they present certification, that they have not.

Are we presumed to be bad citizens unworthy of receiving benefits until we prove our good citizenship?

Mr. Chairman, another extremely important point that I am sure you will appreciate is that not every nonregistrant is an irresponsible lawbreaker. For generations our society has respected the rights of people who for religious or moral reasons refuse to serve in the military.

Under the current registration law, there is no provision for these people to indicate their conscientious objection at the time of registration. They must register for the draft the same as everyone else. They are told that if a draft is instituted, then they should speak up. This is not satisfactory: Many young men for moral and religious reasons are refusing to register at all and we should make provisions to recognize their legal rights as conscientious objectors. And I support your position on this issue.

Mr. Chairman, the problems are fundamental to the law and cannot be removed by simply changing and altering the regulations. The administrative burden can be lessened but the odious law would remain.

It is true that the regulations are more burdensome than required by law. The law requires that only eligible students submit a statement of compliance and that the student be given notice of proposed denial if the application is unsatisfactory. Is it really necessary to double the paperwork by requiring that all students, men and women, complete the forms.

Swarthmore College, which is in my district, will be testifying before you tomorrow, and other universities from the State of Pennsylvania will, in fact, testify as to the burdensome nature of the regulations. I will not go into detail at this point, but I share their concern and I hope you as members of this subcommittee will look carefully at their comments.

Let me close with this thought.

Even if the administrative burden on colleges were reduced greatly, the law would still favor the rich. It would still impose redundant punishment. It would still presume the guilt of students.

It would still punish conscientious objectors. It would still insult the large majority of Americans by questioning their allegiance. It would still be a first cousin of such dreadful, un-American ideas as loyalty oaths.

If someone tells you that this law was designed to get at the worst elements of society, irresponsible, unpatriotic shirkers, you should remind that person that Einstein was a pacifist and most likely would have been denied college aid under this law. Our nation cannot afford to waste the minds of many future young Einsteins.

Mr. Chairman, I thank you for the opportunity to testify and I stand ready to answer any of the questions that you might have.

Mr. SIMON. Thank you very much for your statement.

Incidentally, we will enter your full statement in the record and all the other statements that will follow for those who do not present their statements precisely.

[The prepared statement of Congressman Bob Edgar follows:]

PREPARED STATEMENT OF HON. BOB EDGAR A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr Chairman, I very much appreciate your extending me the opportunity to testify before your distinguished Subcommittee today. The question at hand is one that concerns me deeply, and you will recall the vigorous discussion when I joined you and others on the floor of the House last summer to argue against the amendment Mr. Solomon proposed to the Defense Authorization Bill. I thank you for the attention and effort you devoted to this matter then and the attention and effort you have continued to devote to related matters of military service, registration, and the draft.

Today we consider the Solomon Amendment as passed and as the Department of Education proposes to implement it. I strongly oppose this law; my bill, H.R. 1286, would repeal the Solomon Amendment. My arguments today will deal only with this law and are intended to be independent of arguments for or against registration in general or arguments for or against the draft.

Under the Solomon Amendment any student who is required to register with the Selective Service and who fails to provide evidence that he has done so may not receive federal student aid after July 1 under Title IV of the Higher Education Act. This includes Pell Grants, NDSL and GSL loans, work-study aid, Educational Opportunity Grants, and State Student Incentive Grants. The regulations to implement that law are now under public consideration and under the consideration of this Subcommittee. There are some real problems with the regulations, but with your permission, Mr. Chairman, I would like to discuss the basic problems with the law. Other witnesses undoubtedly will discuss the regulations in great detail. I too hope we can alleviate the unnecessary burdens these regulations impose. However, I ask the Subcommittee to keep in mind throughout the hearings the serious problems beneath the regulations. Even the best regulations (and the regulations proposed by the Department of Education are certainly not that) could not make this a good law.

The Solomon Amendment attempts to punish students who do not register for the draft, but it is misguided and unfair. Really, it is a dangerous law masquerading as patriotism, and it runs counter to basic American ideals.

This law is unfair. It places a burden only on young men, not on women or on older men, and furthermore only on young men who attend college and who need financial aid to do so. What about wealthy non-registrants? You do not need a long memory to recall the inequities of the draft during the Vietnam days when many white, well-placed, well-heeled young men avoided military service while many dutiful, but less fortunate Americans resentfully bore their burdens in the war.

This law is unnecessary. There are already severe penalties for violators of Selective Service law—up to five years imprisonment and up to a $10,000 fine.

The punishment imposed by this law does not fit the offense it is intended to correct. There is no logical connection between student aid and draft registration. But the Selective Service has found a convenient mechanism for enforcing the registration law—make colleges and lenders the enforcers. This is clearly inappropriate in our society.

The government should not make Americans pass tests of patriotism before it extends the benefits of the system to them. We could enlarge the principle of the Solomon Amendment to include not just student aid but also the countless other benefits we all receive from our government. Imagine the outcry if we tried to enforce tax laws by requiring every applicant for Social Security to present a letter from the IRS certifying compliance. How many other tests of good citizenship we could impose. Have they paid their taxes? Do they salute the flag? The next logical question would be, I shudder to think, Have you taken a loyalty oath?

Of course, young men should serve their country. (And by the way, I support a system of universal national service that will allow everyone to serve his or her country.) Now the law is for men to register, but let us impose a penalty on lawbreakers only after the offense, not before. Under this law we would presume the young man has violated the registration law unless he presents certification that he has not. Are we presumed to be bad citizens, unworthy of receiving benefits, until we prove we are good citizens?

Another extremely important point that I am sure you will appreciate, Mr. Chairman, is that not every non-registrant is an irresponsible lawbreaker. For generations our society has respected the rights of people who for religious or moral reasons refuse to serve in the military. Under the current registration law there is no provision for these people to indicate their conscientious objection at the time of registration. They must register for the draft the same as everyone else. They are told that if a draft is instituted then they should speak up. This is not satisfactory. Many young men for moral and religious reasons are refusing to register at all. We should make provisions to recognize their legal rights as conscientious objectors. I support your position on this, Mr. Chairman.

These problems are fundamental to the law and cannot be removed by changing the regulations. The administrative burden can be lessened, but the odious law would remain.

It is true that the regulations are more burdensome than required by the law. The law requires only that eligible students submit a "statement of compliance" and that the student be given notice of proposed denial if the application is unsatisfactory. Is it really necessary to double the paperwork by requiring that all students, men and women complete the forms? The law calls for a verification procedure. But is it wise to put all of the administrative burden of verification on the colleges? (You will recall last year that the Secretary of Education had some doubts about the feasibility of the law because of the increased government workload, but now that seems to be no problem. They just shift it all to the schools.) Under the regulations the schools must obtain confirmatory documentary evidence of compliance. Is that necessary? It is already a criminal offense to lie on a federal financial aid application. Why do we need more elaborate verification procedures? It does appear that superimposing penalties on top of one another is in the spirit of this law. If two wrongs don't make a right, try three.

Swarthmore College is in my district. They have estimated the expense of time these regulations will cost them. Even for such a small school the administrative burden will be large. The President of Swarthmore will discuss that burden in detail for you tomorrow. What about a larger school? A large school could deal with these regulations only by being inflexibly efficient. No letter; no aid. This leads us to consider the record of the Selective Service for efficiency.

I hear about young men who have registered promptly and correctly and who are now being notified by the Selective Service that a routine check of files shows they have not registered. No letter; no aid. No aid; no education. We can expect many interrupted college careers.

College representatives will be speaking to you about their burden, and it is real. I support the efforts of Mrs. Schroeder and others to soften the impact on colleges by delay and modification of the regulations. We may be able to make the Department of Education shift some of the burden back to themselves and to the Selective Service. I am also concerned about the burden that would remain on the student. The law is so bad that no amount of tinkering with the regulations will make it a good law. I hope that whatever improvements we persuade the Department of Education to make will not mollify the colleges and universities and lead them to turn away from what they should do—work for the repeal of the Solomon Amendment.

Even if the administrative burden on the college were reduced greatly, the law would still favor the rich. It would still impose redundant punishment. It would still presume the guilt of students. It would still punish conscientious objectors. It would still insult the large majority of Americans by questioning their allegiance. It would still be a first cousin of such dreadful un-American ideas as loyalty oaths.

If someone tells you that this law is designed to get at the worst elements of society—irresponsible, unpatriotic shirkers—you should remind that person that Einstein was a pacifist and most likely would have been denied college aid under this law. Our nation cannot afford to waste the minds of many future young Einsteins.

Perhaps some of us who are critical of the draft or the current registration law are more likely to look for faults with this law, but I hope that thoughtful people who support registration as well as those who favor a draft will look seriously at the implications of this linkage of student aid and draft registration. You will be struck by the serious problems it presents. It was passed as a simple, strong, statement of patriotism, but the irony is that in the name of preparing a national defense the law undermines basic civil rights as well as educational opportunities. After all, the reason we might want a military draft is to defend such things as freedom of conscience and freedom of opportunity, including educational opportunity.

[From the Philadelphia Inquirer, Feb. 22, 1983]

The Draft-Financial Aid Connection

(By Representative Robert W. Edgar)[1]

Suppose I told you that there was a law preventing your mother or any older woman from receiving Social Security payments until she presented a letter from the IRS certifying that she had always been in compliance with federal tax laws. Our conversation might go something like this:

"Why should my mother have to present this letter to get Social Security?" you might ask.

"Because cheating on taxes has gotten out of hand. Too many people are cutting corners on their taxes, and it is costing the government too much. So Congress passed a law requiring this letter of compliance."

"But think of all the paperwork for the people and for the government."

"That's okay. If the Social Security checks are delayed a few months, the government may even save some money. There are a lot of recipients who do not really need the money anyway."

Sensing some unfairness, you say, "I know there has been some cheating on income taxes, but maybe the government should deny benefits only to those people who have been found guilty of such cheating, rather than assuming that someone is guilty until she proves her innocence. Besides, there is already a strong penalty for tax fraud."

"Yes, but the people in Washington think you should not get the benefits of the American government unless you can show that you support the government."

"What about my grandfather? He has paid taxes over the years. Does he have to present this certification from the IRS, too?"

"No, because the law happens to apply only to women."

At this point you might shake your head and walk away muttering. "Those people in Washington surely got it backwards this time."

This conversation may sound farfetched or even absurd, but it is not far from what is actually happening to draft-age men. As directed by a law last year, the Department of Education and the Selective Service System recently published proposed new regulations governing financial aid to students.

Under the regulations that are due to take effect this summer, a young man cannot receive Federal student aid unless he presents a letter from the Selective Service certifying that he has registered for the draft. This law was introduced by Rep. Gerald B. H. Solomon (R., N.Y.) as an amendment to the 1983 Defense Authorization Bill.

The law, is an unwarrented intrusion of Government into our daily lives. Of course, it is a young man's duty to serve his country. And it is law that each young man must register. However, the Government should not require people to pass tests of good citizenship each time it extends a benefit.

We could enlarge the principle of the Solomon Amendment to include not just student aid but also the countless other benefits we all receive from our Government. Are we presumed to be bad citizens, unworthy of receiving benefits, until we

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[1] (Representative Robert W. Edgar represents part of Philadelphia and Delaware County in the U.S. House of Representatives. He has introduced a bill to repeal the Solomon Amendment linking student aid to certification of draft registration.)

prove we are good citizens? Must we take loyalty oaths and carry badges of good citizenship?

The Solomon Amendment is an attempt to punish irresponsible students, but it is misguided, unfair, and probably ineffective. It puts a burden only on men; women do not have to register with the Selective Service. It applies only to young men who are attending college and who need finanical aid to do so. It is unwieldy.

The administrative headaches will be immense. We can expect many misplaced letters of certification and many interrupted college careers. Furthermore, the law makes policemen of banks and college financial aid offices. That is an inappropriate role for them in our society.

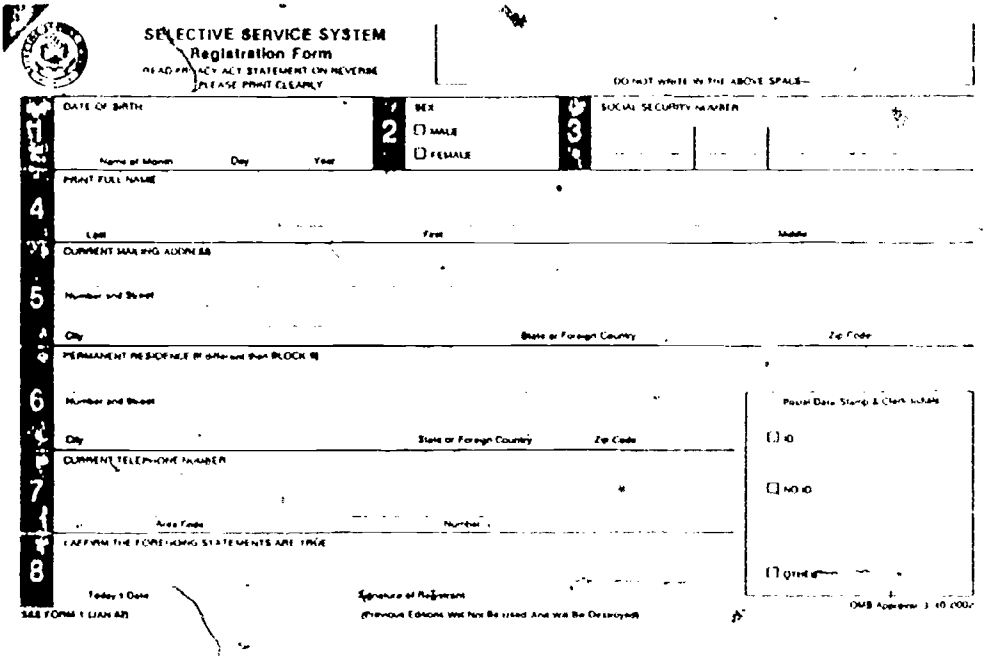
The punishment imposed by this law is unrelated to the offense it is intended to correct. Why was student aid chosen as the focus for this registration law? Not because of a logical connection between student aid and draft registration, but because of a convenient overlap bewteen the groups of people affected by regulations in each of these.

Is more punishment needed anyway? The young man who fails to comply with Selective Service law already faces severe penalties (imprisonment up to five years and fines up to $10,000).

A final and extremely important point is that not every nonregistrant is an irresponsible lawbreaker. For generations our society has respected the rights of people who for religious or moral reasons refuse to serve in the military. We in Pennsylvania with our Quaker and Mennonite traditions should be particularly sensitive to this concern.

Under current registration law there is no provisions for these people to indicate their conscientious objection at the time of registration; they must register for possible military service the same as everyone else. They are told that if a draft is instituted, then they should speak up. This is not satisfactory. Many young men for moral and religious reasons are refusing to register at all. Until we make provisions to recognize their legal rights as conscientious objectors, we should not deny them financial aid.

If we want our young men to be good citizens the Government should treat them as such. We should not begin by denying them the rights of conscience and the individual liberties for which our country is renowned. After all, the reason we might want a military draft is to defend such American ideals as freedom of conscience, and freedom of opportunity, including educational opportunity.



SELECTIVE SERVICE SYSTEM
Registration Form
READ PRIVACY ACT STATEMENT ON REVERSE
PLEASE PRINT CLEARLY

DO NOT WRITE IN THE ABOVE SPACE

1 DATE OF BIRTH — Month, Day, Year
2 SEX — MALE, FEMALE
3 SOCIAL SECURITY NUMBER
4 PRINT FULL NAME — Last, First, Middle
CURRENT MAILING ADDRESS
5 Number and Street
City, State or Foreign Country, Zip Code
PERMANENT RESIDENCE (If different than BLOCK 5)
6 Number and Street
City, State or Foreign Country, Zip Code
Postal Date Stamp & Clerk Initials
CURRENT TELEPHONE NUMBER
7 Area Code, Number
ID, NO ID, Other
8 I AFFIRM THE FOREGOING STATEMENTS ARE TRUE
Today's Date, Signature of Registrant
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Mr. SIMON. We face two problems and you are touching on both of them. One is the question of how we administer what is the law

or should it be repealed. The second question is you can't state this problem without facing the fundamental question and that is that we would not have this problem if we would simply permit people to indicate they are conscientious objectors.

We will be hearing from General Turnage shortly and I had a phone conversation with him the other day. Upon examination of the statutes, it became clear that we can—we don't need to pass a law to have that little category added to the cards. We can do that by regulation. And if we did that by regulation, then we could honor an American tradition. What we have done now is we have caught a couple of Mennonites and Quakers, and I don't know that anyone feels particularly proud of having done that.

And No. 2, we would get rid of a mountain of paperwork that we are now creating and all kinds of problems, plus litigation. Right now, we have a Minnesota decision. If the courts toss that out, there are going to be 12 other cases that are going to be arising around this Nation. We are going to have endless litigation all of which could be solved, it seems to me, very, very quickly and then we could pass legislation such as you suggest.

I guess that is a comment rather than a question, but do you have any response or reaction to that?

Mr. EDGAR. Well, I just want to say that I think we ought to provide, regardless of what we do—whether we pass my bill to repeal the Solomon amendment or whether we support Pat Schroeder's effort to delay implementation for a year or whether we move to modify within the Department of Education the regulations—regardless of that, I think this card ought to be changed.

I am a United Methodist minister by vocation and a congressman by accident and I spent a great deal of time as a chaplain in a university talking with young men and young women about their feelings about service in the military. And during the late sixties and early seventies, I spent a great deal of time talking with young people who, for a period of that time, could only object by virtue of their religious feelings and not by virtue of their judgment or conscience and many of them have had great difficulty simply filling out this registration card, in looking as though their intention was to serve without raising that basic fundamental American right to object.

And I think if we would change the card significantly we would lessen the number. But having done that, which, as you suggest, could be done without passing a law, I think we have to raise some fundamental questions. I wrote an op-ed piece which I attached to your statement and have used it a little bit tongue-in-cheek and facetiously an illustration of that dealing with an elderly woman trying to receive Social Security benefits. And I think if you took this law out to its logical conclusion, you could deny somebody use of Federal highways because of the commitment of Federal funds if they didn't sign a registration card.

You know, we allow people to go out and get a small business loan of several hundreds of thousands of dollars. That's fine. That isn't part of this. I am sure that Congressman Solomon would like to see it apply to everything, but you can see what kind of a haphazard society we would begin to produce if we began selectively

targetting in on people who didn't fill out forms and processes in our society. We would have problems all over the place.

The person who has failed to register, who has not been prosecuted, has not been found guilty in a court of law, that person is still innocent in the eyes of everyone. They have failed to fill out the procedure and it's still being tested in the courts and yet, they are denied some real basic rights and some basic benefits. I think it is a restricted law that is targetted to the poor and the low middle income group in our society. It is unfair and it is unnecessary.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

Many of our laws are ineffective because they are difficult to enforce or it costs more to enforce them than it does to neglect them.

The first test case of this particular requirement was in Vista, which is in the heart of my district. They found the law including the penalties, to be constitutional.

Had the court moved in the other direction and given the person freedom to violate the law, there would have been literally thousands of young men who would have followed his example and broken the law.

What means would you suggest we use to enforce the law?

Mr. EDGAR. I think you raise a real important question and I do have a specific answer to your question. I think that it is the law of the land to register. We ought to give people an opportunity to opt out if, in fact, they, by reason of conscience, feel strongly and that ought to be on the card early up front.

But if they violate that law then the penalties ought to relate to the violation of that law. The present penalties in place, the 5 years and the $10,000 were for a different time, a different period, when, in fact, people were failing to comply with the draft, but were leaving the country.

It would seem to me that it's almost more appropriate to put the penalties directly related to failing to fill out this card. And I could send the person a letter saying, "Dear, John Smith, You have failed at age 18 to fill out your registration card. We have found you. We have your name, your address, your telephone number and your social security number because we have an enforcement availability to cross-check. We now have your name. Please find enclosed a $15 fine for failure to comply. Your name has now been put on a national registry," if that's our purpose to have everyone's name and address on a national registry. We have that information.

But rather than doing that, what we have done is we have taken that person, we have asked him to hire expensive lawyers. We, ourselves, as a Federal Government have hired expensive lawyers to force people to fill out a registration card to give us some idea of where the person can be found in case of a callup.

Now I support that effort to comply with the law. But the penalty, whether it's a $100 dollar fine or whatever, would have to be much more closely related to the action. Now, if that person during a time of callup doesn't show up, then let's revert to the 5 years in jail and the $10,000 penalties if you want harsh penalties.

But simply failing to go to the post office to fill out this form and then taking the resources at a time of deficit spending of the gov-

ernment to put lawyers and judges and courts for long litigation suits selectively going after those, perhaps, that are the most vocal in the society who have demonstrated their unwillingness to fill out the cards, seems to me to be a large mistake.

Our effort at present is to have an all-volunteer military and we are meeting those quotas, primarily because of high unemployment, but we are meeting our quotas for the all-volunteer military and we have a list of people who have filled out the registration cards if, in fact, we have to move to a war situation. And we have a percentage of those people who are not filling out the cards and if we want to put an effort together to find their names, their addresses and their social security numbers, we can do that. Computers can help us do that.

And if we want to fine them we should, with some minimal fine for failing to register. But to fill our prisons for 5 years because people, by virtue of conscience, have decided to not fill out this registration card, seems to me to be ludicrous. I think we are saying some things to ourselves that are silly. To have congressmen as eloquent as many of us try to be, come on to the House floor and offer selective punishments for failing to comply with all of the laws of the land seems to me a very dangerous precedent if we have a people who are living up to the law and only a very small percent who fail to comply.

And yet the burdens—wait until you hear the testimony of some of the universities--the burdens of complying. They need to have verification that they have filled this out, a letter from Selective Service. Suppose you are 18 years old and you get your letter verifying that you have done this and you crumple that letter up and you throw it in the trash because you are working part time at a gas station and then 2 years later you decide to go to college.

You go and you are a poor person in this society and you have to go through a process. Now you have got to go back to Selective Service and the burden of proof is on you as a student to either come up with a second letter or prove that you have filled out that card.

And what we are simply saying is to all of the 90 percent of the people who have filled out that card in good faith that you are somehow under suspicion. And I think we have the possibility if the regulations are not changed that we will deny student loans or we will make people stay out a semester because they don't have their letter for an institution of higher learning even though they have obeyed the law. Is that the kind of society we want? I don't think so.

Mr. PACKARD. Thank you.

Mr. SIMON. Because we have several witnesses we are going to follow the 5-minute rule here. I will ask my colleague if he could yield.

Since you have brought up the case in your district I think the question is, why did not that young man in your district register? Was it a matter of religious scruples?

Mr. PACKARD. No; I think that was a test case. He was the first one who refused to register and I think it was a test case.

Mr. SIMON. Why did he refuse to do it?

Mr. PACKARD. I don't recall, except that he just didn't feel that he ought to be required to do so.

Mr. SIMON. I think most who actually refuse, other than through carelessness, and carelessness it seems to me we can cover through appropriate fines, not through 5 years in prison, but realistic fines, the other cases somehow we ought to be able to modify our system to recognize that there are people whose religious beliefs happen to be different than yours or mine. But in the American system we have traditionally recognized that.

Mr. PACKARD. I think that there could be very many who would fail to register, not due to religious convictions as much as just a resistance to being told what they have to do.

Mr. SIMON. Yes, personal convictions.

Mr. EDGAR. Mr. Chairman.

Mr. Packard, would you agree that someplace on the card it would be appropriate for them to give us their name, their address, their social security number and the fact that if a draft occurs that they would be one of the people more likely to have to go through a process of conscientious objection, would you agree that that might be——

Mr. PACKARD. I see no problem with that. It should be there, I think.

Thank you. I have no further questions, Mr. Chairman.

Mr. SIMON. Thank you. Mr. Kogovsek.

Mr. KOGOVSEK. I have no questions, Mr. Chairman. I thank the gentleman for his testimony.

Mr. EDGAR. Thank you.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman. Thank you, Congressman, for your testimony. I share your concern about the conscientious objector and have been working for about the last 6 weeks with every one from the Selective Service to the Armed Services Committee and others to put together legislation. Now our chairman tells us we may not need that, that we can do it by administrative rule. But I think we do need to reconcile and eliminate that kind of an adversarial role in our society.

We intended to have our bill introduced this week, but if we can solve it quicker, more power to all of us.

I would like to get at a couple of questions that you have suggested or at least have created in my own mind. The first one is, Do you consider financial aid a right or a privilege?

Mr. EDGAR. I think that it is a privilege in our society. I think that it is a privilege that is given to those who can least afford to have that right of free access to education prescribed.

Mr. GUNDERSON. I recall the debate on the Solomon amendment on the floor of the House and I think the thing we need to decide in looking over the implementation of this rule—I have got some problems with the implementation of the rule, as most of us in this subcommittee do—was it the purpose of the Solomon amendment to enforce registration or was it the purpose of the Solomon amendment rather to make sure that our Government does not provide grants, in particular, and other forms of student financial aid to those students who do not participate in the registration process?

If I recall the intent of Mr. Solomon, it was not to enforce registration. Will you agree with that?

Mr. EDGAR. Well, the intent of Mr. Solomon was to focus on those people who failed to register and he used the vehicle of student loans and grants as the place to do that. But to be fair to Mr. Solomon, if he had his opportunity, and he did on one other bill, he would have added it to everything, that you failed to get social security benefits, if you failed to register, you failed to get EDA grants, you failed to get an opportunity to have access to CETA or any kind of job program.

I think his intent was to focus on the need to have people comply with registration and he felt that punishment ought to be inflicted on those who fail. I guess my personal view is that he failed to recognize the penalties that were already in place for failing to comply and I think he has opened a can of worms that has implications far beyond the implications of the student loans and that's why I take such a strong position at this point.

Mr. GUNDERSON. I think if it is our intent to try to enforce registration through this, we ought to skip it. It should not be used as that mechanism. Yet I must tell you I battle inside in my conscience over the issue of what a society ought to do for people who are unwilling to do anything for that society. This amendment is dealing with those and is, not knowing the specifics of Mr. Packard's case, separate from the conscientious, moral or religious objection which I think is very real and must be respected by our society.

Mr. Chairman, no more questions.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Mr. Chairman, excuse me, but the case that I was referring to was the *Sasway* case, which I think had national coverage. It was first case that was tested in the courts.

Mr. SIMON. Thank you very much for your testimony.

Mr. EDGAR. Thank you, Mr. Chairman.

Mr. SIMON. Our next witness is our colleague Pat Schroeder from Colorado and member of the Armed Services Committee, which has jurisdiction, I assume, and I should have checked this, but the bill of Mr. Edgar and your bill are both referred to the Armed Services Committee. Is that right?

Ms. SCHROEDER. I think it is a joint referral.

Mr. SIMON. We are pleased to have you here.

STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mrs. SCHROEDER. Thank you, Mr. Chairman. I am honored that you would take the time to listen.

I would like to put my testimony in the record and since I was listening to the other witness, I think what I will try and do is summarize some of the things that went through my head as I was listening.

[The prepared statement of Congresswoman Patricia Schroeder follows:]

PREPARED STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

I remember last summer a small but hearty band of us on the House floor challenging the Solomon Amendment to deny federal student assistance to students who fail to register for the draft. At that time, I predicted that, if passed, the Solomon Amendment would force schools and lending institutions into roles they neither wanted, were able to play, nor could legally play: as deputies designated to enforce our draft registration laws.

My prediction proved true. I did not expect, however, that my prediction would prove true so soon. The Department of Education quickly developed regulations, a section of which seeks to implement the Solomon Amendment for the 1983-1984 school year. It is this provision I have the most problem with and the reason I will introduce legislation today to postpone the Solomon Amendment for one year, making the effective date July 1, 1984.

The proposed regulations wrongly put the burden of enforcement on schools that are ill equipped, poorly staffed and under the gun to process thousands of student aid applications. But to force these schools to set up ways now to verify compliance with draft registration laws by students who have received their grants or loans for the upcoming school year is too much to ask of too few.

Let's look at the practical side of this using various Colorado schools as examples:

The University of Colorado Boulder Campus, the largest public university in the state, annually awards about 7,000 grants or loans to deserving students. Twelve full-time counselors are currently processing these applications and disbursing the money. Can they rearrange their system to now go back through applications already approved to verify compliance with draft registration laws? The school estimates it will cost $40,000 to $60,000 to comply with the regulations, including additional salaries and computer reprogramming.

Colorado University is lucky, though. The school is large enough to have a computer. Colorado College, a small private institution in Colorado Springs, employs one financial aid counselor and one student part-time to maintain files on 800 financial aid recipients. That one employee must now notify loan and grant recipients, without computer assistance, that if proper certification of draft registration compliance from the Selective Service is not produced, the student stands to lose the loan, grant, and any interest accrued.

Urban colleges face slightly different but still imposing problems. Metropolitan State College in Denver make awards to about 3,000 students. Most of these recipients are above draft age. Many are women. However, they are still required to prove their compliance or state why they did not register. The school, understaffed because of past federal budget cuts, must still backtrack to record the status of each recipient.

Also, students at these schools tend to change addresses often. This raises a point about students who have faithfully registered, may have moved, but did not keep the compliance verification notice sent by the Selective Service. A GAO study of September 24, 1982, reports that 85 percent of the persons who moved after registering in 1980 did not notify the Selective Service of their address change. How can the Service, in the short time left before the start of the 1983-1984 school year, send those students copies of their verification so the school or the bank, acting as the deputy, will not confiscate the grant or loan?

Regardless of your option on the Solomon Amendment or draft registration, the simple fact is that this type of retroactive certification process to prove a student's draft registration status is simply not fair nor feasible on such a short timetable. A one year delay will solve this problem. It will make the 1983-1984 school year provision moot and will give us all a chance to examine other problems found in the rest of the proposed regulations.

Mrs. SCHROEDER. When this whole issue came up a year ago I was one of the people terribly concerned that what we were doing was deputizing the private sector such as colleges and bankers to enforce a Federal law. I think that's very dangerous. We're now seeing the banks yelling about being deputized to collect taxes and employers who were worrying that they were being deputized to become immigration officers. What does this deputization of these institutions mean?

The bill I have introduced deals directly with that. I know the chairman worked with me for many years on the whole problem of respondent burden, the things that we kick out of here in terms of paperwork and never realize what kind of a respondent burden that we're laying on the person the paperwork goes to. And I think that this issue fits into respondent burden.

What I think we should do is delay the enforcement of the Solomon amendment for a year, and there are many practical reasons why I think this can happen. It gives us more time. Everybody is looking down the barrel of a gun, literally, with time running out. It's almost the end of February. The school system wonders what is happening? What are the rules? Where do we go?

I looked at the universities in my State and there is a wide range of problems with enforcing this amendment. The University of Colorado at Boulder says it will cost them anywhere from $40,000 to $60,000 to enforce this between now and the summer. They are lucky and they admit they are lucky because they have a computer. And so it is easier for them to do it than the small private schools such as Colorado College who have one finance officer and they have got to go retroactively back to find everybody they gave aid to, run them down, find out what transpired.

In urban colleges where you have a very, very high percentage of people getting aid, sometimes known as "streetcar colleges," they have got a tremendous problem because our State has been cutting back their funding and the Federal Government has been cutting back their funding. They have really been running on chewing gum, sweat equity and everything else and now to be told that they are going to have to spend more money, alloacate more resources, do these kinds of things for an enforcement for the Federal Government, I think tends to make them angry.

I didn't even look at the banks, but I am sure the banks are facing the same kind of problems, and you will be hearing from them.

A most ominous report is the GAO study that came out in September 1982, where they said that 85 percent of the 18-year-olds who had registered in 1980 have moved and not notified Selective Service. This is the most mobile segment of our society. When you are 18-years-old you tend to move a lot.

So how can the Selective Service even in that short time, find all of those people, get the letters back to them and notify them so that it can go into the student's aid package?

I think that rather than this instant deputization causing all the chaos it is going to cause and the respondent burden it makes much more sense to say, you delay it for 1 year. You need more time to think about this. They can then deal with it prospectively in their forms. People who are registering are much more aware that you don't rumple up the letter and throw it away and so forth.

I will also admit to anybody who says, but weren't you one of the people who really didn't like the Solomon amendment to begin with, no, I didn't like the Solomon amendment to begin with.

On Armed Services I want to say that the whole thing of registering 18-year-olds only scares our 18-year-olds, it does not scare Russians.

I am the mother of someone who is almost 18. He doesn't even make his bed real well. He is not well-trained. And when you are looking at wars in today's world, you are talking about come-as-you-are-wars. Nobody is going to give you time out to take this class of 18-year-olds and whip them into some kind of a fighting force. This is not 1939 when the law was enacted. This is 1983.

If you want to have registration, and I am not opposed to registration, per se, but you ought to be spending the money to register the people we need. And sitting on Armed Services and sitting on the Personnel Subcommittee over there, what we need are all sorts of people in the medical profession, airline pilots, mechanics, computer specialists, navigators. You can go on and on and on. That's what we need. Not a whole group of 18-year-olds who really haven't quite got it together yet and are still trying to figure out whether they should even get up when the alarm clock goes off.

I just think that we haven't looked at how technology has taken over our fighting force. And I really wish we could get to that issue, the issue not so much being registration, but if you are going to pay for this whole thing, for crying out loud, get something for it.

I think we have the worst of both possible worlds. We are paying for it. We are now deputizing the private sector and institutions that are under a tremendous, financial crunch. We are causing all sorts of chaos at the moment and I really think that at least by deferring it a year so we can really look at what we are doing just makes an incredible amount of sense.

So that is the bill that I will be introducing this afternoon. I hope that it is something that this subcommittee and my committee can look at very seriously.

Mr. SIMON. Thank you very, very much.

You mentioned one point that I think is important for this subcommittee and that is the lenders. We are having a tough enough time to get banks to make student loans as it is and if we suddenly complicate things for them and make it less certain whether their loans are guaranteed, that is not going to help the situation.

I have been advised by the staff that your bill, unlike the Edgar bill, has been jointly referred, both to this committee and to yours.

Mrs. SCHROEDER. Yes.

Mr. SIMON. If this subcommittee and our full committee were to report out a 1-year postponement so that we could take a good look at this thing——

Mrs. SCHROEDER. You are going to ask me if I can deliver Armed Services. [Laughter.]

Mr. SIMON. That is exactly right.

Mrs. SCHROEDER. I knew what was coming, Mr. Chairman. I will do everything I can to deliver Armed Services and I certainly hope they understand. Unfortunately, there is a feeling that, we have got to be tough, we have got to do this.

They also have colleges and banks in their districts though and I think that they are beginning to realize—well, we just had a meeting this morning talking about what kind of bonuses are needed and so forth. It is not for the 18-year-olds, it is for the skilled people. And so some of that has got to sink in and they have got to realize what they are doing. So there is some hope, I think.

We now have Les Aspin as the chairman of that subcommittee and I think there is some hope that they will do it.

Mr. SIMON. Thank you.

Mr. Petri.

Mr. PETRI. I have been getting letters on this subject from different student groups and so on in my district, but I must say that I was surprised to discover, for example, the student government at Marquette University, which has a reputation of being fairly forward-looking or aggressive or however you want to put it, endorsed this and felt that it was not really asking very much of kids who are asking for financial help from their country.

Mrs. SCHROEDER. Well, I think the issue is, No. 1, in my bill what we do is delay it a year so the cost isn't so heavy of implementing it, because I think the institutions have a very legitimate gripe about accelerating the implementation and accelerating their role of being the deputy sheriff who enforces it. It is going to be terribly costly at a time when they are under a real financial crunch.

I am talking about the delay of implementation. Now I am not talking about doing away with it so it really isn't in opposition to what your students are saying. And I think they would probably agree. They know how precious college resources are and there is no need to squander them to do something that we don't need.

The other piece of it is I really have no problem drafting 18-year-olds whenever this country is in trouble. I have no problem with that. But I do have a problem with convincing ourselves that we can turn our nightlights out at night because we are now registering 18-year-olds, only because, as I say, as I look at our military requirements, if we really want to run draft registration, we ought to be running them for people who are already trained in the specific skills we need. This is a superpower game, not a football game and the Russians are not going to give us a timeout while we come up to speed because it will be more interesting.

I think we have to get much more realistic about that. We are dealing with the nostalgia of World War II, "Winds of War," what we saw on television, and it is just not today.

Mr. SIMON. Mr. Kogovsek.

Mr. KOGOVSEK. Thank you, Mr. Chairman. I would like to compliment my colleague from Colorado on her testimony and especially compliment her for making the very good point about what is happening as far as costs are concerned in State and public colleges throughout Colorado and certainly throughout the Nation.

People in Colorado, Mr. Chairman, right now, the people who are governing our institutions of higher education are trying to make decisions as to whether they should lay off some professors, cut back on programs and so on, and there is no doubt in my mind that the Solomon amendment is just exacerbating the problems that we are having as far as finances are concerned. It is very obvious to me that we made a mistake when we passed that amendment last year.

Thank you.

Mrs. SCHROEDER. Thank you very much.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

I have to ask you the same question I asked Congressman Edgar. Do you see the intent of the Solomon amendment as enforcing registration? I mean, do you perceive that as the purpose of it?

Mrs. SCHROEDER. That's one of the biggest problems we have in this legislative body is we always see intent, the snail darter being the great thing. I think when we passed preservation of endangered species, we were all thinking of little warm fuzzy things with big brown eyes rather than maybe a snail darter. And so we are saying, that is not our intent.

The issue is, what is it doing? What do the regulations do? And what the regulations do is enforce registration for anyone who is the lower middle class and cannot afford to go to school any other way than financial aid. I am not too sure that is very smart because when I was 18, I didn't think I had the wisdom I have now. Maybe letting some of those people on board, maybe getting them into universities, maybe saying, there is going to be a better life for you, will make them feel much stronger about their country rather than turning them off at a young age with, you threw your letter away. You have got to drop out for a quarter. Go get another letter. Come back, and make them do all of this runaround.

In the heavyhandedness of all of this, I am not sure that we get what we want back, but I think it is being translated as enforcement whether or not that was the intent.

Mr. GUNDERSON. I respect your feelings on the age of 18 registration, but I am not sure that is what we are dealing with today. If we want to change the age at which we should register, we can do that and I think you can bring up some good merits.

What I think we are trying to determine here is a bigger question in the implementation of this particular rule and its effect on universities. I don't think that you can look at the Solomon amendment, or I hope we don't look at it as a tool to enforce registration, because it doesn't enforce registration, even if it is put into play. It is not going to enforce registration because there is only a very small percent of the 18-year-olds going to school who are going to be obligated by this to comply with registration. And I don't think there is anybody in this room, and I hope no one in society, who wants us to have a military that is comprised only of 18-year-olds from lower economic backgrounds.

That is not good as a societal statement and it is not good in military practice or military personnel. I think we have got to go beyond that stage. I am a bit intrigued with the concept of a delay. I think there are some problems in the 1983-84 school year that we need to look at. But I would hope you could give us suggestions as to where we can take that constructively outside of the issue which we should probably debate. However, I don't think your committee would let our committee debate the issue of whether 18-year-olds ought to be registered as opposed to some other age.

Mrs. SCHROEDER. Well, I hope we do. I guess that is my problem. I come here wearing two hats.

My armed services hat says, why in the world are we spending all of this money registering 18-year-olds when every one of us know that is not what we need? If we are going to run a registration system, let's run the registration system—it costs the same amount of money—and register people who will give us faster

readiness in case, heaven forbid, a war broke out, which we hope won't.

But, register your computer specialists, register your navigators and pilots and medical personnel and the people you really need to have in the file and in the inventory, much as they do in the Israeli army and so forth and so on.

So the first thing is you are looking at the overall budget pool of the Federal Government which every one of us as Congressmen is responsible for. And we are spending a lot of money and really getting nothing. As I said, the only person that registration scares is our 18-year-old. It is not scaring the Russians. I can't think of one Russian planner who is terrorized because we have 18-year-olds' names in a computer.

Mr. GUNDERSON. I don't disagree with that but that doesn't solve our problem today.

Mrs. SCHROEDER. Then why are we spending money to do it? That is the first thing. And then we make it even worse and compound it by saying we are going to force the private sector and public institutions and banks and everyone else to help us enforce it.

Now you say the intent is not to enforce it, but it really comes out that way. That is the effect of it. The effect of it is going to be enforcement for people in the lower socioeconomic groups, not kids who are wealthy enough and won't get the aid anyway, but in lower socioeconomic groups. They have to decide, will they do it or won't they do it? Because if they want to go to school that decision has got to be made to get the aid.

We compound the cost of this whole thing and when we get all done, what have we got? I don't think we have got anything, except we have spent a lot of money wrapping ourselves in the flag red, white, and blue. I want to wrap myself in the flag but I want to make sure that it is something that is going to preserve the flag if we are going to force the costs on everybody.

It may be the law, but if the law isn't doing what it should do or it's wrong, then you really ought to test it and ask questions. I am saying that we have got to ask the question about what the Solomon amendment is doing. Is it enforcing a law that I think doesn't give us anything and is costing the Federal budget money, is costing the private sector money. If we want to do draft registration, we ought to be doing it for what we need, not for what we needed in 1939.

Mr. GUNDERSON. Thank you.

Mr. SIMON. If the Chair could just add one other comment. We are talking among other things about security. Two weeks ago our full committee reported out a bill saying, we have to do more to get young people into science and math. We have to do more to get greater resources to the universities. And now we are here 2 weeks later talking about a bill that is reducing that resource of potential students and is saying, for example, to the University of Colorado, you have to spend $60,000 on something that may not end up doing any good for the security of this Nation at all.

Mrs. SCHROEDER. That's right. And we can't spend that and for math teachers at the same time. They have clearly got to spend the $60,000 first or they lose a whole pool of students. We have got to

realize that we can't tell them to do everything if they don't have the money. They have got to prioritize and this is going to preempt those other things.

Mr. SIMON. We thank you very much for your testimony.

Mrs. SCHROEDER. Thank you.

Mr. SIMON. Our final House witness is Representative Tom Foglietta from the State of Pennsylvania, and we are very pleased to welcome him here.

STATEMENT OF HON. THOMAS M. FOGLIETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. FOGLIETTA. Thank you, Mr. Chairman, members of the committee. I am certainly grateful for the opportunity to speak to you today about the proposed regulations for selective service registration requirements for student title IV aid eligibility.

First of all, I am not here to advocate repeal of this law, regardless of what my personal opinions are, but to express my concerns and those of the institutions of higher education who have worked with me on this subject about the proposed regulations themselves.

I believe that the regulations dramatically and drastically overextend the intent of this legislation. In so doing, they create responsibilities for and place burdens on our institutions that are neither philosophically nor legislatively intended by Congress.

The number and variety of problems written into the regulations warrant, I believe, a delay in the effective date of enforcement. Therefore, I have cosponsored Mrs. Schroeder's legislation to this effect.

Mr. Chairman, the Department of Education and the Selective Service have signed off on regulations that remove from them the majority of the burden of enforcing draft registration, and instead have delegated the responsibility to our schools.

The law, as passed by Congress, requires a statement of compliance with regard to registration for a student seeking to obtain financial aid. The law does not place the burden of verifying that compliance on the institution. The regulations do.

In seeking to make the law enforceable, Congress recommended that lists of students eligible for registration and seeking aid be sent to the selective service for verification.

Representative Hartnett specifically stated on the House floor that this possible list was designed, quote, "to place the enforcement on us, on the backs of the Selective Service System," end quote. And in the opinion of the Council on Education, Congress intended to require of schools no more than the submission of the contemplated lists. The regulations, however, create a verification system that will contravene this intent.

Verification prior to disbursement will create chaos in a financial aid office. Uncertainty will develop over how many loans to give out, how to administer them and how to disburse if there must be a verification made on each applicant before disbursement.

Loans authorized will be held up during verification, which, as the committee knows, will take considerably longer than the selective service claims. This will disrupt schedules and create a great deal of uncertainty for applicants and institutions. I believe this is

an unwarranted burden to place on our universities when the vast majority are law abiding.

The provision designed to ease this burden, temporary verification by affadavit will, in fact, make it more difficult on our institutions. Allowing a school to distribute only one loan period funds sounds innocent enough. But forcing the institution to cease the loan and to seek to collect the funds already dispersed, should a student not comply with the regulations thrusts the school into the role of policeman and will certainly result often in litigation, greatly increased costs and ultimately will tie up a great deal of financial aid office time and productivity.

This, too, is many miles removed from congressional intent. The conference report specifically states that the regulations should act to, quote, "minimize the administrative burdens on colleges and universities and the delays in processing aid and applicants and awards," end quote.

Nowhere is it stated in the legislation that a predistribution provision is required, recommended, or suggested.

Mr. Chairman, to conclude, I would like to quote from the Counsel to the American Council on Education Report to the ACE, quote, "It would be a massive misdirection of resources, . . . to impose a sweeping school-administered verification program to identify a tiny minority of students who have submitted false statements of registration compliance," end quote.

And I thank the committee for your time and interest.

Mr. SIMON. We thank you very, very much for your testimony. I simply have one question and that is, in your opinion, after talking to your schools, would a 1-year delay be a wise thing at this point?

Mr. FOGLIETTA. Absolutely. I have spoken to administrators of financial assistance in the various schools and they are terribly apprehensive about what is going to be occurring in the next couple of months. Penn State University—I think Mr. Gunderson will be interested in this—Penn State University, with 50,000 students at that university, 30,000 or 60 percent are getting some sort of financial assistance. So you realize the burden we would be creating in passing on this verification system to that school.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Tom, thank you for your testimony. I really do appreciate it because I think you are getting at some of the problems that we face in this subcommittee and that is how do we deal with the whole implementation.

It is obvious that you have done a great deal of thinking yourself and have been in contact with a number of people and I agree the regulations have gone directly contrary to the intent of the law by putting the burden, the onus, of the enforcement on the backs of the institution.

Have you got any suggestions as to how we might try to better achieve some kind of implementation of this law other than the present proposed rule?

Mr. FOGLIETTA. Yes, that has been discussed with the various administrators of these programs at the schools.

They will be here to testify, especially Mr. Shuckers from Penn State and he has a suggested program.

Mr. GUNDERSON. OK. Thank you.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. I don't have any questions, Mr. Chairman. I just wanted to say it is a pleasure to see my Pennsylvania colleague here and thank you very much for your very thoughtful statement.

Mr. FOGLIETTA. Thank you very much, Mr. Chairman.

Mr. SIMON. We thank you for your testimony.

We now will ask our final two witnesses to appear as a panel, the Honorable Edward Elmendorf, Assistant Secretary of Education for Postsecondary Education, and Maj. Gen. Tom Turnage of Selective Service.

If the two of you can join us here. We will hear from both witnesses before we have questions. Mr. Elmendorf, we will hear from you first.

STATEMENT OF EDWARD ELMENDORF, ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION

Mr. ELMENDORF. Thank you, Mr. Chairman.

I would ask that my statement be entered in the record.

Mr. SIMON. It will be.

[The prepared statement of Edward Elmendorf follows:]

PREPARED STATEMENT OF DR. EDWARD ELMENDORF, ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify on the joint efforts of the Department of Education and the Selective Service System to implement the amendment to the Military Selective Service Act passed by the Congress in the Fall of 1982 as part of the fiscal year 1983 Defense Authorization Act (P.L. 97-252). The amendment provides that, beginning with the 1983-84 award year, any student who must register with Selective Service and fails to do so is ineligible for student financial assistance under programs established by title IV of the Higher Education Act of 1965, as amended. These programs include the Pell Grant, Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CW-S), National Direct Student Loan (NDSL), Guaranteed Student Loan (GSL), Auxiliary Loan (PLUS), and State Student Incentive Grant (SSIG) programs.

Currently, men who are at least 18 years old, who were born after December 31, 1959, and who are not currently on active duty with the armed forces must be registered with the Selective Service. This group includes citizens and non-citizens eligible for Federal student aid except permanent residents of the Trust Territory of the Pacific Islands and the Northern Mariana Islands. According to the Selective Service, if they are within the age category, members of the Reserves and National Guard and men who have been discharged from military service must be registered.

President Reagan signed the Defense Authorization Act on September 8, 1982. With the concurrence of Secretary Bell, I established a task force composed of student financial aid specialists from the Office of Postsecondary Education, the Office of General Counsel, and the Office of Planning, Budget and Evaluation. At my request, General Turnage, Director of the Selective Service System, appointed several of his senior managers to the task force.

The task force began its work on September 17, 1982. The Conference Committee Report accompanying P.L. 97-252 guided the task force throughout its deliberations in developing the proposed rules to implement the amendment. On January 27, 1983, the Department published a Notice of Proposed Rulemaking implementing this new eligibility criterion for student qualification for title IV student assistance.

The Conference Committee Report stated that the intention of Congress with regard to the amendment was that "such regulations and procedures necessary to implement this provision minimize the administrative burden on colleges and universities and the delay in processing aid applications". Thus, in developing the proposed regulations, the Department worked very closely not only with the Selective Service System, but members of the financial aid community were consulted to try

to ensure implementation in the most effective and least burdensome manner possible.

The amendment specifically requires that, in order to receive title IV aid, a student who is required to register with Selective Service must file a statement with the institution he attends, certifying that he is in compliance with the registration requirements. A practical problem exists in implementing the Statement of Registration Compliance requirement. That is the difficulty in identifying which students are required to be registered, especially since many institutions do not have a record of all students' gender, date of birth, or military status. To minimize the burden of institutional staff of determining whether a student is exempt from registration under one of the five exemption categories, the Department of Education and the Selective Service System proposed that all title IV aid recipients complete and submit to the institution the Statement of Educational Purpose/Registration Compliance in which the student certifies either the reason why he or she is not required to be registered, or that he is registered. The five categories providing reason for non-registration include: (1) female; (2) member of the armed services on active duty; (3) born prior to January 1, 1960; (4) not yet 18 years of age; and (5) permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

Following the recommendation of the financial aid community, the regulations propose therefore that in addition to the Statement of Educational Purpose, which is already required of all title IV aid recipients by section 484 of the Higher Education Act, the student must file a Statement of Registration Compliance. For the convenience of the institution and the student, the current Statement of Educational Purpose is simply expanded to include the new Statement of Registration Compliance and it will appear on the 1983-84 Student Aid Report. This method of obtaining the required certification was determined to be the least disruptive and burdensome. The proposed language for this new combined Statement was sent to participating colleges and schools in January of this year for their early review.

The amendment also required the Secretary, in agreement with the Director of Selective Service, to prescribe procedures for verifying students' Statements of Registration Compliance. A number of verification methods were explored during the development of the proposed regulations. A comparison of applicant records and Selective Service registrant records was infeasible, especially in light of the requirement for implementation for the 1983-1984 award year. The Department maintains no central record system for all title IV applicants, and thus the development of a method for matching such data would be extremely costly, time-consuming, and very expensive.

A comparison by Selective Service of its registrant data with all title IV applicant data provided by the institutions was also considered. Under such a method, the institution would have to collect, extract and forward to the Selective Service the necessary applicant data to verify the registration status of its students. This method would not only be extraordinarily burdensome and costly to institutions but it would cause extensive delays in the processing of awards until registration compliance could be verified and confirmed to the institutions by the Selective Service.

To avoid such excessive administrative burden, delays and intrusion, the Department proposed that the primary responsibility for verifying registration compliance rest with the student himself at the institutional level. Any student who certifies that he is registered on his Statement of Registration Compliance would be required to submit a copy of his Registration Acknowledgement Letter to the institution as proof of eligibility before it could disburse aid or certify the GSL and PLUS loan applications and the Pell Grant Alternate Disbursement System Request for Payment.

The Selective Service System currently provides registrants with their original Registration Acknowledgement Letters within approximately 30 days of their registering. Replacement copies of the Acknowledgement Letter are provided within two weeks of their request to any registrant who does not have his original Acknowledgement Letter. The Department and the Selective Service System have both begun to actively publicize the requirement for proof of registration to counselors and financial aid administrators at secondary and postsecondary institutions. Institutions have been provided with a sample form on which a registrant, who does not have his original Acknowledgement Letter may request a replacement. In the initial phase-in award year (1983-84), documentation have to be submitted by all students who certify that they are registered. Once that documentation was part of those students' records, the number of students certifying that they were registered would be drastically reduced in subsequent years.

The Department and the Selective Service System recognize the possibility that in limited circumstances some students may not receive their Acknowledgement Letter from Selective Service quickly enough to verify their registration compliance. In order to prevent delays in the award process, the regulations propose a temporary verification alternative for students who have registered but do not yet have documentation from Selective Service. These students will be able to submit a notarized affidavit to the institution in which they affirm that they in fact have registered and will submit the required Acknowledgment letter documentation within 120 days. This alternative will be available to all registrants who turned 18 within 90 days of the beginning of the award year and have not received their original Acknowledgement Letter from Selective Service. At the option of the institution, it would also be available to any other registrant who does not have his original Acknowledgement Letter and who can demonstrate to the institution that he has requested a replacement copy from Selective Service. Students may certify and verify their registration compliance by either submitting a copy of the Acknowledgement letter, or through this affidavit procedure at any time before the end of the payment period or 30 days after receiving notice, whichever is later.

If an affidavit is filed as temporary verification, the institution would then disburse title IV funds for one payment period and, for any student who had just turned 18, certify the institutional portion of the Guaranteed Student Loan or PLUS application. Only that group of 18 year old students who have not yet received their Letters will receive the benefit of a Guaranteed Student Loan or PLUS Loan under temporary verification. Any title IV funds received by a student who does not submit his Letter within the 120 days of filing the affidavit would be considered an overpayment under the GSL and PLUS Programs. Students would lose the right to the payment of interest benefits on the loan. Although Section 428(a)(3)(A) of the Higher Education Act provides that the holder of a loan (i.e., the lender) to which interest payments are required to be made has a contractual right to receive these payments, no such contractual right exists when interest payments are not required to be made on behalf of a borrower. Payments made on behalf of borrowers who have failed to meet eligibility requirements for a GSL are prohibited. However, lenders would assume no liability because payment of principal and interest would continue to be insured.

I trust I have addressed the essence of the questions you raised in your letter of invitation. I shall be happy to answer any further questions you may have at this time.

Mr. ELMENDORF. What I will attempt to do this morning is to summarize briefly the regulation, and respond very precisely to the seven questions which you asked of me in your letter of invitation.

The statute on which this proposed regulation was based, was contained in the 1983 Defense Authorization Act, Public Law 97-252, passed by Congress and signed by the President on September 8, 1982. As you know, the act contains an amendment to the Military Selective Service Act, which becomes effective July 1, 1983. The amendment provides that any student who is required to register with Selective Service and who fails to register will be ineligible for student financial aid under title IV of the Higher Education Act of 1965.

That, Mr. Chairman, is the basis of the regulation. There are two important pieces of the statute that I think deserve highlighting. Number one, students under the law must file statements certifying compliance with the registration requirements.

Point two, the regulations be issued in cooperation with the Director of Selective Service and must include a method for verifying statements of compliance. Both of those are included by statute and not by any type of arbitrary or whimsical behavior on behalf of either the Selective Service or the Department of Education.

The regulations proposed simply implement a new eligibility criterion. That, Mr. Chairman, is how we view this Selective Service requirement. All students will file a statement of registration com-

pliance with his or her school certifying that the student is registered or giving a reason why he or she is not required to register. That statement of educational purpose which already exists in all 8,000 schools and universities and is already required of all students receiving aid, is the document on which the statement of registration compliance will be contained.

I should add parenthetically that that suggestion came from the student financial community as a result of our consultation with them. We think it i s an excellent suggestion. It was one that was adopted by the task force and it was included in a Notice of Proposed Rulemaking issued on January 27.

Second, any student who certifies in the statement of registration compliance that he is registered then must submit a copy of a registration acknowledgement letter to the institution to verify that he is registered. A copy of the letter is available from the Selective Service for any registered student who did not retain the original letter. I think the General will speak to that when he has his chance.

A temporary verification alternative was discussed by both the Secretary of Education and the General as we were developing the proposed regulations. Both were very concerned that there be opportunities for students who might not be able to get back in a timely way the necessary information to allow them to proceed to get student financial aid or for reasons of forgetfulness or because of their date of birth. Some type of a waiver provision had to be allowed in these instances.

The Department consequently in conjunction with the Selective Service established an alternative affadavit which could be submitted for two types of students, group A—I will refer to group A as a group of students who would turn 18 and register within 90 days of the beginning of the award year. The award year usually is either July 1 or September 1 or about that period of time. So anyone essentially after March 31, 1983 who turns 18 and is not able to get back in their hands sufficient acknowledgement through the registration acknowledgement letter would have the opportunity then to be given student financial aid on the basis of an approved waiver.

There is a second group of students and that group of students would be those who have for some reason not been able to locate the registration acknowledgement letter and at the option of the institution, that student may also receive access to their student financial aid funds and may do so for a period of 120 days within which time they would be expected to produce the registration acknowledgement letter.

Finally, there is an administrative review process that is provided for in the law and under the regulation. It is to be used only for students who assert that they are registered but are unable to prove their registration. The proposed rule was issued on January 27. The public comment period continues through February 28, 1983. I should restate the fact that the NPRM is a product of consultation with the Selective Service System, the Office of Management and Budget and the financial aid community.

You ask in your letter to me seven specific questions and I would like to try to restate the question briefly and then try to respond to each of the seven.

Your first question dealt with the fact that all students were required to file some type of compliance form. You asked if a female refused to fill out the registration portion of the form, would she be denied student aid and why it was necessary to require female students to file the form.

We have addressed that on page 2 of our formal testimony. We have recognized that there is a practical problem in trying to handle a regulation for 8,000 different kinds of institutions with different requirements and understand that there are several, in fact, many institutions that do not have records of all students' gender, date of birth or military status. In other words, the data simply isn't collected.

We have attempted to minimize the burden on institutional staff where possible and in this particular case have provided for a simple check-off box for the female on the registration statement. The fact is that the Selective Service did require that all title IV aid recipients complete and submit to the institution a statement of educational purpose and a registration compliance.

The proposed rule, I should also state, asks for comments, specifically in the area of registration compliance for single sex female colleges to see if there is a better way for that type of institution to comply.

Your second question addressed the problem that the form does not appear to address students who have been discharged from military service and how are they to be treated. On page 1 of the formal testimony, we have stated that all men at least 18 years old born after December 31, 1959 who are not currently on active duty with the Armed Forces must be registered with the Selective Service. This group includes members of the Reserves, the National Guard and men who have been discharged from military service if they are within that age category. I believe on that one General Turnage may wish to further comment.

Question 3. You wanted to know whether or not we conferred with financial aid administrators, whether or not we discussed with them the burdens of delay in collecting and maintaining the file, the registration compliance file and letters. We believe we have addressed this on page 2 of our statement. We did work very closely with the Selective Service, with members of the financial aid community and consulted extensively with at least five State associations and at least 12 different associations in Washington representing many colleges and universities.

I might also add again that it was at the suggestion of the financial aid community through our consultation process that the idea to include the registration compliance statement on the already existing statement of educational purpose was made and accepted by the Department in its proposed rulemaking.

Your fourth question dealt with the 1983-84 academic year and the fact that we were instructing institutions to recontact all applicants for student aid after July 1, 1983, to have them sign the registration compliance form. The question was, Is it possible for the Department to supply institutions with forms prior to July 1 so

delays inherent in notifying students could be eliminated. We have addressed that on page 3 of our formal testimony.

We have not only included the forms that could be used in the Notice of Proposed Rulemaking, but in the Dear Colleague letter that was mailed to all institutions and colleges throughout the country in January. We included the proposed language from the new combined statement. We also encouraged institutions to incorporate that proposed language in their 1983-84 student aid materials to give as much early opportunity as possible for students to sign that statement.

The statement must be signed prior to the actual disbursement of student aid funds. We don't anticipate that schools will need to recontact students receiving aid because by law student aid funds cannot be disbursed prior to July 1. There is the case of the guaranteed student loan program. Some funds will be disbursed before July 1 and we will deal with that in the subsequent question.

Question 5. Your question dealt with the difference in treatment in the two types of affidavits provided that appeared to be inconsistent. I believe that I have explained that in my summary. On page 5 it includes a precise response, but it deals essentially with the fact that those who turn 18 after March 31 and may not, for whatever reason, be able to get back a form in sufficient time. The original registration, I think the General has said, takes up to 40 days from the time it is actually filled in to the time it is mailed back. We wanted to at least double that to make sure that there was, in effect, enough time for that student to receive aid.

So we put in for that group of students the right to immediately access those funds. The second group of students are those that could not locate additional forms and for that category of student we left it essentially up to the institution to choose whether or not they would allow the disbursement of student financial aid to that category of students.

Again, the turnaround time of getting those forms back from the Selective Service we think is acceptable and the General can speak to that. We are also engaged in some discussions about how we might even further improve the reliability of that procedure.

The question about the student receiving the guaranteed student loan for the 1983-84 academic year before July 1 but subsequently fails to file a registration compliance, what then, in fact, happens to the right of payment of interest benefits on that loan as it relates to the lender?

We have stated in our testimony on page 6 that there is no contractual right that exists when interest payments are not required to be made on behalf of the borrower. The payments made on the behalf of borrowers who have failed to meet eligibility requirements for GSL are prohibited. However, and this, I think, is the important consideration here, the lenders would assume no liability because the payment of principle and interest would continue to be insured. In other words, it would be treated just as any other loan for a student essentially who started in September and dropped out in October.

The same approximate procedure would be used and the lender would be guaranteed payment under the provision that these loans are insured 100 percent by the Government, and, in fact, if they

call up that loan and expect it to be paid back, exercise due diligence and fail to get the money back, then they are reimbursed by the State guarantee agency and we, in fact, as a Department, reimburse the State guarantee agency or the lenders directly.

So that provision is provided for, we think, in the testimony and in the Notice of Proposed Rulemaking.

I think question 7 deals with a GAO report and the General will address that, I believe, in his testimony.

Question 8. You ask if it was possible for students to file forms affirming that they are legally registered, forms which could be sent to Selective Service by the financial aid administrator. You also ask if the Selective Service would able to verify registration compliance with its file, thus eliminating the burden that would be placed on institutions and students by the proposed reg, and we believe we have answered that in our testimony.

The statute requires the Secretary and the Director of Selective Service to issue regs that verify compliance with the registration requirement. The conference report, as you know, stated the intention of Congress with regard to the amendment that "such regulations," and I am quoting here, "and procedures necessary to implement this provision minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards."

We feel that we have, in fact, minimized the burden insofar as possible and we do not expect any delay in the processing of financial aid applications. As a matter of fact, I should tell you that the processing system for this coming year that didn't start until March 17 of last year and April 17 of the year before last has already begun as of the 15th of this month and is beginning now to process what will amount to over 5 million student applications for financial aid.

The question deals with whether or not the Selective Service could be recipient of a list of names submitted by the financial aid administrators which would then be verified essentially by Selective Service. We feel this would add undue burden to a system that is already somewhat of a burden to institutions and students but is necessary under the conditions and guidelines set forth under the statute. We feel it would delay a disbursement of student aid funds to students.

The Selective Service and the Department expected in our interpretation of the regulation that there be 100 percent verification of registration compliance. Our assumption was that if there was less than 100 percent required it would have been so stated in either the Conference Report or the statute.

The fact also that we would be verifying institutionally-generated lists from over 8,000 colleges and universities has no outcome other than a delay of student aid delivery, one that I would not encourage. And I believe during the time at which this amendment was being discussed and amendments were being considered to it, the Hayakawa amendment required that both Selective Service and the Department deal specifically with the burden of all of the verification and under testimony from Mr. Stockman and others, an amendment was later introduced which placed the burden on the shoulders of the students, primarily, and somewhat on the

shoulders of the institution, which was later accepted and made a part of the act.

In conclusion, the public comment period ends on February 28. We feel that we can publish the final rule by the first or second week, no later than that, of May 1983. We, in looking at the responses and the intensity of media and public comment that has been generated in this area, would like to state, and I don't know if the press would pick up on this, although it is fact, what we have received back in the way of comment in the first 3 weeks of this publication. We have less than 100 written and oral comments from the public. Sixty-three of these comments have come from college students and interest groups. Only 28 out of 8,000 colleges and universities have responded, half of which favor it and half of which are against it.

We have received no comment from banks or the 17,000 lending institutions and we have received no comment from State guarantee agencies.

Mr. Chairman, the only conclusion that I can reach is that the majority of those who could comment either are waiting until the last minute or they don't have the same level of concern that may have been earlier expressed.

Thank you.

Mr. SIMON. Thank you very much, Mr. Elmendorf.

General Turnage.

STATEMENT OF MAJ. GEN. THOMAS K. TURNAGE, DIRECTOR OF SELECTIVE SERVICE

General TURNAGE. Thank you, Mr. Chairman. It is a privilege to appear before your committee and in the written invitation to give testimony I was asked to respond to four specific committee concerns.

I will address each individually.

The first question was, what action has Selective Service taken and what assurances can we give regarding the GAO report on Selective Service records?

The April 1982 GAO report found no serious problem with the recordkeeping practices of the Selective Service System. It was just the opposite. The report found that there were, and I quote, "no major problems with the way the Selective Service System registration program was organized and conducted."

The GAO reviewed Selective Service records for two types of accuracy. The first was to insure that we could account for all registration forms and that our registration statistics are accurate.

In order to make the determination, GAO counted the registration cards and verified the number of registrants contained in our control documents. The GAO account agreed in all instances with our control documents.

The second type of accuracy the GAO looked for was to insure that Selective Service had recorded the registration information correctly. In that regard, GAO found that 6 percent of our records had a 1 character error. Since each registrant record has an average of 250 characters, this represents 6 errors per 25,000 characters or an accuracy rate of 99.97 percent.

The GAO addressed two areas as it related to potential problems. First, in the interest of equity, the report expressed concerns about Selective Service's ability to get the entire eligible population to register. And second, the report expressed concern about the accuracy of registrant address information in light of the mobile population to which one of our earlier speakers referred.

The first problem, registration compliance, has been met effectively since we have been able to register 98 percent of all men in the draft-eligible population. The second problem, the accuracy of registrant address information is an area in which we have taken substantial initiatives to respond to the GAO report and to insure such accuracy.

Now, every one who registers with Selective Service receives in addition to an acknowledgement letter a change of information or address form and a postage paid return envelope so they can comply with the law by notifying Selective Service of any address change.

We recently mailed 100,000 letters to registrants in the 1963 year-of-birth group. That is the group that has the primary draft eligibility in the event of an occurence tonight, for example. We were able to deliver 94.5 percent of these letters.

By way of comparison, a recent mailing to young men born in 1963 and 1964, using addresses from current IRS and DMV files, we have delivery rates of 93 and 78 percent, respectively.

In October 1982 we initiated a verification letter program where we send letters to registrants who have not corresponded with our system in the past 11 months. The letter verifies the registrant's current and his permanent address. The U.S. Postal Service has agreed to forward these verification letters and provide our service with the new forwarding address. We are confident that this program will even further improve the accuracy of our registrant address information.

Now your second question, sir, asked, can you guarantee that Selective Service will be able to provide timely acknowledgement to a registrant in order to avoid delay in application of student aid.

Our response is as follows: The Department of Education's proposed regulation regarding student financial aid requires a student to provide proof of registration before receipt of title IV aid.

Selective Service regulations require an acknowledgement to the registrant within 90 days of his having registered. On the average, the elapsed time from registering at the U.S. Post Office and receiving an acknowledgment letter from selective service is only 40 days. The 40-day average takes into account the fact that 5 percent of registrations we receive have some type of error which requires a written or telephone inquiry on our part in order to get correct information from the registrant.

We feel confident that there will be no delays in the disbursement of financial aid for a student because of the requirement to register, even if a student registers after he initiates the application for financial aid.

Once again, parenthetically I might suggest that this bill or proposed bill has already had some implications in that we are receiving questions and inquiries from young people suggesting they

have lost their letter and would we provide another? We have done so.

The third question is why is the major role of enforcing the law given to the institution? We don't think that it is given to the institution. We think the burden is on the individual. The major role is given to the applicant student who is asked to certify that he has registered and show proof of same. I believe that this is in harmony with congressional intent.

We feel that Selective Service, in turn, has taken the second major role by improving our ability to provide a registration acknowledgement to the registrant with a short turnaround time including a replacement copy in the event it is needed, upon the request of the individual.

The fourth question is why shouldn't Selective Service verify a registrant's compliance itself, simply through the process of applicant names being forwarded by the institutions?

I think Dr. Elmendorf responded to that. However, once again, given the fact that the vast majority of student applicants will be able to prove registration on the initial day of application for financial assistance, such a program would be burdensome, impractical and unnecessarily expensive for the institution. It would create delay in the processing of awards since proof of registration would require verification and confirmation to the institution by Selective Service.

This would also be unnecessarily expensive for the Government. Such a process would entail approximately 8,000 institutions, some of which lack automated record keeping, developing and submitting lists to the Selective Service.

As the regulations are written, we feel the burden is on the student applicant where it ought to be, just as it is with other data he is asked to provide in order to qualify for the student aid he seeks.

Once again, listening to some of the previous speakers, the thought occurs to me that the real complexity of obtaining a loan, it seems to me as a layman, is inherent in the process of answering all the questions relating to that loan. The addition of one further question, are you registered or are you not, providing a simple letter that we provide the individual to attest to that fact doesn't seem overly burdensome in my judgment.

Mr. Chairman, this concludes my statement and I will be happy to respond to any questions that any of you may have.

[The prepared statement of Gen. Thomas K. Turnage follows:]

PREPARED STATEMENT OF GEN. THOMAS K. TURNAGE, DIRECTOR OF SELECTIVE SERVICE

Mr. Chairman, it's a privilege to appear before your Committee. In the written invitation to give testimony, I was asked to respond to four specific committee concerns. I will address each individually:

1. What action has Selective Service taken, and what assurances can we give, regarding the GAO Report on Selective Service records?

Our Response is as follows: The April 1982 GAO Report found no serious problem with the record keeping practices of the Selective Service System. It was just the opposite. The report found that there were, and I quote, "no major problems with the way the Selective Service System registration program was organized and conducted."

Mr. Chairman, the GAO reviewed Selective Service records for two types of accuracy. The first was to insure that we could account for all registration forms and that our registration statistics are accurate. In order to make the determination,

GAO counted the registration cards and verified the number of registrants contained in our control documents. The GAO count agreed in all instances with our control documents.

The second type of accuracy the GAO looked for was to insure that Selective Service had recorded the registration information correctly. In that regard, GAO found that 6 percent of our records had a one (1) character error. Since each registrant record has an average of 250 characters, this represents 6 errors per 25,000 characters—or an accuracy rate of 99.97 percent.

The GAO report addressed two areas it saw as potential problems. First, in the interest of equity, the report expressed concern about Selective Service's ability to get the entire eligible population to register. And second, the report expressed concern about the accuracy of registrant address information in light of a mobile population. The first problem—registration compliance—has been met effectively since we have been able to register 98 percent of all men in the draft eligible population. The second problem—accuracy of registrant address information—is an area in which we have taken substantial initiatives to respond to the GAO report and insure such accuracy.

Everyone who registers with Selective Service receives, in addition to an Acknowledgement Letter, a Change of Information or Address form and a postage-paid return envelope so that they can comply with the law by notifying Selective Service of any address change. We recently mailed 100,000 letters to registrants in the 1963 year-of-birth group (the group with primary draft eligibility) and were able to deliver 94.5 percent of these letters. By way of comparison, a recent mailing to young men born in 1963 and 1964, using addresses from current IRS and Division of Motor Vehicle records, had deliverability rates of 93 percent and 78 percent respectively.

In October 1982, we initiated a Verification Letter program where we send letters to registrants who have not corresponded with Selective Service within the past 11 months. The letter verifies the registrants current and permanent address. The U.S. Postal Service has agreed to forward these verification letters and provide Selective Service with the new forwarding address. We are confident that this program will even further improve the accuracy of our registrant address information.

2. Can you guarantee that Selective Service will be able to provide timely acknowledgement to a registrant in order to avoid delay in application for student aid?

Our response is as follows: The Department of Education's proposed regulations regarding student financial aid require a student to provide proof of registration before receipt of Title IV aid. Selective Service regulations require an Acknowledgement to the registrant within 90 days of his having registered. On the average, the elapsed time from registering at the U.S. Post Office and receiving an Acknowledgement Letter from Selective Service is only 40 days. This 40 day average takes into account the fact that 5 percent of registrations we receive have some type of error which requires a written or telephoned inquiry on our part in order to get correct information from the registrant.

We feel confident that there will be no delays in the disbursement of financial aid for a student because of the requirement to register—even if a student registers after he initiates the application for financial aid.

3. Why is the major role of enforcing the law given to the institution?

Our response is as follows: We don't think it is. The major role is given to the applicant student who is asked to certify that he is registered and show proof of the same. I believe that this is in harmony with Congressional intent. We feel that Selective Service, in turn, has taken the second major role by improving our ability to provide a registration Acknowledgement Letter to the registrant in a short turnaround time—including a replacement copy, upon request.

4. Why shouldn't Selective Service verify registrant compliance itself, simply through the process of applicant names being forwarded by the institutions?

Our response is as follows: Given the fact that the vast majority of student applicants will be able to prove registration on the initial day of application for financial assistance, such a program would be burdensome, impractical, and unnecessarily expensive for the institution. It would create delay in the processing of awards since proof of registration would require verification and confirmation to the institution by Selective Service. This would also be unnecessarily expensive for the Government. Such a process would entail approximately 8,000 institutions, some of which lack automated record keeping, developing and submitting lists to Selective Service.

As the regulations are written, we feel the burden is on the student applicant where it ought to be—just as it is with other data he is asked to provide in order to qualify for the student aid he seeks.

Mr Chairman, this concludes my statement I will be happy to respond to any questions the Committee may have

Mr. SIMON. Thank you both very much for your testimony.

As the regulation is now drafted an all-female institution has to go through filling this out also. Is that correct?

Mr. ELMENDORF. They have to check off on the single sheet that is provided on the back of the required statement of educational purpose, which every student has to fill out anyway—a simple statement that they are female. That alone signed by them is sufficient to allow there to be no further burden on that individual whatsoever or the institution. They just file it.

Mr. SIMON. General, you mentioned we have 98 percent compliance now. Do you think as a result of this amendment we will have, we will move up to 99 percent or are we going to accomplish anything through this particular amendment.

General TURNAGE. Mr. Chairman, it would be difficult for me to quantify the specific results that would be derived from this amendment. However, I think there are two or three things that might be said in response to your question.

One, we just recently received a letter from a young man who started out by saying, "OK, you got me. I heretofore on the basis of principle did not want to register for the draft in a country that supports the kind of wars which you are planning," and went on with similar type language. "I am now willing to change my principle on the basis that I can't get money unless I register and I will register."

Now we know as a result of that statement and as a result of inquiries that we have had from the field to give an individual a duplicate of the acknowledgement letter, and so forth, we know that people are interested, they know about it, it is a concern and so they are willing to comply.

So to the extent that some know about it and to the extent that is being given the press that it is, we think that some results will be achieved.

Now, in response to an earlier comment by Mr. Gunderson, it seems to me, however, that based on the success that has been achieved in the registration process, and we know that more is coming based on additional initiatives that we have in progress, it just seems to me that it is less a device in order to get registrants than it is to emphasize that the benefits of the country should accrue to those who are willing to meet the obligations of the country.

Mr. SIMON. Let me—General, you mentioned a 94½-percent rate. You're not getting some of them back. And you say 94½ percent are delivered when you follow through. Presumably, there are some who just don't get the mail and just don't bother to look at it. They just pitch it. If it comes to Tom Smith and this is Joe Jones' home, that kind of mail that is just pitched doesn't get back to you. That's part of the 94½ percent that is delivered. Is that correct?

General TURNAGE. We are conscious that may be a fact, sir. On the other hand, I must also suggest that when someone gets a letter from Selective Service, it usually gets more attention than just normal routine mail. But in any event, it is our understanding, based on information from counsel and other people that when, in

fact, the post office delivers a letter, that meets contractual requirements and I think it is the best device we have in order to get the information to people. And that is what we are delivering.

We send a letter and if not returned to us by the post office then there is the presumption that that letter is delivered to the individual to whom it is addressed.

Mr. SIMON. That is an interesting assumption.

If I may take one moment of the time of the subcommittee to relate an interesting experience I had a few years ago. It was about a year and a half after Gerald Ford was President of the United States. I called him on a matter and we chatted about some other things and then he asked if I would send a couple of things to him and I said that I would be pleased to. Then I said to Betty Pyros at the front desk, "Would you send these things to Gerald Ford?" And she said, "Where do I send them?" I said, "Well, I forgot to ask him where, but just send them to President Gerald Ford, The White House, Washington, D.C.," and we got the letter back stamped, "addressee unknown." [Laughter.]

Mr. SIMON. It did not instill great confidence in me in the Postal Service's ability to forward mail.

General TURNAGE. Let me say, however, sir, if that happens, at least it triggers further action on our part.

Mr. SIMON. All right.

Let me follow what happens practically. Now Joe Smith turns 18 August 15. He registers for school September 3. He does not have any evidence. My own son's experience was appreciably longer than the average you mention between the time of his registration and the time he received the notice. What is the procedure then?

General TURNAGE. Please allow me to respond to the last part of your question first.

In July of 1980 the first registration occurred on a 2-week period basis for all age groups who were born 1960 and 1961. Because of that massive type of registration, Mr. Chairman, there was an extended delay of getting the acknowledgement letters back to those people.

In January of 1981 the third year-of-birth group was registered all within 1 week. That was the 1962 year-of-birth group. The same response occurred following that. Then starting that same month of 1981 we started the continous registration for the following year-of-birth group. This last year we started the next age group for continuous registration.

Now since the first two massive-type registrations the only other massive period occurred after President Reagan announced the system of grace period for those people after he announced the continuation of registration and there was a further delay.

What we are suggesting to you now is that while we are working with people on a continuous basis and the backlog has been caught up and we have developed a new relationship with the Post Office as of the first of this year in anticipation of this requirement, we can meet the obligation that we have committed to you here and we have no reservations about it. We feel very confident about that. So I hope that clarifies why, at some particular time, not knowing when your son registered, there may have been a further delay.

The statistics that I have given you, I think, could be verified and I would be glad to do that.

The other question is with regard to the individual who, for example, now goes to his college or university and he says, "I need a loan." What happens on the overall form most of which relates to the requirements which are imposed by the Department of Education. There is one simple block there that indicates that he has registered or he has not registered.

If he has registered, he puts an "X" in that block and if he has his acknowledgement letter with him, he gives that to the administrator and he is free and clear as far as eligibility is concerned attendant to this specific requirement. That's all.

If he, for example, has not registered and he does not have an acknowledgement letter, he can't create eligibility at that time and really the process pays no dividends to continue pursuing it. However, if he will simply, in accordance with the law make the commitment to the university by affadavit that he is registered to them within 120 days, the registrar has the authority to continue and register that individual and start the proceedings for the loan, according to my understanding of it.

There is a distinction here between two types of people. One, the individual who was delayed in registering because he had not reached 18 and the second related to the individual who previously had registered but had not provided the information or didn't have it immediately available.

But, in either event, provisions are inherent in this authority to grant the procedure to continue without interruption or without delay.

Mr. SIMON. So that the person who on August 15 turns 18, he simply indicates that he has registered and within 120 days he then shows proof to the university.

General TURNAGE. Yes, sir.

Mr. SIMON. Now, let's take another case. Joe Smith is a Quaker. Joe Smith turns 18 on October 15. He registers September 3. He gets his Pell grant. He gets his student loans. What happens after October 15 and he turns 18 and he does not register?

Mr. ELMENDORF. You are talking about a student who turns 18 in the year before?

Mr. SIMON. No, I am talking about he registers for school on September 3. He is not 18 then. He is eligible for everything. On October 15 he does not register because he is a Quaker, because in our infinite wisdom, we haven't given him a chance to indicate that he may have conscientious scruples. What happens?

Mr. ELMENDORF. And you are talking in 1983 after July 1 he waits until the next year. He is eligible for aid in 1983–84.

Mr. SIMON. He is eligible?

Mr. ELMENDORF. Yes, sir.

Mr. SIMON. Throughout that school year?

Mr. ELMENDORF. Yes, sir.

Mr. SIMON. And there is no obligation on the part of the institution or anyone to recoup any of that money?

Mr. ELMENDORF. No, sir.

Mr. MOORE. For that year.

Mr. ELMENDORF. For that year only.

Mr. SIMON. For that year.

Mr. ELMENDORF. Now when he cycles into his 18th year he will have the same expectations on him for 1984–85 that students would have on them for 1983–84.

Mr. SIMON. What about the second semester for that year?

Mr. ELMENDORF. No, sir, it is clear for the whole year. He gets his aid for the whole year without any requirement to register until he cycles into the next award year.

Mr. SIMON. OK.

One other question. I was amazed quite frankly when you said you had only 28 institutions that had protested because I have personally received reaction from a lot more than 28 and we will be hearing from some of them tomorrow.

At this point I would like to enter into the record letters I have received on the Solomon amendment from Congressman Thomas Harnett, Louisburg College and the National Education Association. Also, I would like to include correspondence sent to the Department of Education from numerous colleges who shared their letters with this subcommittee.

[Information referred to follows:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 10, 1983.

Hon. PAUL SIMON,
Chairman, Subcommittee on Post Secondary Education, House Committee on Education and Labor, Washington, D.C.

DEAR CONGRESSMAN SIMON: I respectfully request that my comments be included in your committee report of the hearings held February 23 and 24, 1983 concerning the implementation of the Military Selective Service System Act amendment to the fiscal year 1983 Defense Authorization Act (Public Law 97-252).

As a strong supporter of a national defense preparedness, this bellwether effort by my colleague, Congressman Solomon, as passed by a vote of 303 to 95 is a first, and much needed, step to regaining our national commitment to service for the protection of our basic freedoms.

Thank you in advance for your favorable consideration of this request.

Sincerely,

THOMAS F. HARTNETT,
Member of Congress.

Enclosure.

Mr. Hartnett. Mr. Chairman, when the fiscal year 1983 Department of Defense Authorization was considered on the House Floor on July 28, 1982, my amendment to my distinguished colleague Congressman Solomon's amendment was accepted on a voice vote by the full House. As we all know, this amendment passed the House on a recorded vote of 303 to 95. This large majority—along with the fact the debate lasted over two hours—underlines the serious consideration the Congress gave this idea of including the Selective Service registration verification as another eligibility requirement for Title IV student aid.

Mr. Chairman, I personally believe the Congress ought to go much further. We should also tie the registration verification to programs such as food stamps, visa approval for travel abroad, and other programs where citizen benefits are of center interest. As a matter of fact, just such an amendment was placed on the Job Training Partnership Act (Public Law 97-300) last year. As I understand, these regulations also are presently being developed for publication in the Federal Register. Hopefully, the group devising these particular registration certification methods prior to job training placement will develop a set of regulations which are efficient and abide by the intent of the law. I would expect those regulations to be as coherent and fair as the ones devised by the Working Group composed of Selective Service and Department of Education officials who wrote the regulations currently under consideration by your subcommittee.

Mr. Chairman, I strongly believe these regulations which will implement the amendments passed last year are not overly burdensome for the educational and financial institutions. It is highly important to note that any student who has lost his

acknowledgement letter from Selective Service will be able to have it replaced in a relatively short period of time. On top of this, a student will be entitled to financial aid the first time and will have 120 days to place a copy of his acknowledgement letter in his need attesting file for future amounts of aid. This specifically places the burden on the student to comply with the law.

There has to be evidence of a legal registration to offset the possibility of a self-certification statement opening the door to various levels of abuse in relations to this new eligibility requirement. How efficient is a system of self-certification when the institutions may have to recover any aid distributed to students who may have falsified their statement? We already know how difficult it is to recover legitimate student loans made just ten years ago. Many of these delinquents now hold professionally responsible positions in our economy who have no worldly reason for not paying back these loan.

I wish to commend you, Mr. Chairman, for your convening these hearings, and at the same time, those responsible for shaping these regulations before us today, particularly, Mr. Joe Foley of the Selective Service who helped to put "substance into form" in preparing this legislation. It is my view that the inclusion of the 100% verification of registration clause in these regulations implements the full intent of the law passed last year.

LOUISBURG COLLEGE,
Louisburg, N.C., February 18, 1983.

Hon. PAUL SIMON,
Cannon House Office,
Washington, D.C.

DEAR MR. SIMON: As you know, the Department of Education recently proposed regulations governing the coordination of student financial aid awards and the Military Selective Service Act. Unfortunately these regulations add to the burden of campus financial aid administrators.

Essentially the Department of Education has proposed a two-part process. First, all students must certify their compliance with Selective Service Registration requirements, and second, those who are required to register must demonstrate their compliance by providing a copy of their registration acknowledgment to the aid office.

The first issue imposes no major administration burden on campuses. It is the "proof of compliance" issue which creates greater concern. While Selective Service has indicated a turnaround time of two to three weeks in providing copies of acknowledgment letters, I fear that several months will actually lapse in many cases.

If a student is unable to provide documentation, we are enabled by the proposed regulations to make one disbursement of Title IV funds, provided that the student must repay the disbursement if he fails to prove registration compliance within 120 days. This will require an elaborate and costly tracking system in aid offices, whether it is done by computer or manually.

For the Guaranteed Student Loan Program these regulations are especially troublesome, since certification of eligibility rather than disbursement is the key. I hope some changes can be made in this regard.

It is my understanding that Ms. Lola Finch, President of the National Association of Student Financial Aid Administrators, will testify before your subcommittee on February 23-24. She represents the views and will express the very real concerns of hundreds of student aid administrators.

Thank you very much for your continued support of student financial assistance and for allowing me this opportunity to express my concern.

Sincerely yours,

STEVEN BROOKS,
Director of Financial Aid.

NATIONAL EDUCATION ASSOCIATION,
GOVERNMENT RELATIONS,
Washington, D.C., February 23, 1983.

Hon. PAUL SIMON,
Chairman, Subcommittee on Postsecondary Education, House Committee on Education and Labor, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that the Subcommittee on Postsecondary Education will hold hearings on February 23 and 24 concerning the amendment to

the Military Selective Service Act which links selective service registration to the receipt of federal student financial aid (the Solomon amendment). Although we will not be presenting testimony, we would like to comment on this amendment for the record.

The National Education Association (NEA) represents 1.7 million teachers and other education personnel in each of the United States, the U.S. territories and in several foreign countries. Our members can be found not only in elementary and secondary schools, but in institutions of higher education as well. We are concerned about this amendment for the following reasons:

The amendment is unfair because it applies only to young men who attend college and need money to do so. Not only does this mean sex discrimination in the disbursement of aid, it also places an extra burden on those who need financial aid to attend school. Wealthy people face no such consequences for failure to register.

The amendment is administratively unwieldy particularly in the first year when all students requesting federal financial aid must complete Statements of Educational Purpose/Registration Compliance. Financial Aid offices are expected to absorb this additional burden with no compensation. Financial aid decision-making for 1983-84 is already well underway. Although the regulations will not go into effect until July 1, 1983, higher education institutions have already been notified of the regulations and are being asked to comply with them in the 1983-84 school year before they are final. To do otherwise would cause serious delays in disbursement of financial aid.

Higher education institutions and banks will be placed in the inappropriate role of law enforcement officers, while the power of the courts will be usurped. Guilt will be legislatively determined and penalties will be set without benefit of a court trial.

Punishment of up to five years imprisonment and a fine of up to $10,000 already exists for failure to register. This law adds an additional punishment, one that we feel is unrelated to the offense.

One section of the regulations for the amendment states that, ". . . the verification of all student Statements of Registration Compliance must be conducted before the institution disburses any title IV aid." This statement implies that any one uncooperative student could prevent receipt of aid by all of the other students at the institution.

The NEA is sufficiently concerned about this issue to have passed the following resolution at the February 19, 1983 meeting of the Board of Directors:

"The NEA supports the elimination of the requirement that adult male applicants who apply for federally funded student financial aid must file a statement of compliance with Selective Service registration requirements."

We appreciate your holding hearings about the Solomon amendment and its implications and hope that you will take our views into consideration in your deliberations.

Sincerely,

LINDA TARR-WHELAN,
Director of Government Relations.

UNIVERSITY OF COLORADO, BOULDER,
UNIVERSITY OF COLORADO STUDENT UNION,
Boulder, Colo., March 18, 1983.

Hon. PAUL SIMON,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE SIMON: This letter is to contest the implementation of the Solomon amendment which links draft registration to financial aid eligibility.

We find this piece of legislation odious on several counts. The amendment is questionable from a civil liberties point of view as it would cause undue administrative disruption at the universities; it would throw the role of the university as the bastion of free thought into question and finally, it is discriminatory.

As I am sure you know, the legislation requires that a student would have to document his (sic) registration with the selective service in order to receive financial aid. We are positive that if this were implemented, the universities would soon find themselves party to a lawsuit which would question their right to gather this information. It is fairly obvious that the gathering of information on registration status is an abridgment of the Privacy Act; it is in violation of guarantees against self-incrimination and, because there are few routes of petition, it seems that the legislation will violate the guarantee of due process.

The law does not contain any provision for the administration of the program. As the regulations now stand, they would undoubtebly cause an unbearable burden on university financial offices. The University of Colorado Boulder, estimates that the cost of implementation would be approximately $40,000. It is unclear where this money is going to come from at a university where forty staff members were recently laid off and further cuts are pending. In addition, the vulnerability of the entire financial aid system is made more obvious with this system. As it is, the financial aid system is held together with "baling wire and bubble gum" as one administrator put it. It seems to be balanced on the edge of destruction. With the added need to check the registration status of applicants, the system well might fail with catastrophic effects for all aid recipients. When one considers the additional potential of student protests focused at the financial aid system, one can see the problems of the ill-advised Solomon amendment.

The university is one of the few places where free thought is encouraged. The university is supposed to serve as the place in society where one is able to explore ideas and their possible benefit to society. All of the world looks to its universities for guidance and insight in relation to the problems which vex society. How can this function continue if the university is asked to enforce laws which are contradictory to the goal of the university? Instead of encouraging free thought, it is encouraging subversion.

The law is discriminatory, focused only on males of draft age who require financial aid. Thus, on two counts, it discriminates. The affluent person who does not require financial aid is immune from prosecution. This, in our eyes, is another serious problem with the law.

As you can see, we are strongly opposed to this piece of legislation. We welcome the efforts of Representatives Schroeder and Edger for their various attempts to overturn the law. We urge you to support their efforts.

Respectfully,

RICH LING,
TAD MILLER,
UCSU Executives.

ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA,
Sacramento, Calif., February 24, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: On behalf of the University of California Associated Student Body Presidents' Council, I am submitting our objections to proposed regulations affecting 34 CFR 668.

As you are aware, the proposed regulations require that all applicants accepted for federally funded student aid (Pell Grants, GSL's, SEOG's, NDSL's and others) submit to their college a "Statement of Registration Compliance" certifying either that they are not required to register for the draft, or that they have in fact registered. To receive the aid, students who certify they have registered must submit to the school their Selective Service Registration Acknowledgment letter or other suitable documentation.

For students attending the University of California, there exists serious difficulties with both the intent and partical application of this new law. However, for purposes of the public review process with the Department of Education regarding the proposed regulations, we will primarily address the practical and administrative consequences of implementing this law as proposed:

Because the regulations affect financial aid recipients only, they discriminate against lower income people and therefore have a disproportionate impact on racial and ethnic minorities. Section 668.24.

The regulations violate the Fifth Amendment protection against self-incrimination by essentially requiring individuals to make a statement about whether they are guilty of a criminal offense. Sections 668.24 and 668.25.

The regulations violate Due Process by shifting the burden of proof from the government to the accused. The substitution of an administrative process for a judicial process also deprives an individual of his right to trial by jury and to counsel. Section 668.27(c).

Although a hearing is available only to someone who claims to have registered, there are no standards for the action a school can take to verify whether or not an

individual is subject to registration. Furthermore, there is no appeal from the hearing. Section 668.27(d).

The regulations violate the Privacy Act of 1974 by requiring students to reveal draft registration information which is irrelevant to financial aid and then make it a permanent part of their student record. The regulations contemplate exchange of information between colleges and the Selective Service. Section 668.26(c).

It is mentioned several times in the regulations that the procedures outlined will create "administrative burden" for the institutions involved, particularly for the 1983-84 period of educational aid. Enactment of the regulations will force increased bureaucracy into our educational system and represents a waste of a great deal of administrative energy and finance. At the University of California, administrators have expressed deep concerns with many of the points raised here and have not yet been able to fully calculate the overall impact that implementation of this law will have on our system.

Until the issues are addressed and resolved in the final regulations, or until the entire legislation is repealed, students at the University will continue to express opposition to the implementation of this law.

Thank you for your attention.

Sincerely,

CAROLINE J. TESCHE,
Associate Director, U.C. Student Lobby.

[MEMORANDUM]

THE COLORADO COLLEGE,
Colorado Springs, Colo.

To: Department of Education.
From: Rodney M. Oto, Director of Financial Aid.
Date: February 18, 1983.
Re Comments on Proposed Regulations (January 27, 1983).

The following comments are in response to the Proposed Regulations (January 27, 1983) to implement the Selective Service registration requirement for Title IV student aid eligibility.

First, I must acknowledge that the law (P.L. 97-252) has been enacted by Congress and it is the responsibility of the Department of Education (ED) to enforce this legislation. However, I have a number of concerns prompted by ED's proposed regulations that I would like to address.

1. Are the (proposed) regulations consistent with the statute? The regulations refer to two distinct procedures in complying with the law. The certification of registration seems consistent and appropriate with the statute. However, the verification procedures (i.e. requiring copies of the Acknowledgement Letter) seem to overstep the legislation. The verification provision of the law (50 U.S.C. App 5 462 (f)(3)) reads in part:

"Such methods (of verification) may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance."

A literal reading of this suggests that ED or Selective Service should verify the certifications. Even Representative Hartnett, the sponsor of the Bill, suggests that the purpose of the provision was to "place the (enforcement) onus on the backs of the Selective Service System" and to required of schools no more than the contemplated lists (Cong. Rec. H4763-65 (28 July 1982)).

2. Should disbursement of awards be withheld due to a delay in verification? Again, the reading of the law suggests thta ED's proposed regulations do not interpret this provision accurately. The statute (50 U.S.C. App. 5 462 (f)(2) establishes a relatively simple and straight-forward procedure:

"In order to receive (any Title IV aid) . . . a person who is required (to register with the Selective Service) . . . shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance (with the registration requirement)."

A reading of this subsection indicates the law is satisfied, and entitlement for Federal assistance established, when a person submits a statement of compliance to the school.

In addition, the administering of Title IV programs have traditionally relied on written statements and certifications from aid recipients without having to verify those representatives. It appears that ED is suggesting a precedent that would be massive misdirection of resources, not require by statute, to impose a verification

program to identify a small minority of students who have violated registration requirements and submitted false Registration Compliance Statements.

3. Do the Proposed Regulations create an undue hardship and unreasonable burden to schools? There is no question that the proposed procedures, especially the verification requirements imposed on schools, would create undue and unnecessary burdens on educational institutions. The proposed regulations would require an increase in staff time and paper processing to adequately counsel students, monitor compliance, track verification documents, control disbursements, administer temporary verifications, and make required reports to ED. This implementation will require a significant amount of manpower and financial resources at most schools. ED should review the Conference Report for this legislation which indicated any regulations adopted to implement the statute should "minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards" (Cong. Rec., H6001 (16 August 1982)). It seems the regulations are inconsistent with Congressional intent and would impose burdens exceeding those that Congress expected colleges and universities to bear.

4. Do the proposed procedures give students the impression that schools are enforcing draft registration laws? Under the law written, schools may reasonably require a Statement of Registration Compliance and send lists of students who have certified their compliance to ED or Selective Service. However, the proposed regulations require schools to have documentation in order to make a determination of a student's compliance with Selective Service; give written notice to the student of failure to verify registration; terminate aid after 120 days (in cases of temporary verification); attempt to recover disbursed funds; and notify the Secretary of Education when a student has not adequately verified his/her registration. All of these provisions place schools (i.e. Financial Aid Officers) more deeply in military registration and criminal law enforcement than Congress intended. Consequently, students have no recourse but to view financial aid officials at schools as an arm of the Federal government. This impression is not acceptable as institutions of higher education are not Federal institutions nor do they have authority to enforce Federal laws.

Can ED and/or Selective Service adequately verify registration compliance? ED claims that neither it nor the Selective Service can accomplish the verification due to staffing and financial constraints. Naturally, educational institutions have these same concerns and limitations. More importantly, the real question should not be one of the possibility of verification, but one of responsibility. In short, who should be responsible for verification. A reading of the legislation clearly indicates that verification should be done by ED or Selective Service. This is the intent of Congress. If ED and/or Selective Service cannot comply with the law, support and advice should be sought from the Administration or Congress. Instead, ED has made a proposal to shift the burden of responsibility on to the schools. It appears that ED would like to enforce this law at the expense of the constituency it is supposed to serve.

Alternative Proposal. There are three principles that are the basis of the alternative procedures to follow: (A) the schools responsibility be limited to acceptance of a Statement of Registration Compliance and submission of copies of the Statements or lists of persons certifying registration to ED; (B) schools be given authority to disburse funds or certify loan eligibility on the basis of a duly executed Compliance Statement; and (C) no direct or indirect school responsibility for verifying, policing or enforcing compliance with the Selective Service Act.

The procedures would be as follows:

1. Students complete a Statement of Registration Compliance.

2. Copies of Statement for persons indicating they have registered or lists of these people sent to ED or Selective Service.

3. ED and/or Selective Service verifies registration status. If student is verified, no confirmation sent to school. If student is not in compliance, school notified immediately.

4. Upon receiving notice of non-compliance, school withholds or withdraws all Title IV funds that have not already been disbursed to the specific student. Schools would not be held liable for disbursed or spent funds before the notice of non-compliance. However, liability would be incurred for funds disbursed after receiving the notice.

5. ED and/or Selective Service would contact student to request compliance. Student registering after this request would contact ED directly to verify compliance. Students not complying within a reasonable time should then be prosecuted by Selective Service.

6. ED notifies school of those to be taken off non-compliance status. Schools may then disburse Title IV funds to these previously non-registered students.

Thank you for the opportunity to make comments about those proposed rules. I hope I have been helpful in suggesting areas the Department of Education may wish to review more closely. It is my objective that this law be implemented as Congress intended, with the least amount of disruption to the financial aid delivery system and the students and schools it serves.

GREGORY FUSCO,
COLUMBIA UNIVERSITY,
New York, N.Y.

MS. ANDREA FOLEY,
Office of Student Financial Assistance, U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: I write to comment on the proposed Department of Education rules to implement section 462(f) of the Military Selective Service Act, which links eligibility for Federal student financial aid to draft registration.

While the Department has attempted to follow the Congressional mandates to avoid excessive administrative burden and delay of awards, the proposed rule fails in both respects and should be revised. I focus my comments on the regulatory proposal and point out that a superior method of implementing the law is available. The alternative I propose will serve the expressed interests of the Government and not place undue administrative burdens on students or institutions.

There are three primary difficulties with the proposed rules: they have to do with the proper role of educational institutions, the new burden of the proposed system, and the prospect of delaying aid for many eligible students who have fully met their responsibilities under the selective service law.

Educational institutions are stewards of Federal funds in student aid, and have developed complicated and expensive systems to discharge that stewardship responsibility properly. It is poor public policy, and it is outside the language and stated intent of Section 462(f) to excessively entangle universities and colleges in the administration of the Military Selective Service Act. When a less burdensome alternative is clearly available, the Department should embrace it.

The administrative burden of the proposed system is enormous. It is also excessive because of its universal coverage and its predisbursement verfication. We fear that it is also unworkable because the Government will not be able to provide duplicate evidence of selective service registration on a timely basis. A majority of Columbia students need not register at all because they were born before 1960 or because they are women. Surely part of the proposal can be streamlined to expedite their situation. Verfication should not be a precondition for awarding aid because adequate safeguards already exist to identify ineligible students and deal with them accordingly. The current availability of proof of registration to those who have complied with the law is questionable, and the ability to obtain duplicate proof is untried and, at best, uncertain. It does not make sense to withhold aid from large numbers of law-abiding students because the Government is unable to implement an adequate record system.

The American Council on Education has proposed an alternative system of implementing section 462(f) which we believe is superior to the current Department proposal and should be adopted. Essentially, the institution would collect and forward to the Government a modified "statement of education propose/registration compliance" form. This would be similar to the form identified in the NPRM. The principal difference in our suggestion is that all other verfication activities would be between the government and the student. The educational institution would have a written record for its verfication, and the Government would have complete control over whatever subsequent verification may be appropriate. Should government records show that a student who submitted such a form is not registered, they could contact him and see if a clerical error exists, if he is not required to register, or if he is in violation of section 462(f). In this last instance, the student may also avail himself of the hearing which is authorized in Part 4 of Section 462(f).

Such an approach would save hundreds of campuses from a vast new paperwork system, and guarantee that eligible students would receive aid without burden or delay. It would also place the government and the educational institutions in their proper roles, with the Government enforcing the laws and the institutions being responsible stewards of public funds.

I hope that the Department will make every effort to modify its proposal and establish a better method of administering this law.

Sincerely,

MICHAEL I. SOVERN.

ILLINOIS COLLEGE,
OFFICE OF FINANCIAL AID,
Jacksonville, Ill., February 18, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: My initial letters concerning the Selective Service Registration were written before the law was enacted, to protest first of all the inequity of singling out the college student to prove his compliance with the registration process and secondly, to protest that the registration test be made only on those students who would be recipients of federal assistance. My protests fell on the deaf ears of Senators Percy and Dixon, and Representative Paul Findley, and the law was enacted.

We have, at our institution, taken steps to implement this law, as it now stands in the statutes. Specific programs have been instituted; correspondence has been mailed to aid recipients, notices have appeared in local newspapers. The tracking for implementation is a significant burden when added to requirements for validation for Pell Grants and the administrative burdens imposed by the Guaranteed Student Loan program. Federal requirements in the area of student aid have become inceasingly burdensome to this manually operated financial aid office.

Changing rules, awards, regulations, which ofter occur mid-year, increase the time spent in tracking paper and reduce considerably the time available to address student needs & concerns that often require personal attention.

A great concern is the freshman who enters in the fall of 1983, who more than likely has reached his 18th birthday during the summer of 1983. Will he be denied aid because his selective service registration has not been acknowledged? And if the approval is granted for a substitute affidavit, consider the time spent on follow-up to be certain the actual registration is received to replace the affidavit. Many schools will more than likely not honor the affidavit, because of the potential for error for which they would be liable in any future audit.

I have not addressed my personal concern, which is the constitutionality of the law itself. That doubt, coupled with the discriminatory nature of the law, makes the law personally repugnant to me.

In addition, the certification that must be signed by all students as to compliance, be they eligible or not eligible for the draft, is an invasion of personal rights.

I would like to see the law removed from the statutes.

Sincerely,

LOIS M. HUGHES,
Director, Student Financial Aid.

MENNONITE CENTRAL COMMITTEE, U.S.,
Akron, Pa., February 23, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: The Mennonite Central Committee, U.S. Peace Section is an agency of the Mennonite and Brethren in Christ Churches which speaks from a 450 year-old tradition committed to the Christian gospel of peace and the belief that war is sin. In the event of military conscription we counsel our youth against participation in war in any form. Conscientious objection to draft registration has been recognized by the two largest Mennonite bodies. It is because of this history and commitment that we submit the following comments.

The U.S. Peace Section has carefully reviewed the proposed rule for Department of Education regulations: Student Assistance General Provisions, published in the Federal Register January 27, 1983. Because of the administrative impact these regulations will have on colleges and universities along with the controversial nature of the law itself, as evidenced by the pending court case, we request extension of the comment period for 30 days, to March 31, 1983.

Our comments on the proposed regulations fall into four general areas:

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1. CONSTITUTIONALITY

We question the legality of these regulations based on the U.S. Constitution. The Fifth Amendment protects a citizen from self-incrimination. The proposed "Statement of Registration Compliance" would force a person to incriminate himself for a federal crime. The regulations further circumvent a person's right to a fair trial and constitute a Bill of Attainder. In this case a person is presumed guilty until proven innocent and punishment meted legislatively without the benefit of legal counsel or trial. Furthermore, the regulations, while requiring all students to file a compliance statement, clearly discriminate against males and those from lower income families who need financial assistance. This is not equal protection under the law. Indeed, we caution against the arrousal of campus passions for equity and fairness well beyond the conscientious objector community. Finally, information gathered for one purpose (financial assistance) should not be used for an entirely different purpose (registration compliance). This may be in violation of the 1974 Privacy Act.

2. ROLE OF EDUCATION

Educational institutions should not be coerced into a policing role for the federal government. Financial aid administrators become conduits of government enforcement efforts thus jeopardizing the integrity of their position through this involvement. A judicial process has been developed to enforce the military Selective Service Act and specifically the presidential proclamation regarding draft registration. The Department of Justice, FBI and the Selective Service System (administratively) have taken measures to enforce compliance with the registration law. The relative degree of their success is irrelevant to the function and scope of institutions of higher education.

3. ADMINISTRATIVE BURDEN

The proposed regulations create burdensome administrative function for colleges and universities. The already complicated financial aid procedure becomes even more so with the creation of compliance statements, verification letters and affidavits needing to be distributed, processed, filed and retrieved. These functions require valuable resources to implement (i.e. personnel time, filing space, training new staff, counseling with parents and students, etc.). In light of the inflationary cost of education and the cutback of support for educational institutions, these additional functions appear unnecessary and unduly burdensome.

4. MILITARIZATION OF SOCIETY

The fundamental objection to these regulations is rooted in the values of human dignity and human rights which America has historically championed. The responsibility of individuals to act on the basis of their conscience and with "a decent respect to the opinions of mankind," is written in the founding documents of America. These regulations conflict with those values by enforcing an unprecedented militarization of society in peace time. The regulations implement a narrow and short-sighted definition of the citizen's obligation to society. The regulations define social duty in exclusively military terms, an approach which has more in common with totalitarian political and military system than with the American ideal of "one nation under God, with liberty and justice for all." The power to remain a free nation grows out of respect for human dignity and human rights in the laws and regulations of the land. We see these regulations as a threat to the strength and freedom of America, and on that basis urge their withdrawal.

Sincerely,

JAMES C. LONGACRE,
Chairman, MCC, U.S. Peace Section.

THE UNIVERSITY OF MICHIGAN,
Ann Arbor, Mich., February 23, 1983.

Re Response to 34 CFR Part 668 Student Assistance General Provisions, Notice of Proposed Rule Making.

MS. ANDREA FOLEY,
Program Specialist, Policy Section,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: Thank you for this opportunity to respond to the Notice of Proposed Rule Making prepared by the U.S. Department of Education to implement the

new amendment to the Military Selective Service Act, which requires certain recipients of Title IV student aid funds to be registered with the Selective Service Commission.

I would like to summarize for you my concerns, which fall into two categories:

(1) The significantly increased administrative burden which these proposed regulations would place upon the universities.

(2) The belief that it would be more appropriate for the procedures by which a student verifies his registration with the Selective Service Commission to take place between the student and the government, rather than between the student and the university. In complying with the existing law, we would have no objection to asking for the student to certify to us that such registration had taken place, as the student is now asked to do on a variety of other questions.

Let me explain these two points in greater detail. Our understanding of the proposed regulations is that the University will be responsible for receiving and reviewing at least one additional form, and in some cases, as many as three forms for every financial aid applicant. For the University of Michigan this means administrative processing of an estimated 25,000 additional forms.

This substantial increase in required paper work is only one aspect of the increased administrative burden associated with the proposed regulations. Additional staff will be required in order to: notify and counsel students; monitor compliance with the verification procedures; check consistency of Statement of Registration Compliance information (e.g., birth date); establish financial controls and deal with disbursement delays if verification cannot be accomplished immediately; administer temporary verification by affidavit, including aid cutoffs and other actions required when verification is not received within the 120 days being allowed; prepare required reports to the Department of Education and lenders; and check renewal applicant for prior registration information.

Within the time limit for responding to the proposed regulations, it is impossible to develop an absolutely accurate estimate of the University's expenses associated with these new functions, but the costs will be substantial. Thus, we believe that the proposed regulations will impose undue and unnecessary time and cost burdens on our already extremely busy financial aid operations.

The Military Selective Service Act states that students can qualify for Title IV student aid by filing a Statement of Registration Compliance which presumably could be included on the already required Statement of Educational Purpose. The law also implies that schools might have to submit these forms, or lists of them, to the Department of Education. However, the preamble to the proposed regulations notes that compliance cannot be verified by using the lists contemplated by Congress. Hence, the proposed regulations require a verification system that goes far beyond what Congress seems to have intended. In line with our belief that Congress intended these regulations to place a minimal burden on the universities, we suggest that the certification and verification aspects of these regulations be separated and that only the former activity rest with the universities.

In addition, we believe that the federal government should deal directly with the student in verifying registration with the Selective Service Commission. While the University could augment the list of items to which the student must certify a response in order to receive federal financial aid, the process of verifying such information would, I believe, be an inappropriate extension of existing procedures.

All of the above comments are limited to the proposed regulations for enforcing the law. They are not intended as a criticism of the law since the University has not taken any position on the wisdom of the law itself.

I have asked the Office of Financial Aid to draw together its specific reactions to the proposed regulations. These additional comments are attached.

Thank you for the opportunity to respond to the proposed rules and for your consideration of the issues that have been raised in this letter.

Sincerely,

HAROLD T. SHAPIRO.

Attachment.

[MEMORANDUM]

THE UNIVERSITY OF MICHIGAN,
OFFICE OF FINANCIAL AID,
Ann Arbor, Mich.

Re Response to 34 CFR Part 668 Student Assistance General Provisions, Notice of Proposed Rulemaking.
To: U.S. Department of Education.
From: The University of Michigan.
Date: February 23, 1983.

The University of Michigan's additional comments address questions of intent or interpretation and, where possible, suggest language consistent with the goal set forth by the provisions.

(1) Ref. p. 3920 Effective Date—

". . . beginning with the 1983-84 award year . . ."

The determination of Student eligibility under the draft registration requirement is unclear for students awarded for academic periods beginning prior to July 1, 1983, but for whom the disbursement of funds occurs on or after July 1. The ambiguity might be clarified by using such language as ". . . for award periods beginning on or after July 1, 1983."

(2) Ref. p. 3920 Identification of Students Required to Register—

"If a student certifies that he is not required to register, the institution would be able to rely on that statement unless it has other information inconsistent with the statement."

(a) This proposed rule seems to obligate the University to check other information (birth date, sex, residency, armed service member on active duty status) to determine if an applicant's "Statement of Registration Compliance" is consistent with whatever information is available. If such obligation does exist, added administrative responsibilities should be more emphatically stated in that while the University might record such information, it may not routinely review student records for consistency. If such obligation does not exist, it is unclear whether or not the University is liable where it has accepted a "Statement of Registration Compliance" and it is later determined from a University-maintained record that the student submitted false information (e.g., Sandy Smith actually being a draft registration eligible male).

(b) In an effort to ease the administrative burden, in identifying students required to register, it would be advisable to permit the University to declare a student exempt from filing a "Statement of Registration Compliance" in those instances where information indicates that a student is not eligible to register (e.g., known female).

(3) Ref. p. 3923 Proof of Registration After Notification of Denial of Assistance—

". . . the proposed regulations permit the student to establish his compliance at any time before the end of the payment period for which he seeks aid, or the 30-day period after the notice of denial, whichever is *later*." (italics added) One sentence later this statement is revised. "However, if he does not prove compliance until a subsequent payment period, he may not receive aid for the previous payment period(s)."

The second of the two statements effectively changes the period of proof of registration to 30 days or the end of the payment period, whichever is earlier. Since "whichever is later" is preferred, the second statement should be deleted.

(4) Ref. p. 3923 Reduction of Regulatory Burden—

". . . public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations."

Considering the relatively short time period between publication of final regulations and the effective date of July 1, 1983, and the number of registrants who, for whatever reason, cannot locate their Registration Acknowledgment Letter (Form 3A or 3A-S), it is suggested that the Selective Service send to all registrants: (1) a new letter of Form 3A or 3A-S; and (2) a notice that the letter or form is required for receipt of Title IV student aid.

(5) Ref. p. 3924-3925 "Notice" on Registration Compliance Form—

"Notice.—You will not receive Title IV financial aid unless you complete this statement and, *if required*, give proof to your school that you are registered." (italics added)

The University suggests that for clarification purposes, the wording "if required" be changed to "if required to register."

NORTHEASTERN ILLINOIS UNIVERSITY,
OFFICE OF FINANCIAL AID,
Chicago, Ill., February 25, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: We have reviewed the "Notice of Proposed Rule Making" in the January 27, 1983 Federal Register, that requires financial aid recipients to register for Selective Service.

First of all we disagree with the concept of requiring financial aid recipients to register for Selective Service in order to maintain their eligibility for title IV funds. This mandate discriminates against poor students in particular, and male students in general.

Secondly is the administrative impact on institutions to develop policies and procedures to deal with students who experience inordinate delays in receiving verification. We are an urban public institution, with limited flexibility to substitute institutional funds, for federal dollars sequestered. The institution will have to reproduce, distribute, collect, and maintain copies of the Statements of Compliance for all students.

Thirdly the additional administrative cost institutions will experience concerns us greatly. The printing, postage, and staff time devoted to mailings, reviewing, and subsequent following-up to ensure compliance will be costly.

According to the National Association of Student Financial Aid Administrators (NASFAA), the law does not require 100 percent verification, but this administration is requesting it because of the demands of the Selective Service system. This administration is professing to deplore government bureaucracy and attendant paper work. But over the last two years institutions have been required to verify information on more Pell Grant recipients than any other time in the history of this program.

In conclusion, we want the record to reflect that Northeastern Illinois University disagrees with this idea of registration. If this administration is unwilling to compromise and institutions are required to implement this law, then please consider some recommendations:

1. The administration should review the possibility of increasing the administrative cost allowance to institutions.
2. Procedures should be developed between the Selective Services Administration, and the Department of Education, to assist institutions in identifying students who have not registered. This will of course reduce the administrative burden to the institutions.
3. Some consideration or compensation should be given to the institution's "income fund" that incur bad debts, if they decide to execute the "Temporary Verification by Affidavit" option.

Sincerely,

GEORGE A. WEST,
Director of Financial Aid.

PRINCETON UNIVERSITY,
VICE PRESIDENT FOR PUBLIC AFFAIRS,
Princeton, N.J., February 25, 1983.

To: Ms. Andrea Foley, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Ave., S.W., (Room 4318 Regional Office Building 3), Washington, D.C. 20202.
From: Robert K. Durkee, Vice President for Public Affairs, Princeton University.
Subject: Proposed Amendments to 34 C.F.R. Part 668, Student Assistance, General Provisions.

This memorandum is submitted on behalf of Princeton University, responding to a request from the United States Department of Education for comments on proposed amendments to the Student Assistance Regulations published in implementation of 50 U.S.C. App. Section 462(f). Notice of Proposed Rule Making, 48 Fed. Reg. 3920.

In general, Princeton endorses the analysis and comments concerning these proposed regulations submitted by the American Council on Education. Princeton participated in the preparation of the ACE comments and shares ACE's view that the proposed regulations: (1) impose administrative burdens far exceeding those contem-

plated by Congress and (2) unduly entangle educational institutions in the enforcement of Selective Service requirements.

In addition, we wish to draw attention to the extent to which the timing of the proposed regulations poses substantial problems for fair and efficient implementation of University aid award processes regarding aid to be awarded this spring for academic year 1983-84.

We request that the Department of Education join us in seeking a delay in the implementation of the new legislation linking federal student assistance and Selective Service registration so that adequate time may be provided for orderly and thorough consideration of the substantive questions raised by the ACE comments and so that sufficient notice can be given to all affected parties (including students, parents, and educational institutions) to permit appropriate planning.

Entering students are accepted for admission to Princeton in mid-April and continuing students must submit their aid applications by then. Since the financial aid that will be available to students is in many cases a critical factor in their decision-making, it is essential that information about financial aid be distributed to them sufficiently early so that families can submit the necessary data, family financial analyses can be performed, and award packages can be calculated in a timely way.

This year our financial aid process has already been delayed by over a month by the uncertainties introduced by the new legislation and the proposed regulations. It is unrealistic for us to delay further, and yet since the proposed regulations seem so at variance with the relevant statute, the Congressional report language, and the legislative history, the uncertainties persist. They persist also as a result of constitutional challenges to the legislation itself. Under these circumstances, it is exceedingly difficult for institutions and for families to proceed with confidence that they will not have to make substantial adjustments between now and July 1. Even if institutions could put aside the uncertainties, it would be essentially impossible to develop sound administrative procedures for this spring under the existing timetable.

The dimensions of this concern are exacerbated by the inevitability of a major administration logjam for institutions and for the Selective Service whenever the law initially takes effect simply because of the number of students whose registration will need to be established. If the law takes effect this July 1, when students, institutions, and importantly the Selective Service, will have had little time to prepare and adjust, the likelihood of major delay and confusion seems to us unacceptably high. This entire matter is sufficiently controversial and sufficiently inconsistent with other financial aid requirements that it would seem to us especially unwise to implement this law before acceptable and workable procedures can be developed, effective notification of students and families can take place, and the uncertainties concerning the regulations themselves can be resolved.

The likely result of the confusion and uncertainty in processing financial aid requests is delay in making awards. This delay may make it difficult for students to make decisions about matriculation and may postpone the collection of funds for some colleges and universities, imposing additional costs on those institutions. This added cost burden would, of course, be compounded by the need to secure and train staff capable under severe time constraints of processing the added paperwork and responding to the inevitable questions, concerns, and unforeseen circumstances attandant on any substantial change in financial aid procedure.

For all of these reasons we strongly believe that it is unwise to implement these new requirements so late in the financial aid "season." A delay in the effective date would enable the Department of Education to evaluate comments on the proposed regulations in a systematic and orderly way, and to adopt regulations clearly in advance of the first award year in which they will be effective, rather than having the regulations in the process of being written, issued in proposed form, revised, and issued in final form, all directly in the midst of an already complicated award determination process. The more general concerns of individuals and institutions about these regulations are unnecessarily aggravated by the timing of the process, and thus we encourage the Department to seek postponement of the effective date of the legislation to which these proposed regulations apply.

PROVIDENCE COLLEGE,
OFFICE OF FINANCIAL AID,
Providence, R.I., February 22, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: This letter is in response to the Notice of Proposal Rule Making of January 27, 1983, regarding Selective Service registration and eligibility for Title IV student assistance.

Most institutional representatives and financial aid officers that I have spoken with support the concept of Title IV eligibility being contingent upon Selective Service registration. However, the proposed regulations for collecting and administering these new requirements are unnecessarily burdensome to institutions, disruptive to the financial aid delivery system and effectively relieve the Department of Education, Selective Service, as well as, state grant and loan agencies of their intended share of responsibility in this process.

Implementation of the requirements outlined in the NPRN would result in the generation of millions of additional pieces of paper because most schools, loan agencies and state grant programs have distributed their application forms for 1983-84 without the necessary statement of registration compliance or any other indication that Selective Service registration is an eligibility requirement for federal funds.

To distribute, collect and follow up on the Statement of Registration Compliance, then collect the Verification of Registration Compliance for those who are required to register, will be an administrative task of Brobdingnagian dimension. The process will inevitably drag on well into the summer months and cause significant delays in the processing of Guaranteed Loans for the second consecutive year.

It will place additional burdens on already overtaxed financial aid staffs and institutional budgets that have been fixed without provisions for hiring additional staff.

The delays will inevitably affect the delivery of Pell Grants and campus based aid funds. Such delays will cause more frustration and confusion among student aid recipients and college fiscal officers responsible for the collection of tuition and other charges.

Institutions with sophisticated data processing systems will face sizable reprogramming problems to alter their systems for tracking and processing aid applications.

The Selective Service Office will be inundated with requests for the Registration Acknowledgement letter. I have randomly surveyed our students and found that more than half had no idea where their letters were located. About one-fourth were not sure what a Registration Acknowledgement Letter was.

Reason would dictate that given the timing of the NPRM, the produres, as outlined, are ill-conceived and impractical.

A more reasonable and efficient solution for the first year would be to require all schools, loan agencies and state grant programs to provide the Selective Service with computerized tapes containing the Social Security Number and name of all males of registration age for verification in October. The tapes would be matched against Selective Service data and a list or tape containing unmatched Social Security Numbers and names would be returned to the institutions, loan agencies and state grant programs for follow up and recovery by January.

Given that only 4 percent of eligible men have not registrated, it would be much simpler to pursue them rather than disrupt and delay the financial aid of the other 96 percent that are in compliance or are not required to register. This would greatly facilitate the process for 1983-84 and allow sufficient time to implement the necessary procedures for 1984-85.

Sincerely,

HERBERT J. D'ARCY,
Director, Financial Aid.

SCHENECTADY COUNTY COMMUNITY COLLEGE,
FINANCIAL AID OFFICE,
Schenectady, N.Y., February 25, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: This letter is being written in response to the Notice of Proposed Rulemaking with regard to Title 34 of the Code of Federal Regulations (CFR) Part 668, Student Assistance General Provisions, published in the Federal Register, Volume 48, Number 19, dated January 27, 1983. The following are my comments regarding the proposed amendments:

1. Since the Department of Education admits it is unlikely that final regulations will not be published until late Spring, it is therefore unlikely that schools will be able to formally establish their implementation mechanisms until early summer. This could cause undue delays in the processing of Guaranteed Student Loans (GSL). Rather than process GSL's before the regulations become final and retroactively verify registration compliance, I am recommending to my Institution that no

GSL's be processed prior to the final regulations being in place. I do not wish to place my Institution in a position of having to notify lenders that a student is not in compliance with Selective Service Regulations. I also hesitate to enforce a Student Assistance General Provision before it has become finalized. You must surely realize the backlog problems this will cause Institutions and students if GSL loan application processing has to wait for final regulations.

2. Section 668.26(e)(2) allows institutions to disburse funds to students who must request a duplicate of his Registration Acknowledgment Letter. I am recommending to my Institution that we not exercise this option. Tracking these students for 120 days to insure their compliance, attempting to recover the amount of any disbursed Title IV monies and if unsuccessful contacting the Secretary for students who are not in compliance, constituties an administrative burden.

3. My main objection to the implementation of the amendments is the delays which will be experienced by all students in general and those affected by registration compliance in particular. Some institutions may be in a position to cope with the cash flow problems this regulation will cause. However, students still need financial aid funds for noninstitutional educational expenses such as books, room, board, transportation, etc. No doubt many students will be forced to delay their college education if their financial aid funding can not be delivered in a timely fashion.

4. What I respectfully propose is a delay in the implementation of the Selective Service Compliance regulations as it applies to Title IV aid. My institution is a small urban community college. I do foresee problems arising at my school, but I am even more concerned with students at private institutions or the larger state operated universities and colleges. As a professional aid officer for the past 12 years, my concern has always been for students, not just those enrolled at my school but all students.

Therefore, I am suggesting an October 1, 1983 date for implementation that for the most part would only effect students receiving Title IV monies after this date. A more practical date would be July 1, 1984. Either implementation date should not cause undue delay in aid delivery to students and could still satisfy the intent of the Military Selective Service Act.

May I take this opportunity to thank you for your consideration of my comments.

Sincerely,

RICHARD E. OBOYSKI,
Director of Financial Aid.

SOUTHERN ILLINOIS UNIVERSITY,
OFFICE OF THE CHANCELLOR,
Carbondale, Ill., February 25, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: The Department's proposed regulations to implement the requirements of Selective Service registration as a condition of eligibility for federal student financial aid present three major problems to the Southern Illinois University System: they are costly to implement, they impose serious unnecessary burdens on institutions of higher education and on students, and they will thus cause unnecessary delays in awarding aid to students. Two elements of the regulations and their attendant consequences are of particular concern:

1. 100 percent verification: This requirement is not mandated by law. It tremendously increases costs to institutions and the burden on both institutions and students. A well publicized program of selective verification would be adequate.

2. Annual recertification of every aid applicant: This requirement is wholly unreasonable and serves no purpose whatsoever, except perhaps to keep institutional costs very high. It also appears to be inconsistent with the requirements in section 668.26.

To implement these two requirements the University would have to create and maintain systems for notification to students of the requirements, for verification and re-verification of satisfaction of the requirements, for compliance monitoring, for affidavit option development, administration, and follow-up, and for records management and maintenance. In addition, existing computerized and manual systems would have to be substantially and expensively restructured in order to accommodate the requirements of the proposed regulations.

In addition to costs for system development and maintenance, institutions will incur further costs for photocopying certification forms, Registration Acknowledge-

ment Letters, affidavits, and the like. Aid program instruction and application materials will have to be reprinted in order to carry proper notices and instructions.

Indeed, under the regulations proposed by the Department, we estimate that our costs for initiating our administration of the regulations could approach $300,000 with annual processing costs after that of well over $100,000.

The preamble to the regulations states that certification is not being performed by the Department or by the Selective Service system because of the three problem areas already mentioned: (1) the costs of implementing the regulations, (2) the burden of the required paperwork and systems, and (3) the resulting delays to students in the award of aid. We conclude that the first two matters are not being resolved by the regulations, but are simply being shifted to the institutional level. As a result, the problem of delays in making aid awards will still occur.

The proposed regulations leave unanswered a number of questions important to higher education institutions: What is the Department's expectation with respect to information institutions may obtain concerning students who refuse to register for Selective Service? What is the Department's intent with respect to cases in which an aid applicant may submit inaccurate information that is not identified as inaccurate in the verification process? How will the Department deal with situations in which students cannot comply because of Selective Service system faults? To what federal agencies will the Department of Education release information that is collected about students through the Selective Service registration verification process? What are the procedures for dealing with aid applicants who for legitimate reasons maintain conscientious objection to the Selective Service system? Questions such as these need to be resolved before institutions can make adequate response concerning the feasibility and propriety of the proposed regulations.

For the reasons noted in this letter, I urge the Secretary of Education to delay the development and implementation of final regulations on this matter. I further urge that the Department and Selective Service officials meet with representative higher education associations and other related professional organizations in order to design means of implementing the law which will be less costly and burdensome for all involved, and which will not create additional problems for students who apply for financial aid.

Thank you for considering my comments.

Sincerely,

JAMES BROWN,
Vice Chancellor.

SWARTHMORE COLLEGE,
OFFICE OF THE PRESIDENT,
Swarthmore Pa., February 23, 1983.

ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR ANDREA FOLEY: In this letter, I am commenting on the January 27, 1983, Notice of Proposed Rule Making that appeared in the Federal Register (pp. 3920-3926) and would affect the Student Assistance General Provisions.

I am commenting on the draft regulations from the perspective of Swarthmore College, and emphasize the burden that the regulations would place on us. I propose an alternative set of regulations that is simpler, would place less burden on the College, and is fully consistent with the letter of the law and what I understand to be congressional intent.

Swarthmore is an independent, 4-year, coeducational college located in the suburbs of Philadelphia. It was founded in 1864 by the Religious Society of Friends (Quakers), although it no longer has any formal religious ties. The College prides itself on the distinctive character and quality of its academic program and on the high calibre of its 1260 students, who are drawn from all over the United States. Despite the relatively large endowment of the College, 60 percent of its students require Federal financial aid under Title IV of the Higher Education Act of 1965.

The amendment to the Military Selective Service Act requires that students who must register certify their compliance with the registration requirements in order to receive Federal student aid under Title IV of the Higher Education Act of 1965. The Department of Education is required to verify the accuracy of those statements of compliance. Two possible strategies may be envisioned to implement the law. Names of students who have submitted statements of compliance might be forwarded to the Department of Education for verification by Federal personnel. Such a strategy

would satisfy requirements of the law and would be consistent with the legislative intent to involve colleges as little as possible in the policing of registration laws; most of the burden would be placed on the Department of Education and perhaps the Selective Service System to provide verification. It is this strategy that I believe would be most workable. The second strategy would be to require colleges to collect affidavits of compliance and evidence of verification from students, to assume primary responsibility for assessing such documentation, to design administrative control mechanisms to deal with possible delays in the Government's providing of initial and duplicate evidence of registration, and to implement systems for holding up financial aid for students who have not registered or who have not received such verfication. The burden here is mostly on the colleges. Regrettably it is this second strategy that the Department has selected.

The draft regulations make requirements on students and colleges that are not called for in the law. Under the draft regulations, *all* students who get Federal aid—not just registration-age men—would have to submit an affidavit stating compliance with the registration laws; thus a woman will need to submit an affidavit saying she is a woman (and therefore not required to register). Furthermore, despite the absence of such a requirement in the law, the regulation would require that registration be verified in essentially every case before Federal monies are disbursed. This unnecessary and unwise requirement shifts the administrative burden of verification to colleges and leaves students subject to non-support should the Selective Service System prove unable to provide evidence of registration in a timely fashion. The legislative intent was clearly to minimize the burden on colleges but the regulations as drafted make the colleges, not the Federal government, responsible for the bulk of effort in administering the various provisions.

We at Swarthmore have made some attempt to estimate the burden that would be placed on the College if it had to administer the law under the Department of Education proposed regulations. The Table shows the various tasks that the College would be called upon to do. It also indicates the effort that we believe each task would require in the coming year, both to initiate the program and to deal with the situations of individual students. Contrasted with this is an estimate of the College effort that would be required to comply with a simpler set of regulations that would fully meet the letter of the law and what I judge to have been the intent of Congress. These simpler regulations would have the College or student aid lenders ask students to indicate that they were either not required to register or had done so; and then forward a list of those students to the Department of Education for verification. Distribution of aid would not be held up pending verification although any student found to have submitted a false affidavit would be required to return aid that he had received.

Under either set of regulations, colleges would be required to train personnel in the new rules. These personnel include those in the Financial Aid Office, Admissions Office, Business Office and Public Information Office. I estimate that at Swarthmore about 66 person-hours of training would be required under the Department's proposed regulations and 42 hours under the College's proposal.

The College will need to spend considerable time explaining the new rules to parents and students. We shall need to rewrite our aid brochure, and rewrite our descriptions of individual financial aid programs. In addition, until the new brochures are printed we shall have to spend more time with individual students to explain the new rules; this extra time is likely to amount to 15 minutes per student if the Department's rules are in effect and 5 minutes per student if the College's proposal is accepted. Overall these explanations are likely to take a total of 125 hours under the Department's plan and 58 hours under the College's plan.

The collection of affidavits from recipients of Pell grants or campus-based Federal aid will cause no additional burden on the college, because the College already collects one affidavit (the Statement of Educational Purpose) from such students. However the Department of Education draft regulations would require the College for the first time to collect affidavits from applicants of GSL or PLUS loans, whereas under present regulations and under the College's proposal these affidavits are collected by the lenders. Preparing and mailing the additional affidavits and sending out reminders when necessary are likely to consume some 113 hours of personnel time this coming year.

The regulations proposed by the Department require the College to check the truth of a student's statement that he or she is not required to register against other information that the College may have. To perform this check this year will require a case-by-case review of students' central files, which are not now located in or retrievable by our Financial Aid Office. For subsequent years we would modify our computerized files to permit more rapid retrieval of this information by Finan-

cial Aid personnel. This checking of records and system modification would require about 209 hours of work this year.

Collecting of Selective Service verifications of registration is likely to take up to 20 minutes of College personnel time for every student who does not have his verification at the time of applying for aid. It is likely that this would include the one-quarter of incoming freshmen who have recently turned 18 years old and nearly all of the upperclassmen, for a total work load of 122 hours.

Under the Department regulations the College would be required to collect notarized temporary verifications from students who have recently turned 18 years old. The College would then be required to track these temporary verifications to make sure that the Selective Service documentation was received within 120 days and send follow-up notices when necessary. As the College computing system cannot be modified in time for this year a system of manual checking would have to be used. Collecting and tracking are likely to involve 60 person-hours of work.

If the College is compassionate toward upperclassmen who do not still have their Selective Service documents, it will accept temporary verifications from them also and incur similar burdens of tracking and follow-up. These are likely to amount to 98 person-hours in the coming year.

The College's present bookkeeping system credits students' accounts automatically when Title IV funds are received, but there is no feature that would allow "provisional" crediting of accounts as would be required for funds disbursed under temporary verifications as called for in the Department draft regulations. Performing a manual check for expiration of temporary verification before disbursing Pell grants or campus-based Federal aid or crediting GSL/PLUS funds to students' accounts would require 180 person-hours during the first year. Establishing financial controls and redesigning computer programs to enable more efficient checking during subsequent years would take an additional 125 person-hours this year.

From those students whose temporary verifications expire, the Department's regulations would require the College to attempt to recover aid monies already disbursed. The numbers of such students will depend greatly on the speed with which the Selective Service System provides students with duplicate verification documents. We estimate that College personnel may have to spend 30 hours in these recovery efforts, including 10 hours for those students who had recently turned 18. An additional 60 hours would be spent in notifying lenders and the Secretary of Education about students whose temporary verifications had expired.

The Department's draft regulations do not specify the responsibilities that the College may have in regard to hearings requested by students whose aid is denied because they lack documentation of having registered. If the College refuses to accept temporary verifications from students who have lost their original documents, there may be as many as 300 hours of College personnel time. If the College accepts temporary verifications from such students, the burden may drop to 25 hours.

The College proposal adds one burden not present in the Department's regulations. The College would provide the names of all students who submit to it affidavits regarding draft registrations. This is likely to require 41 hours of time by College personnel in the first year.

In total, under the draft regulations issued by the Department of Education, the additional administrative burdens to a small college like Swarthmore in the first year of implementation of this law would be between 1213 and 1330 person-hours of works, depending on whether or not the College elected the option to accept temporary verifications from students who do not have their original Selective Service letters. Under the simpler, College proposal the burden to the College would only be 141 hours. Thus the Department's version of the regulations would require the College to hire an additional person to work between one-half and three-quarters time just to administer these regulations. The College version—which even more closely reflects the letter of the law and congressional intent—would require no additional hiring of personnel.

In summary, I hope that Congress would consider repealing this law because it discriminates against poor and middle income men, because it inflicts punishment without prior trial, because it threatens the spirit of free inquiry so essential to our colleges by restricting their ability to assemble student bodies on educational criteria alone, and because it unwisely makes access to education contingent on compliance with a totally unrelated law.

However, if the law stands, I strongly encourage that the implementing regulations reflect the letter of the law and the intent of Congress. The regulations I recommend would do so, by having students affirm in an affidavit that they either had registered or were not required to register, by having the colleges and lenders for-

ward to the Department of Education for verification, lists of students who have submitted these affidavits and by permitting the timely disbursal of aid to students who have filed affidavits—and would not risk the hold-up of aid from duly registered students that is certain to occur if the Selective Service System proves tardy in providing students with verification of their registration. Furthermore this alternative set of regulations would put the administrative burden of the law where Congress intended it—on the Federal government, not on institutions of higher education.

Sincerely yours,

DAVID W. FRASER, *President.*

Administrative burden to college	Department of Education proposal					College proposal				
		Work with individual students					Work with individual students			
	System startup (hours)	Per-student effort (minutes)	Number of students	Total effort with students (hours)	Total burden (hours)	System startup (hours)	Per-student effort (minutes)	Number of students	Total effort with students (hours)	Total burden (hours)
Training staff in new rules	66				66	42				42
Explaining compliance rules to students and parents	24	15	402	101	125	24	5	402	34	58
Collecting affidavits		10	676	113	113					
Confirming affidavits	10	15	797	199	209					
Collecting verifications		20	365	122	122					
Collecting and tracking temporary verification for those 18 to 18¼		60	60	60	60					
Collecting and tracking temporary verification for others without Selective Service verification (optional)		(45)	(130)	(98)	(98)					
Provisional crediting of accounts	125				305					
PELL/campus based		60	130	130						
GSL/PLUS		5	600	50						
Recovering Federal funds from those 18 to 18¼ and others (optional) with expired temporary verification		60	10(30)	10(30)	10(30)					
Notifying lenders and Secretary of those 18 to 18¼ and others (optional) with expired temporary verification		120	10(30)	20(60)	20(60)					
Preparing for hearing		60	300(25)	300(25)	300(25)					
Notifying Department of those submitting affidavits							5	491	41	41
Total person hours					1,330(1,213)					141

WESTERN ILLINOIS UNIVERSITY,
Macomb, Ill., February 22, 1983.

MS. ANDREA FOLEY,
OSFA, USED,
Washington, D.C. 20202

DEAR MS. FOLEY: I wish to comment on several sections of the NPRM, Student Assistance General Provisions, 34 CFR Part 668, Federal Register, January 27, 1983, draft registration compliance.

1. The law and pursuant regulations are discriminatory because they:
(a) single out male students.
(b) single out financially needy students.
Should not all males who benefit directly or indirectly from federal funds (not just student aid) be required to prove registration?

2. The regulations are unnecessary.
(a) It is estimated that fewer than 5 percent of all of those required to register have failed to do so.
(b) Millions of dollars of student aid are disbursed to students nationwide based on a signed Statement of Educational Purpose. This is the same statement that is now considered insufficient and inadequate in regard to draft registration compliance.

3. The regulations are intrusive and obstructive to the goals of student aid. My experience with the Pell Validation process has convinced me that promises of timely service by Federal agencies are empty words. Both the Social Security Administration and IRS promised to provide Pell validation information to students in two to three weeks. Experience indicates a typical time lag of six to eight weeks. It is doubtful that the Selective Service can do better. What do students do for money while they wait for Selective Service to act?

4. The vertification process will be costly and burdensome. We estimate that the cost will be at least $15—$20 per federal student aid applicant or $150,000 to $200,000 during the first year. Included in this cost are: redefining and reprogramming of a computer system to detail and track the Compliance forms, initial notification to students and follow-up correspondence, printing and distributing information to all campus publics, training of staff, individual counseling of students regarding registration requirements and campus policies.

We recognize the legitimate interest of the nation in assuring compliance with the draft registration requirement. We, therefore, suggest the following:

1. All male students be required to verify only in the Statement of Educational Purpose that they have registered for the draft.

2. The U.S. Education Department should establish procedures whereby it would adjudicate those cases in which a student refuses to sign a verification statement. No Title IV aid would be disbursed until a resolution is reached.

Sincerely yours,

JANET M. RUGE,
Director of Financial Aid.

UNIVERSITY OF WISCONSIN,
OFFICE OF STUDENT FINANCIAL AIDS,
Madison, Wis., February 24, 1983.

Re Proposed Rules Regarding Selective Service Registration—Student Financial Aid Published in the Federal Register of Thursday, January 27, 1983 (34 CFR Part 668 (amended)).

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

Following is our response to the Proposed Rules concerning Selective Service Registration and the receipt of Student Financial Aid as required under the so-called "Solomon Amendment". Our response is divided into 2 sections: (1) General Comments; (2) Technical Considerations.

I. GENERAL CONSIDERATIONS

We would like to raise the following general concerns which do not relate to specific points in the Proposed Rules.

1. Having read the law, the House Conference Report and the Proposed Rules, we believe that the Proposed Rules go far beyond the intent of the law. It seems clear to us that the law can be satisfied simply by having the student certify that they

have registered and that this information be supplied to the Department of Education during the course of the school year. No where do we find that this process must be completed before a student can be given aid. We rely on information supplied by the student for other information and we see no reason why this shouldn't be acceptable initially. We will outline the way we believe the law can be implemented at the end of our letter.

2. The Selective Service has indicated to us that between 95 percent-97 percent of those people required to register have done so. We do not believe that Congress intended to create a system that will cost educational institutions literally millions of dollars just to find the miniscule few who may attempt to receive financial aid without registering for Selective Service.

3. The Proposed Regulations state that other methods (that those which they propose) would be "extremely costly and time consuming". The methods that are proposed simply force institutions to assume extremely costly and time consuming methods to implement the law. In addition to the expense, service to student's receiving Title IV Programs will be significantly impaired due to the increased workload that institutions will have to absorb to carry out these provisions. We think it is clear in the House Conference Report that this was not the intent of Congress.

4. The cost of implementing this Program will be enormous. On the UW-Madison campus the Data Processing changes alone will cost from $14,000 to $16,000. In addition, this will cause delays in other work that is being done since there are no additional systems analysts available to do this work. They will have to be pulled off of other projects which are much more in keeping with the educational objectives of the University.

Other costs such as filing, response to inquiries on the subject which will come in in person, through the mail, and over the telephone, data entry, etc., will cost us another $20,000. Thus, the total cost to implement this program will run around $35,000. If this is multiplied by all the educational institutions in the country that will be affected by these Proposed Rules, you can see that an enormous educational resource has been tied up simply to attempt to deter a tiny fraction of the population who may wish to attempt to flout the law.

5. The Proposed Rules assume that the Selective Service will be infallible. We would like to use an actual illustration to prove that this is not true. A staff member in our Financial Aid Office has 2 sons who have both registered for Selective Service. In the case of son #1, the Acknowledgement Letter came back with the name misspelled. Additional forms had to be sent in to correct this error. The original Letter of Acknowledgement would not have been acceptable for the student to use to claim his financial aid. In the case of son #2, the Acknowledgement Letter also came back with the name spelled incorrectly. Son #2 sent in the necessary information to correct the spelling. Before he could get back an Acknowledgement Letter with the correct spelling he received a notice from the Selective Service that he had not registered and that if he did not do so within 30 days he would be subject to fine and imprisonment. Son #2 still has not gotten the situation straightened out. Son #2 would still not be able to get financial aid. We do not think it is reasonable to expect the Selective Service to provide the service which the rules imply should be expected.

6. Finally, we think the Proposed Rules that state a student can be denied aid without a hearing and other due process protections goes far beyond the intent of the legislation. It also seems clear that this would be subject to challenge in court where the case would almost certainly be found in favor of the student.

II. TECHNICAL PROBLEMS

1. To begin with we are particularly concerned with a statement in the "Supplementary Information" proceeding the Proposed Regulations that states: "if a student certifies that he is not required to register, the institution would be able to rely on that statement unless it has other information inconsistent with this statement". Does this imply that the institution must check all certifications for gender and date of birth since we have this information on our files? For instance, if a student checks that they are too old, are we supposed to check their actual date of birth to see if this is indeed true? Similarly, if they say that they have not reached their 18th birthday, are we required to check that?

Finally, if someone checks that they are a female and their name is Leslie or something similar, would we be required to check that? It seems to us that if we can accept this other information, we should also be able to accept the student's statement that they have certified that they are registered with the Selective Service,

particularly when they know that this information will be sent on for verification with the Selective Service System.

2. It appears that all aid recipients, female as well as male, will have to be monitored. This means additional processing steps for the approximately 19,000 aid recipients we expect to have in 1983-84. Recording and handling this additional information will require new data processing files, additional terminal transactions, new teleprocessing screens, etc., all of which will add extra steps to the processing of financial aid applications, a process which is already cumbersome enough as it is. This will mean additional steps will be necessary to process the application which means that it will take just that much longer before the student will be able to either be notified about their financial aid or to pick up their financial aid checks.

3. Under the Proposed Regulations and Proposed Rules, we will have to collect and file approximately 9,500 additional pieces of paper. Some of these will surely be temporarily misplaced, and if so, this may make us liable for whatever money the student may have received when we undergo an audit for federal programs. This is certainly an additional paperwork burden that flies in the face of the efforts of the federal government to reduce paperwork related to federal programs. This seems particularly out of order when there is another way to handle the system without this additional piece of paper.

4. Since this is a new system, educational institutions have no assurances that the Selective Service System will be able to provide the students with their Acknowledgement Letter on a timely basis. (See our personal anecdote listed in section I) The Proposed Regulations themselves state that it takes 90 days for the Selective Service to return an original acknowledgement and then this may very well be incorrect. Thus, can we rely on the Selective Service system to provide a duplicate within 14 days? Or even an original in 90 days?

5. The Proposed Rules say that the student must provide a copy to the Financial Aid Office. Who is responsible for making this copy? Theoretically, the student is we assume. However, from actual experience, we know the students will come in with a copy and then expect us to make the xerox copy for our files. This in and of itself will cause delays and additional expense.

6. Because of the fact that a student may not have an Acknowledgement Letter at the beginning of the school year, however well intentioned the student may be in his attempt to obtain this letter, this will force the institutions to set up alternative financing for the student until such time as the Acknowledgement Letter is available. Or, if the school does give out Title IV funds without the copy of the Acknowledgement Letter, then it must set up an expensive tracking system to make sure that the letter has been received. In addition, a system must be established to obtain a "notarized affadavit" which in our institution would mean that we would have to have a notary public in the Financial Aid Office.

Futher, if the Acknowledgement Letter is not received, then it appears the school is liable for any aid given to the student and would have to repay this amount to the federal government. This could happen in the case of a student who withdraws before the Acknowledgement Letter arrives. Further, in the case of a Guaranteed Student Loan, the institution would be required to notify the private lender so that the student would not receive any interest subsidy on the Guaranteed Student Loan.

7. If a student transfers to another institution, we must provide the new institution with the student's selective service number on the Financial Aid Transcript. This will require us to install another data processing system to handle this piece of information. It seems to us this could be better handled by simple having the student give the new school another copy of the Acknowledgement Letter.

8. If a student is applying only for a Guaranteed Student Loan, an entire new system must be created to make sure that we have an affadavit as well as the Acknowledgement Letter in place. This new system will affect not only the institution, but also the private lender and possibly the State Guarantee Agency. This seems to be dismissed with short shrift in the Proposed Regulations. We don't believe the rules writers had any concept of what a burden this could be on the private lending institutions in the country. This could very well cause a number of private lenders to not make Guaranteed Student Loans. They already are complaining of too much red tape to process these loans.

9. One of our greatest concerns is that Financial Aid Officers will have to become experts on Selective Service. Before the Proposed Regualations have gone into effect we are already receiving questions about Conscientious Objectors, hardship deferments, questions about the draft itself—which doesn't exist—how do I get an Acknowledgement Letter, etc. The Proposed Regulations indicate that this additional burden will be somewhat alleviated since "a sample request form will be provided to the institutions which will assist students who do not have their original Acknowl-

edgement Letter . . ." Thus, the Financial Aid Office becomes a Selective Service Information Center as well as a dispenser of Student Aid.

10. The Proposed Regulations suggest that the institution notify students early of this verification requirement so that their aid will not be delayed. However, the Final Regulations are not expected before May 1. What stance should the institution take in the interim period?

11. A good deal of time will have to be spent on follow up letters to students who either fail to check the proper box on the compliance form, or who do not sign the form, or both. This will place an additional workload on the Financial Aid Office as well as cause delays in the disbursal of checks.

12. The school must bear the burden of informing the student of what to do next if he cannot provide the Acknowledgement Letter and is denied aid. This would include how to appeal, the length of the grace period to appeal, etc. On an individual basis, this could be a very time consuming function for the Aid Office. This would include working with students who assert that they have registered, but who have not been able to prove this registration. In addition, we would be burdened with the need to "make a reasonable effort to contact the student" who has received aid but has not submitted the Acknowledgement Letter. We are sure that many students may receive the Acknowledgement Letter but will not return it to us immediately. This means more follow up.

13. There are numerous other questions which must be addressed which the Proposed Rules do not speak to, such as: what should schools do about students who indicate that they wish to apply only for non-federal aid because of this requirement; what is the insitution to do if an Acknowledgement Letter appears to be questionable—and what is "questionable"; must a school create new information brochures with questions and answers about this new requirement; what is an institution to do if it receives a Financial Aid Transcript without a Selective Service number, but the student says he has registered?

We are certain there are other items that we have overlooked, however, we think this provides you with some of the technical difficulties which every Aid Office will be faced with if the Proposed Rules are put in place as written.

In our view, the requirements of the law would be fully met if the institution did 2 things:

1. Include on the "Statement of Educational Purpose/Registration Compliance" form the information necessary to determine whether or not a student has registered, or if not, why they have not.

2. Require that the institution provide to the Department of Education a list, a computer printout, or if it the institution has this capability, a tape, providing the name, date of birth, and social security number of all those students who say they have registered. Then, the Selective Service will have the information it needs and if someone says they have registered who has not, then the Selective Service may take whatever action is appropriate to find out what the problem is and resolve it. It may very well be there has been a problem with the numbers and the student is, in fact, duly registered.

In short, we do not believe that Financial Aid Offices should be used to police this law and we certainly do not believe that this was the intent of Congress. We believe that students will recognize that there will be a verification of the information they submit so that there would be identification of non-registrants, and therefor believe that the punishment which would follow under the case of both committing fraud on a Financial Aid Application, as well as violating the Solomon Amendment, would eliminate false statements and would encourage, as the Amendment states, students to register and comply with the Selective Service.

We hope that these comments have been helpful as you deliberate the Proposed Rules. In short, the law can be carried out with a minimum amount of effort on the part of the institution and the imposition of this onerous set of Proposed Rules is entirely unnecessary.

Sincerely,

WALLACE H. DOUMA.

VANDERBILT UNIVERSITY,
Nashville, Tenn., February 25, 1983.

Ms. ANDREA FOLEY,
Officer of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR Ms. FOLEY: The purpose of this letter is to comment on the Notice of Proposed Rulemaking to amend Subpart B of the Student Assistance General Provi-

sions concerning Selective Service registration for receipt of Title IV student aid funds.

Under the proposed rules, every Title IV aid recipient, male or female, must submit a Statement of Registration Compliance. I understand and appreciate that you are taking this approach in order to ease the administrative burden on financial aid offices.

However, Vanderbilt University and many other schools have already printed thousands of financial aid applications for 1983-84 with the currently-approved Statement of Education Purpose printed on them. Under the new proposed rules, we will now have to contact every Title IV aid applicant to obtain the new version of the Statement of Educational Purpose/Certification of Registration.

Since female students clearly are not affected by Public Law 97-252, it would impose an unnecessary burden on educational institutions to have to contact female applicants to complete a form which is meaningless for them. Of even more importance, under currently proposed rules, educational institutions would be required to withhold Title IV funds and GSL checks for female students who fail to complete the certification form. Since female students are not required to register for Selective Service, they should not be subjected to delays in disbursement of Title IV funds and/or processing of GSL/PLUS applications for failure to certify that they are not required to register.

Specifically, I am recommending that, for 1983-84 only, educational institutions be given the flexibility to process GSL/PLUS applications and disburse Title IV funds to female students and older male students without requiring certification of registration status. Under this option, institutions should be held responsible for making a correct determination of applicants' sex and birthdate.

This recommendation is not made due to any feeling of sex or age discrimination with regard to implementation of PL 97-252 but rather to permit institutions to have the flexibility to concentrate and limit their efforts to the target group of Title IV aid recipients, namely male students over age 18 who were born after December 31, 1959.

After 1983-84, the requirement for all Title IV applicants to sign the proposed Statement of Educational Purpose/Registration Compliance form should cause less difficulty because institutions will have adequate lead time to print the statement on application forms.

For the future, I recommend that the Selective Service issue a Selective Service registration card to each person who registers. Young males would be more likely to keep a wallet-size registration card than they would a Registration Acknowledgement Letter.

Sincerely yours,

D. K. SMITH,
Director of Financial Aid.

Mr. SIMON. Would either of you be greatly disturbed if this Congress were to pass a bill something like the Schroeder proposal postponing the implementation of this regulation by 1 year?

Mr. ELMENDORF. In my opinion, I don't think that it is really up to us to cast an opinion. If the law is changed to reflect a delay of 1 year you could expect the Department of Education to comply with the law. If the law remains as it is, we will still move forward with the NPRM that we have just issued and the final reg in May and make every effort we can to insure that whatever Congress does in its wisdom between now and July 1, on July 1 there will be available full compliance with the statute as a result of a regulation that was developed during this past year that I think met the intent of the law that we had in front of us.

Mr. SIMON. Your answer is that you are going to comply with the law and I would expect that you would comply with the law, but my question, however, is whether it would be wise on the part of Congress to delay the implementation by 1 year.

Mr. ELMENDORF. I am not in a position to judge the wisdom of Congress. I don't expect that the reason for Congress delaying this could be justifiably given as the fact that the current regulation as

now produced would delay student-aid delivery. I do not believe it would. If there are other reasons for the delay, I would like to hear those arguments before I was asked to really give an opinion one way or the other. It would not be on the basis of an anticipated delay.

Mr. SIMON. General.

General TURNAGE. As the director of an administrative agency, I not only would obey and comply with that law but I would do so with vigor and enthusiasm. As a private citizen who has a proportionate share of my tax funds going to individuals who would be getting large amounts of aid without meeting their obligation, I would be disappointed.

Mr. SIMON. Mr. Coleman.

Mr. COLEMAN. Between the two of you, could you answer this question? Just how many students are you going to catch through this procedure? And second, how many dollars, on an average basis, are we talking about in student assistance?

General TURNAGE. Mr. Coleman, I don't know that we are trying to catch anyone. Based on the philosophy we have had from the absolute beginning, our objective is not to prosecute or incarcerate or take punitive action against anyone in the system and that is the policy that we have followed.

What we are trying to do, however, is to get people to register. Now, I can't speak for Mr. Solomon and neither do I know the specific motive that he had in passing this legislation. What I do know is that we have had some favorable fallout already as a result of it and it is not even law yet.

What we're saying, however, is if I take an application of the so-called "1½ million people" who we estimate may be eligible for student assistance in appropriate age groups, and I apply a 98-percent figure against it, which are people who have already complied with the law according to our system, that leaves a residual of something like 45,000 people.

I can't tell you whether or not this law would cause a man to go to the post office or there would be no way, once again, to quantify it. It is just my presumption that it, as well as some other initiatives, may be helpful in encouraging people to comply with the law.

Now, at the outset, I think there is one other question that may not be completely germane here, but I think there is a relationship based on some of the rhetoric that I have heard this morning already.

One, when there was the question before the President with regard to whether or not registration had merit for continuation or whether it should be dismissed, there were all kinds of comments that in the event he took action to continue, there would be massive dissent on the streets, th[redacted] would be great disenchantment, and it would be divisive socially [redacted] ntry.

And since he took that action, [redacted] observed that, Mr. Coleman, and it just seems to me that [redacted] rt of the concern expressed about this has been coming from relatively few sources. As pointed out here, there are 8,000 institutions and we have heard from very few.

Mr. COLEMAN. Your answer is 45,000.

General TURNAGE. Yes, sir.

Mr. COLEMAN. Mr. Elmendorf, how many dollars are we talking about on an average basis? Any idea?

Mr. ELMENDORF. I would have no ideas of the dollars involved among those 45,000 students but we are talking about several billion in student financial aid funds out there in the universe among all students and I don't really have a way of dividing and getting a realistic answer for you.

Mr. COLEMAN. Well, I don't know why the general felt that the word "catch" was an adversarial term. Frankly, I think that that is what we were trying to do when we passed the law. To make sure that people did register, to make sure that they went through the process, and catch people who were not registering, I suppose, was what the intent of Congress and the author of the amendment was.

General TURNAGE. Excuse me, sir, if I may. Not "catch" in the sense of having concern or not "catch" in the sense of—we don't expect the institution to tell us, for example, if an individual walks in and he is ineligible, I don't expect he's going to report that name to us. The fact is, we think that the individual who goes in for the loan knows that it's a prerequisite and he will probably go to the post office and register. In that sense, it will improve the system.

Mr. COLEMAN. How do we handle those loans that are disbursed by the institutions before July 1, 1983, under your proposal? What happens to the value of those guarantees on a guaranteed student loan, for example? Are they affected at all by a failure to register?

Mr. ELMENDORF. They are if the period of instruction begins after July 1, 1983, which is the effective date of the regulation, and they would have to, in fact, have the statement of registration compliance in the record before that disbursement could be legitimized. In our case with a loan, it means before we could honor the interest and principle payments to the borrower there would have to be a statement of compliance.

Now, as I said before, the liability to the lender is covered by the insurance provision of the act, which says that they, in fact, get paid regardless. But in this particular case you would have to really call it a default by the student. We would not like to encourage defaults and this is one of the reasons why we distinguish between the two groups of students. Those who by an accident of birth have a problem obtaining loan funds, should have immediate access. But if a larger group of forgetful students who did not remember to bring the letter or have the letter in their possession were allowed into that process, we felt that that would, in fact, lend to potential abuse and defaults that we did not want to encourage.

Mr. COLEMAN. Do you feel, having knowledge of the jobs and the burdens of the financial-aid offices in the universities, that this additional administrative burden is going to be too much for them? Are we going to see a slow down in the processing? Are they going to have to beef up staff? How do you see this thing trickling down to the local institutional level?

Mr. ELMENDORF. The guidelines that were set forth in the Conference Report expected of us a minimum burden on institutions and no delays if at all possible in the processing. I still don't expect any delays in the processing and by virtue of the early startup of

the major processing system—the Pell grant system—I expect that that adds even further veracity to that statement.

The second point is that of the burden on the institution. My sense is that because there is already called for a statement of educational purpose that every recipient of any title IV dollars must complete, that that process of additional paperwork burden is not a major one. It takes about a minute, essentially, to verify, to sign that statement and have it put into the file and about 30 seconds to file it.

Now I agree there is some time before that and after that, but the actual process is not a time-consuming one, not nearly as much as it would be if they were to sit down and manually try to build a list of people who had not complied, had not sent in their letters and then sent that to us for us to try to verify. I think you are talking there about double duty. Even though the law says we may require it, our job is not to go into the institution and ask them to produce a list for us of people who haven't complied with the Selective Service Act. That's not the intent of the legislation.

It really should be enforced on the local level. I believe that's where the action, in fact, should be taken.

Mr. COLEMAN. If I might ask one more question, Mr. Chairman. General Turnage, what is your goal as far as registration? Is it indeed 100 percent or is it 99.44? What exactly is it and how close should it be so that you feel that your job and your responsibilities have been fulfilled?

General TURNAGE. Our goal is to achieve the highest participation possible, sir, in order to insure equity. For example, at any time there is a call or necessity to activate the system, and that could only be done as a result of actions by this body, then it is incumbent upon us to be sure that we have every one in the roster that is supposed to be there. Anything less ends up creating inequities in the system and that is the thing that people are quick to criticize.

Moreover, failure to do it is not victimless. The individual who doesn't register is shedding a disproportionate burden on the individual who has complied with the law. So I guess that is why I pursue it with the vigor that I do. No one list that we have access to is 100 percent so that is why we are using different sources in order to identify people.

Mr. COLEMAN. If that is true, then is it true that you are not going to prosecute those people who already have been determined nonregistrants, but that you are taking a random sample of 100 to prosecute so that you won't clog the courts?

General TURNAGE. I read that in a recent article, as recent as a day or two ago, sir, and I can't address that fact. I know my job is very clear. Every individual that is identified to us as a possible nonregistrant after we have exhausted the means that are available to us in order to get him to do so, all of those names without exception, without selection go to the Department of Justice. They take that action. As recently as 10 days, 2 weeks ago, we sent them a list of names slightly in excess of 5,000 that we identified.

Now we're sure that when they start investigations that they will find some are the wrong sex, some are too old or other reasons.

But the fact is those are the ones that they start looking at. I will continue to provide that kind of information to them.

Mr. COLEMAN. So that is not your decision, that is the Justice Department's.

General TURNAGE. Not to my knowledge, sir.

Mr. COLEMAN. You would know if it was your decision. OK. Thank you very much, both of you.

Mr. SIMON. Mr. Kogovsek.

Mr. KOGOVSEK. Thank you, Mr. Chairman.

Secretary Elmendorf, do you recognize the document at all? Can you see it from where you are?

Mr. ELMENDORF. Yes, sir. It looks like the application for federal student aid. [Laughter.]

Mr. KOGOVSEK. I was going through it and it was brought to my attention by a colleague, it is the application for Federal student aid for 1983-84. As I have gone through here, and I might have missed it, but I have looked at these several documents that have to be filled out by students in applying and I can't find any reference to the Solomon Amendment.

My reason for bringing that up is, it seems to me that maybe the Schroeder suggestion about delaying the effective date of the Solomon amendment for 1 year might make sense inasmuch as I assume that this has gone out already and there are a lot of students who might already have it and are in the process of filling it out.

Mr. ELMENDORF. Yes, sir. I would also like to make note of the fact that that document you have in your hand is a document that was of a high level of concern to this committee and others about 5 months ago. Although it was of such a high concern, in fact, a notice regarding selective service was included even before the regulations were developed.

In this particular case, we have protected the student in two ways. The financial aid application has a wearing about selective service registration under "Eligibility Criteria." The application goes through a central processor. The central processor has a computer printout, the student aid report [SAR], that is sent to every student in the country determining what their contribution ought to be for financial assistance. On that statement, built into the computer program, is the warning relative to selective service registration. That will be on that statement. So, in fact, it is on the application, and on the SAR statement that they get which enables them to access the title IV student aid dollars.

Mr. KOGOVSEK. Is that an indication that they will have to fill out one more form?

Mr. ELMENDORF. That's an indication that they will have to take the back side of that form that they get and fill out—there are instructions on there to fill out the statement of registration compliance which is part of our statement of educational purpose which they already have. We printed that this year on the back of that form because it facilitated another reduction of paperwork that we were trying to develop through a separate process.

Mr. KOGOVSEK. I guess that leads me to ask the question, that if, in fact, that form has to be filled out, then what is wrong with sending a form right to the Selective Service?

Mr. ELMENDORF. I missed the first part of that question, sir.

Mr. KOGOVSEK. If, in fact, they have to fill out another form——

Mr. ELMENDORF. Well, my whole purpose in trying to comply with the conference report was to minimize the administrative burden. If I add that to the deregulation effort that the administration has underway, we are trying to reduce the paper and regulatory burden on individuals, institutions, and others. And, in this particular case, it serves both ends of that continuum and not only reduces the burden but also reduces paperwork.

Mr. KOGOVSEK. Mr. Elmendorf, do you see a basic unfairness in the Solomon amendment that was brought up several times this morning by Mr. Edgar and Mrs. Schroeder in regard to the rich versus the poor?

Mr. ELMENDORF. No, I do not. I again have sat before this committee and heard criticism of the fact that students coming from families earning as much as $75,000 still have access to the guaranteed student loan program. I don't consider students getting that kind of subsidy coming from a $75,000-a-year-family needy and student aid covers the whole range of income levels.

Mr. KOGOVSEK. But on the average, though, do you have to concur that more students coming from poorer families, middle-income families apply for student loans as opposed to those from the richer families?

Mr. ELMENDORF. Yes.

Mr. KOGOVSEK. Let me ask General Turnage a question that Congressman Gunderson has been asking this morning. Do you see the Solomon amendment as an aid to enforcement of draft registration?

General TURNAGE. I think without question, sir, it is an aid to the enforcement process. On the other hand, as opposed to a punitive measure I see it simply as another one of a number of eligibility requirements. For example, if an individual—there's an upper limit on the amount of income of the family in the final determination of whether or not an individual is eligible for a loan—if he exceeds that, it is just understood that he is not eligible. It seems to me that also if he doesn't register he just should understand that he is not eligible.

Mr. KOGOVSEK. In your opinion, what else would you have Congress do to help you as far as making people register? The reason I ask that question——

General TURNAGE. Sir, I know that you want to curtail this hearing, but go ahead.

Mr. KOGOVSEK. Well, the reason I ask that question is I think it's evident that one of the reasons we passed the Solomon amendment was it was convenient. It was convenient to Congress. It was an easy thing to do and it was something that we can just pass right on to the different institutions of higher education. There were suggestions this morning that if we proceed down this line we are going to possibly have people—before they get a driver's license we are going to have them register for the draft. I suppose there are many other things that we could do.

What is your opinion?

General TURNAGE. It wasn't my intent to offer anything trite in response to your question. I think, more than anything else, sir, is

the fact now that in responsible bodies such as this and in the judiciary and in the administration itself which, of course, has been supportive, there is a recognition of the fact that a program that has a 97.7 or 98 percent compliance in the country is successful and it should be recognized as such and advertised as such in interviews and speeches and other exposure to the youth of the Nation.

And I think that kind of moral support would be greatly helpful and I think the fact that here the issue to me is a very clear one. If a young man wants to get the benefits of this Nation, he should comply with the laws of the Nation. It's that simplistic. And I think it's easy to do. It's very simple to accomplish administratively, in my judgment and it is that kind of support that would be most helpful to me.

Mr. KOGOVSEK. Thank you, General.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman, and to both of you, I can't help but sitting here and thinking that, you must get a little perplexed with the Congress too. I don't recall either one of you asking us to do something like this and put you in the middle of a new controversy in an area where I think both of you probably have many other things you would rather be doing and could better spend your time. So I guess, to a degree on behalf of myself and my colleagues, I apologize.

But there are some concerns that I do have with the implementation of the rules. I am not convinced that we have the minimum impact on higher educational institutions. Almost quite the contrary. How would you respond, Dr. Elmendorf if we recognized, first of all, that it is not the responsibility of a financial institution to go back and collect these payments, try to collect payments from a student who has received financial aid but has not followed through later with a verification of the registration. And once we had established that as point number one, we would arrive at point number two which would say that if then, as you suggested with the student who turns 18 after his freshman year, that really that student is forgiven for that year and it becomes the second year.

Wouldn't we really find ourselves in a position where not the institution, but the Federal Government between your two agencies could easily verify eligibility for that student in his second, third and fourth year of higher education with little or no burden on the higher educational institution itself?

Mr. ELMENDORF. Let me ask the General to respond to part two that deals with the ease of verification centrally. Part one is that the law already provides a requirement now that the institution, if they recognize an overpayment situation exists, make every reasonable attempt to collect that back from the student. Our whole philosophy in student aid has been to try to set procedures in place as part of a system, not to allow the dollars out the door, so to speak, because the difficulty collecting those dollars after they are out is immense.

So I would support any kind of a system such as this one which is an eligibility for the funds as opposed to one that tries to chase the dollars after they have gone out the door.

General TURNAGE. If I understand the second part of the question, Mr. Gunderson, once the individual has given this confirma-

tion or proved it to the university, once is enough, because generally speaking, the individual who pursues higher education does it at one locale, and it seems to me, the records of that institution would be adequate to reflect his compliance throughout the period of the student's education.

If he changes educational locales, then the provision for either taking some of those records with him are, in fact, just simply making the statement again and giving a copy of the acknowledgement letter once again.

Mr. GUNDERSON. Let me go on to a different area for just a second.

The NPRM requires educational institutions to attempt to recover already disbursed funds from students failing to register. How do you anticipate that the institutions would go about fulfilling that requirement?

Mr. ELMENDORF. Just as they do now. In this particular case, there is in the first semester of an academic year, for example, an opportunity in the Pell grant program, which is one of your largest student financial aid programs, it is a grant program—there is the opportunity because you have a two-payment system to adjust the second payment if, in fact, that student later comes into eligibility so that there is no loss.

If the student fails to come into eligibility at all and does not, in fact, sign or meet the 120-day deadline, the institution is going to have to pursue that through their own mechanisms. They, in fact, make every attempt. In some cases, they turn it over to the Federal Government and we pursue it with the Department of Justice.

In some cases of overpayment, for example, of the Pell grant system, we have referred in the neighborhood of some 26,000 cases. Agreed they are small, less than $1,000 usually, but we have referred each of them to the Department of Justice for collection.

Mr. GUNDERSON. What happens if the university accepts in good faith, No. 1, the statement of educational purpose registration compliance or a forged affadavit from that student that he has actually complied with registration. The university accepts that in good faith, provides the financial assistance only to be later notified by Selective Service or others that that student has not, in fact, registered. At that point, has the university met their obligation by accepting in good faith, in their interpretation, action on behalf of that student——

Mr. ELMENDORF. That same procedure I just described would be followed. The student becomes the person who is responsible and the institution may try to collect it and if it fails to collect it, there is no liability on behalf of the institution, it goes directly to us and we refer it to the Department of Justice for direct collection from the individual.

Mr. GUNDERSON. You suggest that every student fill out this statement of educational purpose registration compliance. I am still confused as to what is gained by having every female, every student, regardless of age, to fill out that form. What do we achieve by that?

Mr. ELMENDORF. Well, first of all, every student does need to fill out the statement of educational purpose if they receive any type of financial aid, whether they are male or female. The burden al-

ready exists for a statement of some sort to exist in the file. This one happens to deal with how they will use the funds. They have to certify that the funds will be used for educational purposes.

Second, in some cases, we know that institutions do not, in fact, collect the kind of information that would enable them to make the determination as to date of birth, prior military service or other pieces of information which would allow them to determine whether or not that person had, in fact, been exempted or not.

In some cases, institutions never see students for registration. They are so mechanized and highly computerized that it becomes a paper process, and in many cases, we did not feel, taking the guidelines of Congress, that we could set up different standards for different types of situations in different institutions and we did blanket the whole requirement with a simple statement for females, for example, that if you are female, simply check and sign and that is the end of it.

Mr. GUNDERSON. I have had financial aid officers in my congressional district tell me the cost of implementation of this regulation for their school will vary between a low of $5,000 to a high of $40,000 a year. How would you respond to those who suggest that it is going to cost $5,000 to $40,000?

Mr. ELMENDORF. My good friend, Mr. Jim Moore, who is the Director of Student Financial Aid Programs and an expert on cost, can answer that.

Mr. MOORE. Well, first of all, let me make the point that the heavy cost on this program is only for this spring because the entire population has to be brought into compliance. From this year on, institutions only deal with the 18-year-olds, which is a much smaller group, on the order of some 800,000, of which half or two-thirds will be in school.

Second, I will be interested in the testimony that you hear tomorrow because my good friends in NASFAA and other organizations are going to talk about cost in this.

Now, there isn't any cost involved in this compliance certificate. This committee put that Statement of Compliance in the law in 1972 and every year all of these people who come into school, they have signed the statement, it has duly been filed and that's it. Now this time all we are saying is, "Sign the statement and check a couple of boxes." Nobody can tell me, other than the small cost of printing a couple of additionsl lines to a statement that has to be printed already, this adds about another 10 or 12 lines of type, that there is any cost involved.

This is a self-operating sort of thing. So the cost of securing and filing the acknowledgement letters is not great. I will admit that some students who will get fouled up in this system, as the general indicated, 5 percent or so of your people who are registrants on your mailing make mistakes, you have to make phone calls and that sort of thing and there will be some of that.

But to have a clerk sit and receive these letters from students and check them off and file them is as cost-effective as anything we can do. With overhead costs and all of the programs and what it costs to do business out there, I am sure that you will hear a lot of fairly broad estimates of cost. But on a per unit basis, I just can't

believe that there is this tremendous cost burden that schools will entail this spring.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. Thank you, Mr. Chairman.

Doctor, in your statement, if I understand it, you tell us that in developing these regulations you worked closely with the financial aid community. Can you tell what reaction you received from that community as you were developing these regulations? In short, do the colleges think this is a good idea?

Mr. ELMENDORF. The law or the regulation?

Mr. HARRISON. The regulation, Doctor.

Mr. ELMENDORF. I would say that they have not, in fact, been disagreeable with the fact that the regulation had to be structured in such a way as to comply with the prescriptions set forth in the law and that this was a way that it could be done with the minimum amount of burden to them.

If we were to say, and they were to be given a green light to go ahead and do it centrally and let the Department of Education or Selective Service do it, they would certainly go along with that. But then again, and very clearly stated in our testimony, is that that is what would really cause the burden to the system, to the institution and would delay student financial aid applications.

We are not equipped, essentially, to do that kind of mammoth undertaking for 8,000 institutions and that would, in fact, conflict directly with the conference report language.

Mr. HARRISON. You think that to do it centrally would impose a greater burden on the colleges and yet, the colleges if they had their druthers would say, "Go ahead and you do it."

Mr. ELMENDORF. Essentially it would impose a greater burden on the Government and would delay the system therefore contradicting the Conference Report language. I believe that it can be best done, as most things are best done, essentially, at the local level.

Mr. HARRISON. I don't mean to cut you off, Doctor, but that's what I am getting at. A couple of times this morning you have said that to do it centrally would impose the burden both on the institutions and the Government and that's not really so. If I am hearing you correctly now, the question is whether we are going to impose the burden on the institutions or whether we are going to impose the burden on the Government, and as a matter of philosophy, you prefer to impose it on the institutions.

That seems to be what is coming through, sir.

Mr. ELMENDORF. Philosophy and practicality. I can give you the practical side of that. The practical side is we simply do not have a data base record that has in it all of the students in this country who receive student financial assistance. We have only one major system, the Pell Grant System, that covers only about 2½ million aid recipients. There are easily another 2½ to three million aid recipients out there that are covered only by individual State computer systems who borrow under the Guaranteed Student Loan Program and individual institutional systems that cover campus-based programs.

There isn't a single source in student financial aid for us to look across a data bank and come up with all of the recipients of student financial aid.

Now I would have to let the general as it relates to the Selective Service data files.

Mr. HARRISON. Sir?

General TURNAGE. Well, once again, it seems to me, Mr. Harrison, that the issue has been made clear in the sense that the form that contains the checkoff for registration is prepared and administered and retained and controlled by the institution in any event.

The acknowledgement form that selective service provides an individual when he registers is the only thing that must be added to that. So to the extent that that is a burden for them, it becomes a matter of individual interpretation. I don't consider that to be such and it just seems to me that it can be done relatively simply.

I don't think the burden really is on the institution in that sense. I think it rests with the individual to get his acknowledgement form and provide it to them and make the check and that constitutes the action.

Mr. HARRISON. But to the extent the individual doesn't do that, the burden falls back to the institution, doesn't it? Among other things, they may end up having to "chase the money out the door and try to get it back," to use the phrase that we had here a minute ago.

General TURNAGE. If they use poor judgment initially and allow the loan to be made to an individual who doesn't qualify, I think they deserve that kind of problem.

Mr. HARRISON. Yes, but they don't know it at that point, do they, General?

General TURNAGE. They may not, in some instances, although they have accepted the affidavit, as Dr. Elmendorf suggested, and if, in fact, it turns out to be a false affidavit then, I believe, according to his interpretation, the institution is no longer responsible.

Mr. HARRISON. If I may just pursue this one more minute, Mr. Chairman.

It seems to me that there are many of us who don't quarrel with the underlying philosophy which you have stated, General. People who seek to enjoy the benefits of this country have to obey its laws. But there are those of us who go further and say that the obligation of enforcing the laws of this country rests on the executive branch of the Government, not the colleges and universities, and that to attempt to use the colleges and universities as deputies of the Government for the purpose of enforcing the registration law is mixing things up a little bit.

And I have some sympathy with my colleagues in the educational community who say that this is not our job and how come it's being given to us.

I guess my final question, if I may, sir, would be just to ask if the Department of Education has developed any idea or estimate of what the cost of this would be to the colleges and universities.

Mr. ELMENDORF. As far as I know, we did not prepare any estimate like that. It is very difficult to make that kind of assumption based on essentially what Mr. Gunderson said about—I would need

to know, for example, how he got a range of $5,000 to $40,000 for institutions. I need to know what goes into their formula.

I would make one statement though. It deals with self-regulation and I would take some of what you said about who should enforce the laws of the land—we have a regulation similar to this regulation that deals with measuring satisfactory progress or a student who maintains a C average in an institution. Theoretically, according to the GAO report, they should have their aid withdrawn by fiat from a departmental review if that student does not, in fact, hold to that 2.0.

The whole academic community that is now exercising their right to show some sympathy here for burden expressed quite a different perspective when it came time to the enforcement of that GAO report and, in fact, advised us and convinced us, including the Secretary, to put forth a regulation that was self-regulatory. Let the institution determine its own standard for academic progress and let the institution monitor that. And I think you have got to look at that from the consistency of the application of a standard. That we would like to see happen here as well.

Mr. HARRISON. If I may just respond to that and get your reaction because I think you have just reinforced my point. It is up to the colleges and universities of this country to monitor academic progress. It does seem to me that it is up to the colleges and universities of this country to monitor compliance with the Selective Service law. They are in the business of education. The Government is in the business of enforcing the laws that the Congress passes.

General TURNAGE. Would you allow a response, sir?

Mr. HARRISON. Please, General.

General TURNAGE. It seems to me that they are, however, responsible for determining eligibility.

Mr. HARRISON. Who should do the work of verifying that the student who signs his name to the bottom of the sheet of paper, "I hereby verify under the penalties of perjury, U.S.C. whatever it is, that I have complied with the requirements of the Selective Service Act."

Now the question is, How do we know that that person is not lying? And it seems to be a question of who is going to do the enforcement. And I don't want to belabor this, there are others who want to speak, but it does seem Mr. Chairman, that the issue is whether that burden should be passed to the colleges.

Mr. SIMON. Mr. Boucher.

Mr. BOUCHER. Thank you, Mr. Chairman. I have just two questions for General Turnage.

General, you have indicated during your statement that you have about a 94.6 percent success in verifying to registrants the fact that they have registered. And you based that, as I understand it, on the statement that you are only receiving back some 5.4 percent of the letters that you initially mailed.

Now I question whether or not you can assume from those figures that the registrants really are receiving verification in accordance with those figures. Isn't it possible that someone who is living with a registrant, be it a parent, a roommate, a brother or a sister,

might well receive the letter and actually never have it reach the registrant at all?

General TURNAGE. That's absolutely possible, sir.

Mr. BOUCHER. That leads me then to my second question which is this: When you hear from a registrant that he has not gotten verification of the fact that he has registered, what is your procedure for determining that he has registered, and in the event that he has, notifying him, and what is the period of time that it takes you to go through that procedure and send a letter to him indicating that he has, in fact, registered?

General TURNAGE. I think there is an issue of clarification that must be made here, Mr. Boucher. I am not sure we are speaking to the same issue. In the first case, when we have an individual who reaches age 18 and he goes into the post office and he fills out the registration form consisting of a half a dozen questions, one of which suggests his permanent address and the other is a temporary address, we have full knowledge that this individual because of his age, may be going away to college, this sort of mobility. So we try to keep both of those addresses available to us in the event of the requirement to reach him.

Within a matter then of—now we are talking in terms of 30 or 40 days—we respond to that individual with a letter of acknowledgement and we really, in effect, regurgitate the information that he gave us and say: Is, in fact, this correct? If it is, no further requirement is necessary, but if it is not, please respond to us in the stamped, addressed envelope provided so that we can clarify your records.

Now in every case then we send that out to the individual who registers. That is the first procedure. The second thing, to which I think you were alluding, is the fact that we know, based on the age group with which we are dealing and the volatility or at least the mobility of this group, we find then it is necessary for us to keep in touch with them on an ongoing basis to be sure that we have current addresses. And the verification program that I am suggesting to you, the first test of that occurred about 15 or 16 months ago where we sent out the first 10,000 letters and we got something on the same order of percentages that I suggested to you.

However, this last October we sent the first 100,000 out and this month we are sending 250,000 out and we will be sending out 250,000 every month ad infinitum simply to keep in touch with people that we haven't heard from for the last 11 months. Now the 11 months is significant because after the 12th month, if the individual leaves his address, his letters may not be forwarded. So that is the key.

We are doing that so that we can keep our list updated and as current as we can and keep the equity in the system by virtue of that fact.

Now, you suggest that someone else may open his mail. Absolutely. The fact is that in some other cases other issues may come up to prevent that individual from receiving his mail. Absolutely. We don't know of a better system, sir, and if you do, if you will tell me, we will try and incorporate it.

Mr. BOUCHER. All right. Thank you very much, General.

Mr. SIMON. One comment and one final question for you, General.

The comment is simply to disagree respectfully with Dr. Elmendorf when he suggests there is no economic type of sanction to this law. The reality is that if you come from a family with $100,000 or above income, there is no sanction in this law for you. If you come from a family with $15,000 income, it applies universally so that clearly there is an economic sanction.

Now the question for Congress is: Despite that economic sanction, is it wise to have this regulation? But I don't think there can be any question that there is an economic aspect to it.

Then the question, and this really gets to the law itself and how you administer the law, General, you could by regulation simply add one small point to the card where you say, "I reserve the right to file as a conscientious objector in any future draft." That would eliminate, other than the careless people who just aren't registering, it would eliminate the problem.

I don't know that this Nation has gained any victories by putting Mennonites and Quakers in jail, but that is what we are doing right now. And these are the people we are denying a chance to go to college. Is there anything wrong with just adding that provision to that card, General?

General TURNAGE. Mr. Chairman, I would hope that you would entertain a question from me, if you have the conviction about this, if I may ask it.

Mr. SIMON. Yes.

General TURNAGE. Have you any assurance based on the information available to you that by adding that blank or that particular provision in the registration form, that, in fact, you would solve the problem with the people who are making the issue?

Mr. SIMON. I have reason to believe you would. So that it is clear—you have really three major religious groups in addition to others, the Friends, the Quakers, the Mennonites and the Seventh Day Adventists. I did speak to one of the leaders of the Friends who indicated that would solve the problem, for example, at Earlham College, which is a Quaker institution.

It just seems to me that we, as part of the American tradition, try to accommodate people whose religious views happen to be different than yours or mine, General. But part of the American system is that we respect those kind of views.

General TURNAGE. Please then, I will now try to respond my way and based on my impressions about the system.

I have the firm conviction that such a provision notwithstanding, you still wouldn't solve the question or the real issue because it is my judgment that in some cases you are not going to satisfy the individual regardless of what you do, that it becomes a matter not of religious preference but of political rhetoric.

Let me give you a couple of cases in point. I have discussed with almost every religious group that has expressed an interest to me, on a personal basis, not through other sources, this issue. And as recently as 2 weeks ago, I was at the national headquarters of the Seventh Day Adventists Church here where they went through a program that they are currently giving to all young men in their faith where they advocate, one, registration, and second, they advo-

cate 1-AO classification to have them go into medical service and serve in a noncombatant role as opposed to conscientious objection.

I talked with Mr. Ken Singer of the Amish faith. He said, "If you have any trouble with my boys, tell me about it."

I talked with a lot of people, with the Dunkers and the Mennonites and, you name it and we have tried to be sensitive to this issue.

Now the thing that bothers me about it is the fact that, with a full understanding, what we are saying in this one registration card has nothing to do with classification of any form. We are saying to the young man, register in order to be considered for classification at some future time in case the Congress takes this action. We ask that you sign this card and send it to us. You will then become a part of a manpower pool. In the event your name is drawn then by virtue of a random lottery and if you have a matter of conscience, all you need do is fill out this one form and give it to your local board and that form will adjudicate your case.

So, we are not compromising an individual's option nor is he abrogating any of his principles nor are we taking away any of his opportunities for service in a conscientious field, if, in fact, he feels that firmly.

There are some, however, that even if we put that on there, they didn't sign. What is our course of action? We try to make it through our public awareness program that there is no classification now and that we will zealously, statutorily, and philosophically guard the interests of the young conscientious objectors.

I feel comfortable with being able to do that. I do not feel comfortable with the individual who is not going to obey the law of the land regardless of his conviction. In many cases, as you can appreciate, the fact is it is not only religious, but it is moral and ethical. I can understand all of those.

But it is the other individual that gives a lot of political rhetoric to it and says, "I am not going to obey the law of this land." He does it on a selective basis. I think we may have difficulty with that man and I am not sure, or as a matter of fact, let me retract that, I am quite sure that regardless of a provision on that registration form, we are not going to satisfy that reservation.

Mr. SIMON. If I could just respond briefly, and I don't want to get into a lengthy debate on this, but if you had such a provision on that registration card, you don't diminish your powers or authority one iota. What you say about a future draft is correct. At that point the decision is made. You reserve the right to make that decision at that point. But you simply dissipate 90 percent of the opposition you have right now.

And now there are those who are going to be out there no matter what. But of those who have been sentenced so far for violating this law, how many—number one, how many have been sentenced?

General TURNAGE. There have been 14 indicted to date.

Mr. SIMON. OK. But among those who have been sentenced?

General TURNAGE. I am giving you a guestimate, sir. I think five or six.

Mr. SIMON. And of those five or six, how many are Mennonites or Quakers or people who have expressed religious scruples?

General TURNAGE. I can't tell you that precisely, excepting I just get the same kind of information you do from the press about their motives for failing to register.

Mr. SIMON. But my understanding is all but one, in fact, are in that category.

General TURNAGE. I don't know that, sir.

Mr. SIMON. And it just seems to me that we have created no victories for this Government by having four or five Mennonites and Quakers sentenced to prison, and we can easily, relatively easily, solve this problem and do away with the whole reason for the hearing that we are having here today and some of the other problems——

General TURNAGE. Mr. Chairman, if you recall in our recent telephone discussion, I suggested to you that I would be pleased to consider that or any other device or initiative that would be helpful in this vein. I should also point out here for the record, however, if you recall this very issue was once voted on by the Congress and was voted down.

Now, if the Congress elects to change that position, you would once again see me enthusiastically support it.

Mr. SIMON. OK. So it seems to me that the burden is clearly on those of us in Congress to see if we can come up with something that is a little more workable and we thank you both for your testimony here.

This concludes our hearing.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

21-873 O - 84 - 6

LEGISLATIVE HEARING: REGULATIONS ON THE SOLOMON AMENDMENT TO THE DEFENSE ACT OF 1983

THURSDAY, FEBRUARY 24, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in room 2257, Rayburn House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Harrison, Gunderson, Goodling, Petri, and Packard.

Staff present: Maryln McAdam, majority legislative assistant; John Dunn, majority fellow; and Betsy Brand, minority legislative associate.

Mr. SIMON. The subcommittee will come to order.

I offer my apologies for being late this morning. I will simply enter my statement in the record

[The opening statement of Hon. Paul Simon follows:]

OPENING STATEMENT OF HON. PAUL SIMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON POSTSECONDARY EDUCATION

The Subcommittee on Postsecondary Education today continues its oversight hearings on the implementation of the Solomon amendment to the Department of Defense Authorization Act of 1983. During yesterday's hearing, the Subcommittee heard form several Members of the House who suggested several legislative solutions to the issue before this Subcommittee—is there a practical, administratively feasible method for implementing the Solomon Amendment in the upcoming academic year or should implementation be postponed (or the law repealed). Our colleague, Representative Leon Panetta, was unable to join us yesterday and I would like to enter his testimony in yesterday's record at the conclusion of Mr. Foglietta's presentation.

Today the Subcommittee will hear from college and university presidents, student financial aid administrators and lenders, and students. We will also hear from the American Civil Liberties Union, which is currently engaged in litigation in Federal District Court in Minnesota.

I hope we will learn today about the impact of the proposed regulation, in dollar and human terms, so that the Subcommittee can thoughtfully consider the feasibility and appropriateness of the Department's proposal. We are especially anxious to learn of alternatives which place less of an administrative burden on postsecondary institutions and students, and leave enforcement to the Selective Service System—where it belongs. I want to welcome David Fraser of Swarthmore College, my friend Father Byron of Catholic University and Dr. Johnson of George Mason University who is testifying on behalf of the American Council on Education.

Mr. SIMON. We have a statement also by our colleague, Representative Panetta, which also will be entered in the record.

[The prepared statement of Hon. Leon E. Panetta, follows:]

PREPARED STATEMENT OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, at the time the Solomon Amendment was approved last July, you attempted to amend the proposal so as to give students the option of declaring their objections to draft registration based on religious or moral grounds. I supported you strongly in that effort and when it was defeated, I was one of only 95 Members of Congress to vote against final passage of the Solomon measure.

Now I would like to take this opportunity to restate my own belief that if students who are in financial need are to be penalized for their failure to comply with the registration law—and it is apparently the will of the Congress that they should be—then those students whose failure is based on deeply held religious or moral beliefs should be allowed to make their beliefs known.

Unfortunately, the regulations which have been put forward by the Department of Education fail to make this opportunity available. Simply put, students are denied the benefit of beneficial aid if they do not state and verify their registration compliance. They are given the right to a hearing only when they claim to have registered but cannot provide any proof of their compliance.

I was not a supporter of the draft registration program when it was enacted in 1980, because I did not see any convincing evidence that the resumption of registration would contribute to our nation's military preparedness or would prove useful in case mobilization became necessary. However, the registration proposal was enacted into law by the Congress and it must be enforced. I do not believe we can or should condone noncompliance with the law.

At the same time, I cannot support enforcement efforts which are selective or discriminatory, or which do not allow for the expression of moral or religious objections to registration for a military draft. Conscientious objection is part of the American military tradition. I believe strongly that if we are to use the student aid programs which enable so many young people to attend college as a tool for enforcing the draft registration law, then it is incumbent on us to take into account the religious and moral factors which may legitimately prevent students from complying with that law.

Another aspect to this problem is the religious colleges which may be forced by these regulations to participate in the registration program. As written, the regulations place the heaviest burden of implementation on institutions of higher education: colleges are not allowed to disburse any federal student aid funds unless registration compliance has been verified. This may place schools with a tradition of religious pacifism in the role of policeman, forcing them to help execute a law to which they themselves have deeply held religious objections.

I would like to emphasize again that draft registration and the Solomon Amendment are both the law of the land, and our job now is to find the most equitable and efficient means of enforcing them. At the same time, I believe that there are better ways to accomplish the goals of these statutes and that we must continue our efforts to find alternatives. For this reason, I have reintroduced legislation to establish a Select Commission to study the issues surrounding voluntary national service. I believe that what we need ultimately is a broad and comprehensive debate on the issue of national service, and I am hopeful that such a debate will help us formulate a system which allows those who are morally opposed to the military to serve their country in other ways. In the meantime, I hope that the Members of the Subcommittee will join me in emphasizing their support for regulations which will allow students at the very least an opportunity to voice their dissent.

Mr. SIMON. We heard yesterday from the Director of the Selective Service, from the Assistant Secretary of Education for Postsecondary Education, and we heard from some of our colleagues with various suggestions. Today we are going to hear from the university community.

Before I call on our witnesses, let me yield to my colleagues for any comments they may have. Mr. Petri?

Mr. PETRI. I don't have any comments, Mr. Chairman. I am just looking forward to the testimony of the witnesses on this important matter.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. Thank you, Mr. Chairman.

I have to start with an apology of my own. I have a full committee markup at 10, so I will have to excuse myself. But I am grateful for the opportunity to welcome all of our distinguished witnesses.

I hope I won't be out of order in particularly recognizing my old friend, Father William Byron, who, before he became president of the Catholic University of America, was president of the University of Scranton, which was the great and friendly rival of Kings College where I spent many years. Before leaving our community, the Father made a speech which I believe to be one of the best statements of the need for a community to present an image to society and for the academic world to be involved in that community.

It is an honor to welcome him and all of our other guests this morning.

Mr. SIMON. In a very real sense, he ought to be welcoming you. I think he has been to more meetings of our subcommittee than you have.

Mr. HARRISON. He knows his way around far better than I, Mr. Chairman.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. I have no comment, except to thank those who have taken the time to come and testify before the committee.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

I have no major comment. But to those who were not at the hearing yesterday, I would share with them that yesterday afternoon, we introduced legislation that would allow on the registration certificate the opportunity for the students to indicate that they desire consideration for conscientious objector status. I think this is one of the objections and concerns a number of witnesses raised yesterday. That bill is now in for people to look at and criticize or do whatever else they so desire.

Mr. SIMON. We will first hear from the President's Panel. We will hear from David Fraser, president, Swarthmore College; Father Byron, president of the Catholic University of America; and George Johnson, president of George Mason University.

We will hear first from the president of Swarthmore College. We will listen to all three witnesses and then have questions.

STATEMENT OF DAVID FRASER, PRESIDENT, SWARTHMORE COLLEGE

Mr. FRASER. Thank you, Mr. Simon and members of the subcommittee.

My name is David Fraser, and I am the president of Swarthmore College. Swarthmore is an independent, 4-year, coeducational college located in the suburbs of Philadelphia. Despite the relatively large endowment of the college, 60 percent of its 1,260 students require Federal financial aid under title IV of the Higher Education Act of 1965.

The amendment to the Military Selective Service Act that we are discussing makes registration for the draft a prerequisite for receiving this money. I would like to contrast for the subcommittee today the administrative burden that would be created for the college by two possible sets of rules.

The first is that set proposed by the Department of Education, in which the burden would be on colleges to prove the truth of students' statements about their registration before aid could be disbursed.

The second that I would like to discuss is a proposal that I would make to have names of students who have submitted statements of compliance forward to the Department of Education for verification by Federal personnel. Such a strategy would satisfy requirements of the law and would be consistent with the legislative intent to involve colleges as little as possible in the policing of registration laws. Most of the burden would be placed on the Department of Education and perhaps the Selective Service to provide verification.

Distribution of aid would not be held up pending verification, although any student found to have submitted a false affidavit would be required to return aid that he had received.

The table that I put up here shows the various tasks that the colleges would be called upon to do. It also indicates the effort that we believe each task would require in the coming year, both to initiate the program—and that is shown in the first column titled "System Startup"—and to deal with the situations of individual students.

Under either set of regulations, colleges would be required to train personnel in the new rules. These personnel include those in the financial aid office, admissions office, business office, and public information office. I estimate that, at Swarthmore, about 66 person hours, the first number under Department of Education, would be required for training under the Department's proposed regulations, and 42 hours under the college's proposal.

The college would need to spend considerable time explaining the new rules to parents and students. We shall need to rewrite our aid brochure and rewrite our descriptions of individual financial aid programs.

In addition, until the new brochures are printed, we shall have to spend more time with individual students to explain the new rules. This extra time is likely to amount to 15 minutes per student if the Department's rules are accepted, and 5 minutes per student of the college's proposal is accepted. Overall, these explanations are likely to take a total of 125 hours under the Department's plan and 58 hours under the college's plan.

The collection of affidavits from recipients of Pell grants of campus-based Federal aid will cause no additional burden on the college, because the college already collects one affidavit, the statement of educational purpose, from such students.

However, the Department of Education draft regulations would require the college, for the first time, to collect affidavits from recipients of GSL or PLUS loans; whereas under the present regulations and under the college's proposal, these affidavits are collected by the lenders. Preparing and mailing the additional affidavits and

sending out reminders when necessary are likely to consume some 113 hours of personnel time during the coming year.

The regulations proposed by the Department require the college to check the truth of a student's statement that he or she is not required to register against other information that the college may have. To perform this check this year will require a case-by-case review of students' central files, which are not now located in or retrievable by our financial aid office.

For subsequent years, we would modify our computerized file to permit more rapid retrieval of this information by financial aid personnel. This checking of records and system modification would require about 209 hours of work this year.

Collecting the Selective Service verifications of registration is likely to take up to 20 minutes of college personnel time for every student who does not have his verification at the time of applying for aid. It is likely that this would include the one-quarter of incoming freshmen who have recently turned 18 years old, and nearly all of the upper classmen, for a total workload of 122 hours.

Under the Department regulations, the college would be required to collect notarized temporary verifications from students who have recently turned 18 years old. The college would then be required to track these temporary verifications to make sure that the Selective Service documentation was received within 120 days and send followup notices where necessary.

As the college computing system cannot be modified in time for this year, a system of manual checking would have to be used. Collecting and tracking are likely to involve 60 person hours of work.

If the college is compassionate toward upper classmen who do not still have their Selective Service documents, it will accept temporary verifications from them also, and incur similar burdens of tracking and followup. These are likely to amount to 98 person hours in the coming year. The 98 is in parentheses because it is an option burden for the college.

The college's present bookkeeping system credits students' accounts automatically when title IV funds are received, but there is no feature that would allow provisional crediting of accounts as would be required for funds disbursed under temporary verifications as called for in the Department's draft regulations.

Performing a manual check for expiration of temporary verification before disbursing Pell grants or campus-based Federal aid or crediting GSL or PLUS funds to students' accounts would require 180 person hours during the first year. Establishing financial controls and redesigning computer programs to enable more efficient checking during subsequent years would take an additional 125 person hours this year. This would total the 305 listed on the table.

From those students whose temporary verifications expire, the Department's regulations would require the college to attempt to recover aid moneys already disbursed. The numbers of such students will depend greatly on the speed with which the Selective Service System provides students with duplicate verification documents. We estimate that college personnel may have to spend 30 hours on these recovery efforts, including 10 hours for those students who had recently turned 18. An additional 60 hours would be

spent in notifying lenders and the Secretary of Education about students whose temporary verifications had expired.

The Department's draft regulations do not specify the responsibilities that a college may have in regard to hearings requested by students whose aid is denied because they lacked documentation for registration. If the college refuses to accept temporary verification from students who have lost their original documents, there may be as many as 300 hours of college personnel time involved. If the college accepts temporary verifications from such students, the burden may drop to 25 hours.

The college proposal adds one burden not present in the Department's regulations, and that is listed at the bottom. The college would provide the names of all students who submit to it affidavits regarding draft registration. This is likely to require 40 hours of time by college personnel in the first year.

In total then, under the draft regulations issued by the Department of Education, the additional administrative burdens to a small college like Swarthmore in the first year of implementation of this law would be between 1,213 and 1,330 person hours of work, depending on whether or not the college elected the option to accept temporary verification from students who do not have their original Selective Service letters.

Under the simpler college proposal, the burden to the college would be only 141 hours. Thus, the Department's version of the regulations would require the college to hire an additional person to work between one-half and three-quarter's time just to administer these regulations. The college version, which even more closely reflects the letter of the law and the congressional intent, would require no additional hiring of personnel.

In summary, I hope that the Congress would consider repealing this law because it discriminates against poor and middle-income men, because it inflicts punishment without prior trial, because it threatens the spirit of free inquiry so essential to our colleges by restricting their ability to assemble student bodies on educational criteria alone, and because it unwisely makes access to education contingent on compliance with a totally unrelated law.

However, if the law stands, I strongly encourage that the implementing regulations reflect the letter of the law and the intent of Congress. The regulations I recommend would do so by having students affirm in an affidavit that they either have registered or are not required to register, by having the colleges and lenders forward to the Department of Education for verification, lists of students who have submitted these affidavits, and by permitting the timely disbursement of aid to students who have filed affidavits, and would not risk the holdup of aid from duly registered students that is certain to occur if the Selective Service System proves tardy in providing students with verification of their registration.

Furthermore, this alternative set of regulations would put the administrative burden of the law where Congress intended it, on the Federal Government, not in institutions of higher education.

Thank you very much.

Mr. SIMON. Thank you.

Incidentally, do you have a sample affidavit that you are talking about?

Mr. FRASER. I can prepare one for the committee. It would have two questions. One, it would say, "I have registered under the requirements of the Selective Service." The second question would be, "I am not required to register." The student would check one of the two boxes.

Mr. SIMON. We thank you.

[The prepared statement of David Fraser follows:]

PREPARED STATEMENT OF DAVID W. FRASER, PRESIDENT, SWARTHMORE COLLEGE, SWARTHMORE, PA.

My name is David W. Fraser and I am the President of Swarthmore College. On behalf of Swarthmore, I welcome the opportunity to point out to the members of the Subcommittee the burden that would be placed on the College by the regulations on financial aid and draft registration that have been drafted by the Department of Education.

Swarthmore is an independent, 4-year, coeducational college located in the suburbs of Philadelphia. It was founded in 1864 by the Religious Society of Friends (Quakers), although it no longer has any formal religious ties. The College prides itself on the distinctive character and quality of its academic program and on the high calibre of its 1,260 students, who are drawn from all over the United States. Despite the relatively large endowment of the College, 60 percent of its students require Federal financial aid under Title IV of the Higher Education Act of 1965.

An amendment to the Military Selective Service Act makes registration for the draft a prerequisite for certain students to receive this money under Title IV. I am not here today to emphasize the unfairness of a law that singles out less affluent men and limits their access to education while leaving untouched the full constitutional protections of others who differ only by accident of birth. Nor am I here to dwell on the unwise legislative linkage of education to military registration, although there seems to be little justification in asking those who are dedicated to the teaching of our young people to divert their efforts to the enforcement of Selective Service laws. I am here rather to talk about the specific problems that would be created by the proposed Department of Education regulations and to propose an alternative that fully meets the letter of the law and the legislative intent.

The law requires that students who must register certify their compliance with the registration requirements in order to receive Federal student aid. The Department of Education is required to verify the accuracy of these statements of compliance. Two possible strategies may be envisioned to implement the law. Names of students who have submitted statements of compliance might be forwarded to the Department of Education for verification by Federal personnel. Such a strategy would satisfy requirements of the law and would be consistent with the legislative intent to involve colleges as little as possible in the policing of registration laws; most of the burden would be placed on the Department of Education and perhaps the Selective Service System to provide verification. It is this strategy that I believe would be most workable. The second strategy would be to require colleges to collect affidavits of compliance and evidence of verification from students to assume primary responsibility for assessing such documentation, to design administrative control mechanisms to deal with possible delays in the Government's providing of initial and duplicate evidence of registration, and to implement systems for holding up financial aid for students who have not registered or who have not received such verification. The burden here is mostly on the colleges. Regrettably it is this second strategy that the Department has selected.

The draft regulations make requirements on students and colleges that are not called for in the law. Under the draft regulations, all students who get Federal aid—not just registration-age men—would have to submit an affidavit stating compliance with the registration laws; thus a woman will need to submit an affidavit saying she is a woman (and therefore not required to register). Furthermore, despite the absence of such a requirement in the law, the regulations would require that registration be verified in essentially every case before Federal monies are disbursed. This unnecessary and unwise requirement shifts the administrative burden of verification to colleges and leaves students subject to non-support should the Selective Service System prove unable to provide evidence of registration in a timely fashion. The legislative intent was clearly to minimize the burden on colleges but the regulations as drafted make the colleges, not the Federal government, responsible for the bulk of effort in administering the various provisions.

We at Swarthmore have made some attempt to estimate the burden that would be placed on the College if it had to administer the law under the Department of Education proposed regulations. The Table shows the various tasks that the College would be called upon to do. It also indicates the effort that we believe each task would require in the coming year, both to initiate the program and to deal with the situations of individual students. Contrasted with this is an estimate of the College effort that would be required to comply wih a simpler set of regulations that would fully meet the letter of the law and what I judge to have been the intent of Congress. These simpler regulations would have the College or student aid lenders ask students to indicate that they were either not required to register or had done so; and then forward a list of those students to the Department of Education for verification. Distribution of aid would not be held up pending verification although any student found to have submitted a false affidavit would be required to return aid that he had received.

Under either set of regulations, colleges would be required to train personnel in the new rules. These personnel include those in the Financial Aid Office, Admissions Office, Business Office and Public Information Office. I estimate that at Swarthmore about 66 person-hours of training would be required under the Department's proposed regulations and 42 hours under the College's proposal.

The College will need to spend considerable time explaining the new rules to parents and students. We shall need to rewrite our aid brochure, and rewrite our descriptions of individual financial aid programs. In addition, until the new brochures are printed, we shall have to spend more time with individual students to explain the new rules; this extra time is likely to amount to 15 minutes per student if the Department's rules are in effect and 5 minutes per student if the College's proposal is accepted. Overall these explanations are likely to take a total of 125 hours under the Department's plan and 58 hours under the College's plan.

The collection of affidavits from recipients of Pell grants or campus-based Federal aid will cause no additional burden on the College, because the College already collects one affidavit (the Statement of Educational Purpose) from such students. However the Department of Education draft regulations would require the College for the first time to collect affidavits from applicants of GSL or PLUS loans, whereas under present regulations and under the College's proposal these affidavits are collected by the lenders. Preparing and mailing the additional affidavits and sending out reminders when necessary are likely to consume some 113 hours of personnel time this coming year.

The regulations proposed by the Department require the College to check the truth of a student's statement that he or she is not required to register against other information that the College may have. To perform this check this year will require a case-by-case review of students' central files, which are not now located in or retrievable by our Financial Aid Office. For subsequent years we would modify our computerized files to permit more rapid retrieval of this information by Financial Aid personnel. This checking of records and system modification would require about 209 hours of work this year.

Collecting of Selective Service verifications of registration is likely to take up to 20 minutes of College personnel time for every student who does not have his verification at the time of applying for aid. It is likely that this would include the one-quarter of incoming freshmen who have recently turned 18 years old and nearly all of the upperclassmen, for a total work load of 122 hours.

Under the Department regulations the College would be required to collect notarized temporary verifications from students who have recently turned 18 years old. The College would then be required to track these temporary verifications to make sure that the Selective Service documentation was received within 120 days and send follow-up notices when necessary. As the College computing system cannot be modified in time for this year a system of manual checking would have to be used. Collecting and tracking are likely to involve 60 person-hours of work.

If the College is compassionate toward upperclassmen who do not still have their Selective Service documents, it will accept temporary verifications from them also and incur similar burdens of tracking and follow-up. These are likely to amount to 98 person-hours in the coming year.

The College's present bookkeeping system credits students' accounts automatically when Title IV funds are received, but there is no feature that would allow "provisional" crediting of accounts as would be required for funds disbursed under temporary verifications as called for in the Department draft regulations. Performing a manual check for expiration of temporary verification before disbursing Pell grants or campus-based Federal aid or crediting GSL/PLUS funds to students' accounts would require 180 person-hours during the first year. Establishing financial controls

and redesigning computer programs to enable more efficient checking during subsequent years would take an additional 125 person-hours this year.

From those students whose temporary verifications expire, the Department's regulations would require the College to attempt to recover aid monies already disbursed. The numbers of such students will depend greatly on the speed with which the Selective Service System provides students with duplicate verification documents. We estimate that College personnel may have to spend 30 hours in these recovery efforts, including 10 hours for those students who had recently turned 18. An additional 60 hours would be spent in notifying lenders and the Secretary of Education about students whose temporary verifications had expired.

The Department's draft regulations do not specify the responsibilities that the College may have in regard to hearings requested by students whose aid is denied because they lack documentation of having registered. If the College refuses to accept temporary verifications from students who have lost their original documents, there may be as many as 300 hours of College personnel time. If the College accepts temporary verifications from such students, the burden may drop to 25 hours.

The College proposal adds one burden not present in the Department's regulations. The College would provide the names of all students who submit to its affidavits regarding draft registration. This is likely to require 41 hours of time by College personnel in the first year.

In total, under the draft regulations issued by the Department of Education, the additional administrative burdens to a small college like Swarthmore in the first year of implementation of this law would be between 1213 and 1330 person-hours of work, depending on whether or not the College elected the option to accept temporary verification from students who do not have their original Selective Service letters. Under the simpler, College proposal the burden to the College would only be 141 hours. Thus the Department's version of the regulations would require the College to hire an additional person to work between one-half and three-quarters time just to administer these regulations. The College version—which even more closely reflects the letter of the law and congressional intent—would require no additional hiring of personnel.

In summary, I hope that Congress would consider repealing this law because it discriminates against poor and middle income men, because it inflicts punishment without prior trial, because it threatens the spirit of free inquiry so essential to our colleges by restricting their ability to assemble student bodies on educational criteria alone, and because it unwisely makes access to education contingent on compliance with a totally unrelated law.

However, if the law stands, I strongly encourage that the implementing regulations reflect the letter of the law and the intent of Congress. The regulations I recommend would do so, by having students affirm in an affidavit that they either had registered or were not required to register, by having the colleges and lenders forward to the Department of Education for verification, lists of students who have submitted these affidavits and by permitting the timely disbursal of aid to students who have filed affidavits—and would not risk the hold-up of aid from duly registered students that is certain to occur if the Selective Service System proves tardy in providing students with verification of their registration. Furthermore, this alternative set of regulations would put the administrative burden of the law where Congress intended it—on the Federal government, not on institutions of higher education.

Administrative burden to college	Department of Education proposal—Work with individual students					College proposal—Work with individual students				
	System startup (hours)	Per student effort (minutes)	Number of students	Total effort with students (hours)	Total burden (hours)	System startup (hours)	Per student effort (minutes)	Numberf of students	Total effort with students (hours)	Total burden (hours)
Training staff in new rules	66				66	42				42
Explaining compliance rules to students and parents	24	15	402	101	125	24	5	402	34	58
Collecting affidavits		10	676	113	113					
Confirming affidavits	10	15	797	199	209					
Collecting verifications		20	365	122	122					
Collecting and tracking temporary verification for those 18–18¼		60	60	60	60					
Collecting and tracking temporary verification for others without Selective Service verification (optional)		(45)	(130)	(98)	(98)					
Provisional crediting of accounts	125				305					
PELL/campus based		60	130	130						
GSL/PLUS		5	600	50						
Recovering Federal funds from those 18–18¼ and others (optional) with expired temporary verification		60	10(30)	10(30)	10(30)					
Notifying lenders and Secretary of those 18–18¼ and others (optional) with expired temporary verification		120	10(30)	10(30)	20(60)					
Preparing for hearing		60	300(25)	300(25)	300(25)					
Notifying Department of those submitting affidavits										41
Total person hours					1,330(1,213)					141

Mr. SIMON. Father Byron.

STATEMENT OF FATHER WILLIAM BYRON, PRESIDENT, THE CATHOLIC UNIVERSITY OF AMERICA

Father BYRON. Thank you, Mr. Chairman.

My name is William Byron, and I am the president of the Catholic University of America. I appreciate the opportunity to be here to speak to an issue that is bringing administration and students together once again in great concern over the implementation of registration legislation.

I would like to just make a couple of comments. I have a short statement and copies of it are here.

Mr. SIMON. Your statement will be entered in the record.

Father BYRON. I want to say first that I have no objection to registration for selective service. I went through that process once myself, and there is no objection in principle to that. I believe that all just laws should be obeyed by all citizens. I know that the Department of Education is insisting on that as they explain the regulations.

I respect, however, the right of conscientious objection to military service, as well as the tradition of civil disobedience on the part of those who act in good conscience with the willingness to face the legal consequences of their actions. I do not believe the requirement to register with Selective Service violates any of those rights.

I do not, however, think it appropriate to assign responsibility for enforcement of this law to financial aid officers in colleges and universities. They are officers of the educational institution, not of the Federal Government. They often function as advisers and counselors to student applicants, thus rendering an enforcement role all the more odious and inappropriate. Further, by fixing the point of enforcement in the area of financial aid related to need, the provision in question ignores the wealthy and emerges as patently punitive to needy students who fail to register.

It is not good Federal policy to require educational institutions to be enforcers of Federal laws or distributors of Federal penalties.

As it searches for a way to enforce its law with respect to affluent youth who refuse to register, as well as with those—rich or poor—who refuse to register with Selective Service and are also uninterested in registering for higher education, the Federal Government should, I think, look for an enforcement mechanism that respects the integrity and special character of our colleges and universities.

The Department of Education's regulation will certainly add to the personnel costs and time required to administer student aid on campuses. That has been documented by one very high quality and relatively small institution. Just multiply that across the country, and you can begin to get a sense of the additional burden that higher education will feel.

The regulation will also have a disproportionately adverse effect on independent colleges and universities where tuitions are, as we all know, higher and where delay in coming to a firm financial aid figure discourages applicants and drives them into the lower

priced—although I would say not necessarily lower cost, but the lower priced—State-supported institutions. Mr. Chairman, every week's delay in processing financial aid packages means a loss of applicants from the independent sector. Every dollar spent to meet the costs of increased paperwork and regulations means greater difficulty for financially strapped institutions in dealing with the troubled economy of higher education.

Mr. Chairman, it is my understanding that the Department of Education's regulation in this matter would require all students to file a form indicating whether or not they are subject to registration with selective service.

If I could just cite the paragraph in the Federal Register. It is 668.25, on page 3924 of the Federal Register, volume 48, No. 19, Thursday, January 27, 1983, the proposed rules. Here the Secretary is suggesting a checkoff where someone might indicate "I am not obliged because I am female," or "I am out of the age cohort," et cetera.

The point I am trying to make is it is simply going to multiply the paperwork, handling paper that is submitted by students who are not affected by this regulation. It is just adding to the problem for the colleges. It multiplies quite unnecessarily, I think, the burden of paperwork for colleges and universities. I would urge that those who are not required to register, by that, of course, I mean all females and those males whose age removes them from the subject group, be excluded from the regulation. If any forms must be filed, let the requirement fall only on the appropriate male age group.

Can the colleges be helpful to the Federal effort while refraining from an enforcement role and avoiding increased costs and undue delays in processing requests for financial aid? Perhaps they can. Not as helpful, I suspect, as the Department of Education would want them to be, but helpful in some measure.

As a result of the Buckley amendment, application forms for admission to institutions of higher education carry a checkoff space where students can affirm—that is to say, assert—or waive their right to see a recommendation or evaluation filed by another person in their regard. I would suggest that a similar opportunity be provided on financial aid application forms. The applicant could place a checkmark next to the following statement: "I am aware of my obligations under the Selective Service laws of the United States." Then male applicants who are unaware of their obligations could then and there be given information prepared by the Federal Government, not by the college. It would be inappropriate, in my judgement, for the college or university to be required in the context of financial aid applications to do anything more than raise the issue and offer the information.

Thank you, Mr. Chairman.

Mr. SIMON. Thank you.

[The prepared statement of William J. Byron, S.J., follows:]

PREPARED STATEMENT OF REV. WILLIAM J. BYRON, S.J., PRESIDENT, THE CATHOLIC UNIVERSITY OF AMERICA

Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to present my views concerning the Department of Education's regulation to im-

plement provisions in the Department of Defense Authorization Act of 1983 (P.L 97-252) mandating that no student who is required to register with Selective Service and fails to do may receive Federal student assistance under Title IV of the Higher Education Act of 1965, as amended.

By way of preamble, let me say that (1) I have no objection to registration for Selective Service, and (2) I believe that all just laws should be obeyed by all citizens. I respect, however, the right of conscientious objection to military service as well as the tradition of civil disobedience on the part of those who act in good conscience with the willingness to face the legal consequences of their actions. I do not believe the requirement to register with Selective Service violates any of these rights.

I do not, however, think it appropriate to assign responsibility for enforcement of this law to financial aid officers in colleges and universities. They are officers of the educational institution, not of the Federal Government. They often function as advisers and counselors to student applicants, thus rendering an enforcement role all the more odious and inappropriate. Further, by fixing the point of enforcement in the area of financial aid related to need, the provision in question ignores the wealthy and emerges as patently punitive of needy students who fails to register.

It is not good Federal policy to require educational institutions to be enforcers of Federal laws or distributors of Federal penalties.

As it searches for a way to enforce its law with respect to affluent youth who refuse to register, as well as with those—rich or poor—who refuse to register with Selective Service and are also uninterested in registering for higher education, the Federal Government should, I think, look for an enforcement mechanism that respects the integrity and special character of our colleges and universities.

The Department of Education's regulation will certainly add to the personnel costs and time required to administer student aid on campuses. This will have a disproportionately adverse effect on independent colleges and universities where tuitions are higher and where delay in coming to a firm financial-aid figure discourages applicants and drives them into the lower-priced, state-suppported institutions. Mr. Chairman, every week's delay in processing financial-aid packages means a loss of applicants from the independent sector. Every dollar spent to meet the costs of increased paperwork and regulations means greater difficulty for financially-strapped institutions in dealing with the troubled economy of higher education.

Mr. Chairman, it is my understanding that the Department of Education's regulation in this matter would require all students to file a form indicating whether or not thay are subject to registration with Selective Service. This multiplies quite unnecessarily the burden of paperwork for the colleges and universities. I would urge that those who are not required to register (i.e., all females and those males whose age removes them from the subject group) be excluded from the regulation If any forms must be filed, let the requirement fall only on the appropriate male age group.

Can the colleges be helpful to the Federal effort while refraining from an enforcement role and avoiding increased costs and undue delays in processing requests for financial aid? Perhaps. As a result of the Buckley Amendment, application forms for admission to institutions of higher education carry a check-off space where students can affirm or waive their right to see a recommendation or evaluation filed by another person in their regard. I would suggest that a similar opportunity be provided on financial aid application forms. The applicant could place a check mark next to the following statement: "I am aware of my obligations under the Selective Service laws of the United States." Male applicants who are unaware of their obligations could there and then be given information prepared by the Federal Government. It would be inappropriate, in my judgment, for the college or university to be required, in the context of financial aid applications, to do anything more than raise the issue and offer the information.

Mr. SIMON. Our final witness of this panel is George Johnson, president of George Mason University.

STATEMENT OF GEORGE JOHNSON, PRESIDENT, GEORGE MASON UNIVERSITY, ON BEHALF OF AMERICAN COUNCIL ON EDUCATION

Mr. JOHNSON. Thank you, Mr. Chairman and members of the subcommittee.

My name is George Johnson, and I am president of George Mason University. I am appearing today on behalf of the American

Council on Education, an organization representing over 1,500 colleges and universities and associations in higher education, and as chairman of its ad hoc committee on draft registration, which consists of college and university presidents, counsels, admissions officers, and student financial aid officers.

The committee was established to aid the higher education community in responding to the proposed regulations issued pursuant to the recently enacted amendment to the Military Selective Service Act which provides that any student who must register with the Selective Service System and fails to do so is ineligible for student financial assistance provided under title IV.

The higher education community opposed this amendment on the grounds that it is inappropriate for student aid to be linked to draft registration, in that it will unduly entangle schools in the administration, policing and enforcement of draft registration, and Federal criminal laws.

The constitutionality of this provision is currently being tested in the courts and is beyond the focus of this testimony. We would like today, however, to concentrate our comments solely on our concerns with the proposed regulations issued by the Department of Education on January 27.

We have several major concerns with these proposed rules. We believe that they exceed the statutory authority of the Department of Education, that they have inherent technical difficulties, will impose on institutions an excessive amount of paperwork, and that an attempt to implement by July 1, 1983, will create an inordinate delay and confusion for student recipients.

The statute requires that a student who must register with selective service, in order to receive any title IV aid, shall file with the institution which he intends to attend or is in attendance, a statement of compliance. The plain meaning of this provision would seem that the law is satisfied and eligibility for Federal assistance is established when persons required to register for selective service submit a statement of compliance to their school. Moreover, the law contemplates that the disbursement of title IV funds may occur when this simple requirement is satisfied.

There is an additional "verification" provision of the new law that requires the Secretary of Education, in agreement with the Director of Selective Service, to prescribe methods for verifying statements of compliance filed with schools. This provision further states that such methods of verification may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of Selective Service of those persons who have submitted such statements of compliance. The legislative history makes clear that Congress intended this to be the maximum verification burden to be imposed on educational institutions, and that selective service and the Department of Education were to shoulder any additional burdens.

Most critically, the proposed regulations go far beyond that law by requiring schools to verify, before any financial aid is disbursed, that students have actually complied with their registration responsibilities. In imposing the preaward verification obligation, the Department of Education has acquiesced in a selective service interpretation. But this interpretation rests on a supposed congres-

sional intent which is evident neither from the statute itself nor from its legislative history.

To prohibit the awarding of student aid in advance of verification, without considering other means of verification, including methods that the Congress clearly contemplated, flies in the face of congressional intent. Moreover, the proposed procedure which requires a student to furnish a copy of his selective service registration letter places the verification burden on the school, also contrary to the clear intent of the Congress. We fear that there will be massive and widespread disbursement delays during the 1983-84 school year.

During this phasein period, schools will be required to verify the registration of all aid applicants, not just the entering class. Many schools simply lack the resources to cope with this new and burdensome set of procedures. The entire system depends on selective service's ability to provide evidence of registration for hundreds of thousands of students promptly enough so there will be no disbursement delays. Selective service says it can provide such acknowledgement letters within 14 days of receiving a request. It has never described how it will do so and its system is untested. It is no wonder that financial aid administrators throughout the country fear chaos if these verification procedures are adopted.

It is the position of the American Council on Education and its ad hoc committee that the certification provision alone satisfies the statutory intent and that verification can be conducted by the Department of Education and/or selective service through a review of the statements of compliance furnished by the students to their schools.

In administering title IV programs, schools have traditionally relied on written representations and certifications of aid without having to verify those representations. Indeed, it is a criminal offense to make factual misrepresentations in applying for Federal financial aid of any sort. We believe that it would be a violation of congressional intent, as well as poor public policy, to impose a sweeping school-administered verification program to identify a small segment who have violated both the draft registration requirement and the criminal laws forbidding false statements.

The proposed regulations also present several technical difficulties. To facilitate the flow of student aid, institutions would be given the option to accept affidavits as temporary verification where the student does not have the appropriate selective service documentation confirming his registration. Whenever this process is utilized—one, the affidavits must be notarized; two, payments or loan certifications may be extended for only one payment period; and, three, if the student fails to provide proper documentation within 120 days, the school must notify the student, suspend all aid, attempt to recover aid already advanced, and report the facts to the Secretary of Education and any lenders involved. This procedure puts the school in the position of having to make tentative determinations of guilt, to implement aid cutoffs, and to report to the Department of Education individuals who have not registered for the draft. All of this places institutions in the role of policemen, something not contemplated by Congress.

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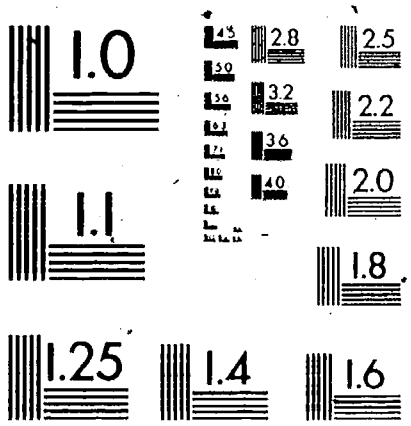


MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

The transition procedures for advancing or committing title IV funds and loan authorities prior to July 1, 1983, as well as the daily operation of the verification procedure itself, would cause unnecessary paperwork burdens to colleges and universities. This is contrary to the clear intent of the House/Senate conferees on the legislation, who stated in their report that they "* * * strongly urge that such regulations and procedures necessary to implement this provision minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards."

Other people have already elaborated on the paperwork burden, and the American Council on Education will provide complete documentation in our response to the proposed regulations and will furnish a copy of that response to your subcommittee for inclusion in the record.

If the Department of Education fails to abide by the plain meaning of the statutory language and congressional intent, and refuses to modify the verification procedures so that institutions are relieved of the unnecessary burdens associated with these proposed rules, we are also concerned that protracted litigation will ensue.

Institutions will very shortly start notifying students of their aid packages for the 1983–84 academic year. We request that the effective date of the legislation be amended to a date at least 6 months from the date of final promulgation of the regulations so as to enable colleges and universities to prepare adequately for its implementation. Additional time will be necessary in order to avoid massive confusion in the delivery of financial aid to all needy students.

We very much appreciate the opportunity to appear before you today. We reiterate our willingness to work with the members of the subcommittee to make implementation of this law reasonable and workable.

Thank you.

Mr. SIMON. Thank you very much.

[The prepared statement of George W. Johnson follows:]

PREPARED STATEMENT OF DR. GEORGE W. JOHNSON, PRESIDENT, GEORGE MASON UNIVERSITY

Mr. Chairman and Members of the Subcommittee:

My name is George W. Johnson, and I am president of George Mason University. I am appearing today on behalf of the American Council on Education, an organization representing over 1,500 colleges and universities and associations in higher education, and as Chairman of its Ad Hoc Committee on Draft Registration, which consists of college and university presidents, counsels, admissions officers, and student financial aid officers.

The committee was established to aid the higher education community in responding to proposed regulations issued pursuant to the recently enacted amendment to the Military Selective Service Act included in the Department of Defense Authorization Act of 1983. The amendment provides that any student who must register with the Selective Service System and fails to do so is ineligible for student financial assistance provided under Title IV of the Higher Education Act of 1965.

The higher education community opposed this amendment on the grounds that it is inappropriate for student aid to be linked to draft registration. This amendment causes schools to be unduly entangled in the administration, policing, and enforcement of draft registration and federal criminal laws.

The constitutionality of this provision is currently being tested in the courts and is beyond the focus of this hearing. We would like today, however, to concentrate our comments solely on our concerns with the proposed regulations issued by the Department of Education on January 27, 1983, to implement this amendment to the Military Selective Service Act.

We have several major concerns with these proposed rules. We believe that they exceed the statutory authority of the Department of Education. They have inherent technical difficulties and will impose on institutions an excessive amount of paperwork. In addition, the 30-day comment period does not accord the higher education community sufficient time to appraise fully the impact of the proposed regulations. We also believe a July 1, 1983, implementation date will create delays and confusion for student aid recipients.

The statute requires that a student who must register with Selective Service, in order to receive any Title IV aid, shall file with the institution which he intends to attend, or is attending, a statement of compliance. The plain meaning of this provision is that new eligibility and filing requirements extend only to persons required to register with Selective Service, and the law is satisfied and eligibility for federal assistance is established when such persons submit a statement of compliance to their school. Moreover, the law contemplates that disbursement of Title IV funds may occur when this simple requirement is satisfied.

There is an additional "verification" provision of the new law that requires the Secretary of Education, in agreement with the Director of Selective Service, to prescribe methods for verifying statements of compliance filed with schools. This provision further states that such methods of verification may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of Selective Service of persons who have submitted such statements of compliance. The legislative history makes clear that Congress intended this to be the maximum verification burden to be imposed on educational institutions and that Selective Service and the Department of Education were to shoulder any additional burdens.

Most critically, the proposed regulations go far beyond the law by requiring schools to verify, before any financial aid is disbursed or loan eligibility is certified, that students have actually complied with their registration responsibilities. In imposing the pre-award verification obligation, the Department of Education has acquiesced in a Selective Service interpretation of the new law which requires such a program of pre-disbursement verification. But this interpretation rests on a supposed congressional intent which is evident neither from the statute itself nor from its legislative history.

To prohibit the awarding of student aid in advance of verification, without considering other means of verification, including methods that the Congress clearly contemplated, flies in the face of congressional intent. The proposed verification procedure, which requires a student to furnish a copy of his Selective Service registration letter, places the verification burden on the school, contrary to the clear intent of the Congress. We fear there will be massive and widespread disbursement delays during the 1983-84 school year for three reasons.

First, schools will be required to "verify" the registration of all aid applicants, not just the entering class, during this phase-in period. Second, many schools simply lack the resources to cope with this new and burdensome set of procedures. Third, the entire system depends on Selective Service's ability to provide evidence of registration for hundreds of thousands of students promptly enough so there will be no disbursement delays. Selective Service says it can provide such acknowledgment letters within 14 days of receiving a request. It has never described how it will do so, and its system is untested. It is no wonder that financial aid administrators throughout the country fear chaos if these verification procedures are adopted.

It is the position of the American Council on Education and its Ad Hoc Committee that the certification provision alone satisfies the statutory intent, and that verification can be conducted by the Department of Education and/or Selective Service through a review of the statements of compliance furnished by students to their schools.

In administering Title IV programs, schools have traditionally relied on written representations and certifications of aid applicants without having to "verify" those representations. Indeed, it is a criminal offense to make factual misrepresentations in connection with applying for federal financial aid of any sort (18 U.S.C. § 1001). We believe that it would be a violation of congressional intent, as well as poor public policy, to impose a sweeping, school-administered verification program to identify a small segment of students who have violated both the draft registration registration requirement and also criminal laws forbidding false statements.

The proposed regulations also present several technical difficulties. To facilitate the flow of student aid, institutions would be given the option to accept affidavits as temporary verification where the student does not have the appropriate Selective Service documentation confirming his registration. Whenever this process is utilized: (1) the affidavits must be notarized; (2) payments or loan certifications may be

extended for only one payment period; and, (3) if the student fails to provide proper documentation within 120 days, the school must notify the student, suspend all aid, attempt to recover aid already advanced, and report the facts to the Secretary of Education and any lenders involved. This procedure puts the school in the position of having to make tentative determinations of guilt, to implement aid cut-offs, and to report to the Department of Education individuals who have not registered for the draft. all of this places institutions in the rôle of policemen, something not contemplated by the Congress.

There are numerous instances throughout the proposed regulations in which the transition procedures, where Title IV funds and loan authorities are advanced or committed prior to July 1, 1983, and various proposals for the daily operation of the verification procedure itself, would cause unnecessary paperwork burdens to colleges and universities. This is contrary to the intent of the House/Senate conferees on the legislation, who stated in their report that they:

". . . Strongly urge that such regulations and procedures necessary to implement this provision minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards." (Congressional Record, August 16, 1982, page H6001.)

Other individuals will elaborate on the paperwork burden, and the American Council on Education will provide complete documentation of our concerns with additional paperwork requirements in our response to the proposed regulations. We will furnish a copy of our response to your Subcommittee for inclusion in the record of this hearing.

If the Department of Education fails to abide by the plain meaning of the statutory language and congressional intent, and refuses to modify the verification procedures so that institutions are relieved of the unnecessary burdens associated with these proposed rules, we are concerned that protracted litigation will ensue.

We request that the effective date of the legislation be amended to a date at least six months from the date of final promulgation of the regulations, so as to enable colleges and universities to prepare adequately for its implementation. Many schools will have great difficulty in complying with the time frame for implementation of the new regulations. Additional time will be necessary in order to avoid massive confusion in the delivery of financial aid to all needy students.

Institutions will very shortly start notifying students of their aid packages for the 1983-84 academic year and will also begin certifying loan applications. It will create a large burden to have to re-check all these students' files and request certifications and verification. Any student who starts the process of obtaining a loan may face unreasonable delay.

I should also report the concern of several institutions that a student be permitted to indicate, at the time of registration with Selective Service, that he intends to claim conscientious objector status at such time as a draft is instituted. This would enable the government to accomplish its goal of full registration, while enabling young men to indicate their intent to seek conscientious objector status. In addition, there are concerns that the proposed regulations would allow aid denials or cut-offs before a hearing, even where students have certified their registration and the Selective Service is to blame for delays in "verifying" registration.

We appreciate the opportunity to appear before you today and stand ready to answer any questions you may have concerning our statements. We reiterate our willingness to work with the members of the Subcommittee to make implementation of this law reasonable and workable.

Mr. SIMON. I thank all three of you for your testimony.

Father Byron, I don't happen to like the law, but we have to live with the law. I am not sure what you are suggesting complies with the law. I am interested in how you defend this as complying with the law.

Father BYRON. If you understand that the enforcement role for the colleges is part of the law, then what I am suggesting would not comply with the law. But I think there is a question.

Mr. SIMON. No, I am not suggesting that. Would you read the affidavits again that you are suggesting?

Father BYRON. It was a modification of what a student, the applicant for financial aid, would be expected to do. The quotation is this on checkoff on a financial aid form; "I am aware of my obliga-

tions under the laws of the United States." The issue would be raised for the student. If the student is plainly unaware of the responsibilities, a provision would be made to give the student at that time a explanation prepared by the Department of Education or the Selective Service Department explaining what those obligations were. To check that box, which any student could do after receiving the pamphlet, would not lead a student into a perjury situation and it would keep the institution free of an enforcement role.

Mr. SIMON. As I understand you, President Fraser, you are suggesting a little more than that. President Byron is not requiring the student to say "I have registered." That is what the law, as I understand it, requires. What you are suggesting is the burden of enforcement still be with the Federal Government, but that the student has to say affirmatively, "I have registered." Is that correct?

Mr. FRASER. My reading of the law is that a student who must register if he is to get aid under title IV has to indicate that in fact he has complied. As I read it, even with the objections I have to the law, it seems to me that that student would have to at least check off a box that says, "I have registered."

In my suggestion, I made the additional suggestion that somebody who is not required to register check off a box saying "I am not required to register." Otherwise, it is hard for our financial aid people to know that everybody who is supposed to have checked the box has in fact. It is just hard for us to track.

That, in fact, is not required, as I read the law. I added that only to allow our people to make sure that people have filled out the box. I would be happy to drop that if the Department of Education is willing.

Mr. SIMON. I think what we are dealing with now is where can we go that will satisfy the Department of Education and Selective Service. Is that your suggestion?

I would be interested in hearing from President Johnson.

Mr. JOHNSON. The ad hoc committee of the American Council accepts the compliance form that the Secretary of Education has promulgated in the draft regulations. We accept the position that Dr. Fraser has enunciated as compliance with the law. We do not want to go further than that in accepting obligations for verification. We feel that simply forwarding that statement of compliance or a list of those students who have submitted such a statement to the Secretary suffices under the law.

Mr. SIMON. President Byron, as I understand you, you are not suggesting that any list be fowarded or anything like that?

Father BYRON. No, quite the opposite. I would concede that the Department of Education is not likely to take my suggestion with enthusiasm. I think it is question of whether it is good law that we have here.

Mr. SIMON. The subcommittee is really faced with two questions. Number one, is it good law?

Father BYRON. I think not.

Mr. SIMON. It is probably the opinion of the majority of this subcommittee that it is not good law. But it is also probably the opinion of the majority of the subcommittee that we are going to have to live with the law, and we have to make the best of it.

Mr. Petri.

Mr. PETRI. I have one or two questions. First, I can't help observing that if this were a Commerce Committee hearing and you three were businessmen talking about the burden of environmental rules and regulations—you talk about the administrative burden and cost benefit and difficulty and chaos—it would be about the same.

So, we are sympathetic, but I wonder if you aren't overblowing the amount of time and work and everything that would be required. I mean, if you talk to 400 students for 15 minutes, you can look at it as adding up each 15 minutes and say it is going to take hours, but, on the other hand, only 15 minutes has elapsed.

Mr. FRASER. This is all on person hours of actual time spent. I have spent a great deal of time with our financial aid officer trying to be brutally honest in our estimations of what the time would be. There are a couple of numbers where I think we have underestimated the time on a couple of items. But our financial aid officer thinks that they are accurate estimates.

That 15 minutes is 15 minutes with a student, between a financial aid officer and a student. That is going to be repeated again and again and again, because each one is going to have a different set of questions.

We have in the 24 hours of time for explaining compliance rules to students and parents group sessions in which a 1-hour session is counted as a single hour. But we expect to have to spend a great deal of time on one-on-one discussions about these issues.

Father BYRON. On the commerce parallel, we, of course, are nonprofit institutions and we can't take business expenses for the additional costs.

Mr. PETRI. A lot of businesses, unfortunately, these days can't either because they have no profits against which to deduct.

Father BYRON. From an administration that is trying to take the burden off their backs, too.

Mr. PETRI. OK. Still, I guess I don't understand some of the figures very well.

You are collecting affidavits from 676 students and you are explaining it to 402 students, so you are evidently going to collect it from 274 students that you are not explaining it to? Is it necessary to explain it? Wouldn't you explain it to everyone or not explain it to everyone?

Mr. FRASER. Not necessarily, no. We don't expect every student in the college who has to complete an affidavit to need an individual discussion with our financial aid officer over those compliance rules. We hope that in the group sessions we will be able to give sufficient information to enable some of our students to comply without additional meetings. But we do expect that a considerable number of the remainder will have questions that will have to be explained.

Mr. PETRI. Finally, I am not sure, but I understand that they proposed a model statement of educational purpose and registration compliance in the Federal Register, vol. 48, No. 19, January 27, 1983, which would be on the same piece of paper as the rest of it. I don't understand how it could take all kinds of extra time to mail all of these things in when you are mailing it in anyway.

Mr. FRASER. Under the present system, the Pell grants and campus-based aid programs involve the college collecting such a statement of educational purpose. As I said in my testimony, that will involve no more time for the college to get an affidavit or a statement of compliance regarding the draft.

But under the present laws, the Guaranteed Student Loan program and PLUS loan program affidavits are submitted to lenders, not to the college. Yet, under the Department of Education draft regulations, colleges are now going to have to mail out and retrieve those affidavits, and that will add considerable burdens.

Mr. PETRI. Thank you.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

The question has already been discussed regarding whether the law is good or not. Assuming, however, for the present discussion that the law will remain, and each of you have covered some specific recommendations on the implementation of the law—I just need to review those and ask the question, are there other specific areas, if you knew that you were to implement the law, and what recommendations would you have?

I understand from review and from your chart that explaining to the students and preparing your staff to do so and notifying the Department and submitting a list of those who have filled out their affidavits, would be costly. I believe the recommendation from Mr. Johnson was to delay the implementation to allow the schools to gear up to it. I believe that was, as I summarized basically your testimonies, the extent of the recommendations of implementation as far as schools were concerned.

Are there other specific ways or areas where you feel that implementation could be better done?

Mr. FRASER. The one area that I think is of most importance because it involves the greatest amount of burden is the area of requiring the verification of students' statements prior to disbursing Federal aid. We don't do that, for example, in regard to students' statements that they are citizens of the United States. We don't hold up aid until we verify their statement that they are a citizen of the United States. I see no reason why we should do it here. It is not required in the law, but the Department of Education draft regulations have that as a linchpin to their argument for putting the burden, the administrative burden, on the colleges.

I think that if we could remove that—it is unnecessary since it is not in the law—and allow us to accept at face value students' statements that they have registered or are not required to register and permit the Department of Education to carry out that verification in conjunction with the Selective Service System, it would simplify the process tremendously.

Mr. PACKARD. If these minimum requirements of implementation were used, what would that do to enforce registration differently than what is already being done? Would it do any more?

Mr. JOHNSON. I think that in our proposal that the implementation be made as elegantly simple in conformity with the law as possible; the burden for enforcing registration falls clearly on selective service and not on the universities. So the answer to your question is how effective selective service can be in matching the record of

those students who have filed compliance statements and their own records.

Mr. PACKARD. The real question is would this provide any additional information, going through the minimum effort? Would this provide any more information to the selective service than what they already have?

Mr. JOHNSON. It will accommodate the law and provide a list of those students who are accepting aid under title IV who have signed a statement that they have registered for selective service. That is the law.

Mr. PACKARD. OK. Do any of you three gentlemen know what the total male population that falls within the registration age group is now enrolling in colleges and universities in the country?

Father BYRON. I would take a guess, but it is only a guess. I would say it is probably about half.

Mr. PACKARD. I would guess it would be probably be less than that.

Father BYRON. The participation rates of high school graduates going on to college have been increasing recently, and that is sometimes a function of the economy.

Mr. PACKARD. So, in fact, the present law that requires student aid controls would reach less than half, in your judgment, of the actual number of people who may or may not register.

Father BYRON. Yes.

Mr. FRASER. And even a smaller proportion of that, since not all of them get financial aid.

Mr. PACKARD. One of you—I don't recall which one—referred to the constitutionality of it and the fact that the courts are now addressing that. Is that the question as to whether constitutionally they are requiring something of the population of draft age and not of others?

Mr. FRASER. That is one of the issues, that by singling out poor and middle-income students and singling out men, that it is unfair and violates the constitutional protections against due process.

Mr. PACKARD. Have any of your three universities made any efforts to this point in implementing the regulation by setting up a structure and beginning forms, and so forth?

Mr. FRASER. We have begun in that we have analyzed the requirements that will be placed on us, and that is a very important first step. So we have begun in the analysis and training of staff on the new rules. We have not started designing brochures yet.

Mr. PACKARD. Of course, as you have evaluated how it would affect your school, that, of course, is the purpose of your concern.

Mr. JOHNSON. Yes. I think that experience is duplicated over and over again by the financial aid officers who, through their own association, I think, are taking a position on these regulations.

Mr. PACKARD. Are there any existing procedures in your schools—or in any universities or colleges that you might be aware of—to determine whether students have or have not registered for the draft?

Mr. JOHNSON. I am not aware of any.

Mr. PACKARD. There are no forms at the present time?

Mr. JOHNSON. I am not aware of any.

Mr. PACKARD. This would be the first attempt in that effort?

Mr. JOHNSON. Yes

Mr. PACKARD. Thank you very much.

Mr. SIMON. We are pleased to have a new member of our subcommittee here, Mr. Goodling.

Mr. GOODLING. Thank you, Mr. Chairman. I have just a couple comments.

First of all, personally, I don't believe you should register in peacetime, and I don't believe there should be a draft in peacetime. Now I realize that is totally opposite to the little bit of the free world that is left where most every other country demands not only that you register, but that you also serve. You automatically know that at age so and so, you are off to service for a time.

I had a colleague yesterday who was totally embarrassed at an Intelligence Committee meeting because he made the statement, "Switzerland doesn't have an army." Switzerland has the most sophisticated armed forces in the world and they also have conscription. But my personal opinion is that it is something in a free country that isn't needed.

Regardless of my personal opinion, this is the law. I agree with the chairman that I don't see that it is going to be changed. Now how do we make it workable and how do we take the collection part off of your back, or the enforcement part off of your back, where I don't believe it belongs.

Even though I think the president from an outstanding college and from an outstanding State used the worst-case scenario—I would do that, too, if I were making a point—I agree with him that I think a notarized affidavit with perhaps a 30-day period in which you had to get your letter in the file should suffice, and that you should not be in the business of then trying to enforce the law. You know very well that you will be punished severely if in fact you circumvent the law by paying little attention to it. But I don't think you should be in the business of enforcing it.

I would hope that our committee could come up with some recommendations along the line of—first of all, the 6-month delay, I think, is very important, after the final regulations are written because, for 23 years; I sat on your side of the table and I have always gotten these directives of what I am supposed to do 6 months to a year after I was already supposed to have implemented them. So I believe the 6-month delay is important.

I think that the notarized affidavits with perhaps a 30-day period where they bring the letters and put them in a file—then I think that is the end of your responsibility. If they have broken the law, then I think it is the the law enforcement agencies' responsibility to do something about that.

Mr. FRASER. I would like to speak to that specific proposal. I think that would give us all of the problems that I list on the left-hand side. If we were to require a notarized affidavit and only consider that as a temporary one to be followed by a letter from Selective Service, we would have to implement all those provisional crediting of accounts and all of the tracking system.

Mr. GOODLING. I am not talking in relation to whether you move ahead. You would move ahead, of course, with your disbursement.

I think the only proposal I am suggesting and the only problem you would have is some clerk who would naturally check off when

the person brought in their letter, stick it in the file, and at the end of the month, go through that file—she wouldn't go through everybody's file, because she has already checked off 99 percent of the people who have already turned theirs in. She is only looking at 1 percent of that file to see whether they have turned theirs in. Then you report the fact that they didn't turn it in. Then it is somebody else's responsibility to enforce it, not your responsibility.

I don't see that there would be much work involved for that kind of thing. It would just be the matter of a clerk checking off that they have turned it in.

First of all, I think a large percentage will have that letter, unless it is totally different than it used to be. Of course, my daughter always says that is ancient history when I talk about the good old days. They are going to have that letter. As soon as they realize that you are going to need that letter, mother and dad are going to make darn sure that the letter is saved, and so on, and that it is going to be available.

I don't think there will be a problem as large as we may think in relationship to who does have the letter. But if they have a 30-day period to recover that—all they have to do is bring it to you and you can stick it in the file. At the end of that month, that grace period, you indicate to the Department of Education or the Justice Department, whoever it is, "Here are 10 names of students that didn't turn in their letters. What are you going to do about it?" That is not what are you going to do about it; it is what are they going to do about it.

It would simplify the problem. Maybe I am oversimplifying it. Usually, in the Federal Government they say that is too practical and you don't do things that way.

Are there any comments?

Mr. FRASER. It could be made so much simpler, though, by merely having the student say "I have registered," or have the student say "I don't have to register," and by having the college forward a list of those names to the Department of Education. That does not require our clerk to continually checkoff names and to receive notarized statements and letters for the selective service. It gets the problem completely off the colleges and on the Department of Education, which I thought Congress wanted.

Mr. GOODLING. You are talking about a notarized statement.

Mr. FRASER. No, I don't see any need for notarizing a statement, as long as the student says "I have registered."

Mr. GOODLING. I would probably take issue with that. I think there is no reason to have it at all then. Then we might as well forget about it. It is not very painful to just check off a list. We get those checkoffs all the time. We are getting 10 percent ones now by the bundles. I would think that would be totally painless and just a waste of time altogether, and I would do away with it completely. That, of course, is what you would like to do. But if it is going to be there—just to have someone say "I registered" or "I don't have to register"—particularly to say "I don't have to register,"—whose version is that? Is it mine? Is it my neighbor's? Whose version is that?

Mr. JOHNSON. Congressman, it is already a criminal offense to file a false statement in application for financial aid. So to notarize

an affidavit really compounds the opportunities for perjury prosecution, it seems to me.

Second, I am not clear whether your suggestion——

Mr. GOODLING. I would agree with what you are saying, except that, unless you really spell that out to the student—the notarized statement, in my estimation, would spell it out.

Mr. JOHNSON. I am not clear on whether your suggestion addresses what the American Council Committee regards as a central issue. Namely, that the law, in our reading, does not require predisbursement verification. Compliance on the part of the student, the statement of compliance, whether it is notarized or what have, you, is one thing. But all students have to be verified by the institution before the institution can disburse title IV funds, and that is where the bind occurs.

Mr. GOODLING. In my comments, I was saying that I think where we as a committee should change that legislation is to take any responsibility that you have for verification other than the letter, and then from that point on, it is not your responsibility. From that point on, it is not your responsibility. You have done what you were supposed to do. You were supposed to make sure that they have indicated through the letter that they have met their obligation or do not have to meet that obligation. But when you say they do not have to meet it, that is where I think something notarized or something more than just a checking off is needed to meet that obligation. I think you need a little something more at that particular point.

I think it is needed also to protect the student. If the student feels that is tremendously painful to check that block, and you don't have the time to sit down and counsel that young person as to what happens if you falsely check that, I think you should have a notarized statement. But I don't believe you should be put in a position of verifying other than saying that you have that letter or that you have that notarized statement that they have met their obligations, and that is it.

Mr. SIMON. If the Chair could just comment on the dialog that has just taken place, the State of Illinois dropped the notary requirement on a great many things and found no change in compliance with the law or that there was any appreciable change in behavior.

I do think—and you are correct, President Johnson—that the law provides that, if you make that checkoff, you are subject to 5 years in prison and a $10,000 fine under the present law, because you are then willfully obtaining Federal funds through fraudulent means.

I do think some kind of a statement may be—and maybe this is a compromise bill—some kind of a statement saying incorrect checking of the following form could subject you to prosecution, please read this form carefully before signing it, or something along that line——

Mr. GOODLING. My whole idea was for the protection of the student. I think that if you make it so painless, they may not realize what they could be getting themselves into.

Mr. SIMON. Right.

Mr. GOODLING. That is the only reason I suggested any kind of notarizing. They would know that it is a really serious thing.

Mr. SIMON. I think we should have that kind of a warning at the top.

Since the three of you have been testifying, I have been rereading the law. It seems clear to me that what two of the three of you are suggesting, with all due respect to Father Byron, is clearly in line with the mandate of the law. I don't think what Father Byron is suggesting would comply with the law. I think that to go in the direction he is suggesting, we would have to change the law. But clearly it would make it much easier for the colleges and universities of this Nation.

It does place an additional burden on the Federal Government. I assume the Department of Education simply would turn those lists over to Selective Service. They would then have to make computer comparisons or something like that. There would be that additional burden.

The question is do you place that burden on the Federal Government or do you place it on the colleges and universities? I gather that the panel is fairly certain on where that burden should be placed.

Mr. Packard.

Mr. PACKARD. Mr. Chairman, with your permission, I would like to pursue a little different area that has not been discussed very much here.

We have talked about the burden placed on the colleges and universities and some alternatives that would make their burden lighter. Mr. Goodling brought out something that I would like to get an evaluation on as it relates to the student. We are seeing it—at least this morning—the general scenario the student would have to follow.

If we followed the proposal of simply explaining compliance and notifying the Department of those complying, what would the students do in reference to enforcement? If the law remains as it is where they cannot receive student aid without complying, would the schools then hold in abeyance those few students who have not registered any aid for school attendance? Would they have to delay until they get clearance for student aid or whatever?

Mr. JOHNSON. If a student could not file a valid certification that he had registered for the draft as he is required under the law, then universities would be precluded by the law from disbursing any title IV student aid. That is the only and sole effect.

Mr. PACKARD. They would not be precluded from enrolling them in school.

Mr. JOHNSON. No.

Mr. PACKARD. But at their risk, at the school's risk and at the student's risk.

Mr. JOHNSON. No. There would be no jeopardy as far as the university was concerned, because the university would not be violating the law, it would not be disbursing title IV funds to that student.

Mr. PACKARD. To the student as his economic requirements would determine.

Mr. SIMON. Mr. Goodling.

Mr. GOODLING. Let's again take the worst case scenario and say that the regulations, as proposed, are going to be the final thing. You talked about verification and moving ahead with disbursement without verification as you presently do. It seems to me that if you get this worst case scenario, you would want their regulation in relationship to verification for disbursement, because they are making you the responsible person to recover the funds if any funds have to be recovered. So it would be a protection to you, would it not?

Mr. FRASER. The regulations do not put any fiscal requirement on the colleges. They do not take on the financial burden. They are required to attempt to recover the money, but they are not responsible for that money if it has been given out according to the temporary verification permitted under the regulations.

Mr. GOODLING. They are required to attempt to recover it, but they are not required to recover it.

Mr. FRASER. That is right. They don't owe the Federal Government the money.

Mr. GOODLING. How much good faith must you make in that effort? All I am trying to point out is if you are going to get caught in the business of having to recover those funds, then I would think that you would want to have the verification prior to disbursement, if we can't succeed in changing that law.

Mr. JOHNSON. In any case, a young man, for instance, becomes 18 in July or becomes 18 August 31 and school begins September 1, there has to be some proviso for the provisional disbursement of funds. That opens the door to potential chaos.

Mr. GOODLING. That is where my 30-day period comes in.

Father BYRON. A lot of the counseling is going to have to go back into the high schools.

Mr. GOODLING. Thank you.

Mr. SIMON. We thank you, panel, very, very much. We appreciate your testimony.

Our next panel is Lola Finch, accompanied by Dallas Martin; John Brugel; and Philip Rever.

Lola Finch is the president and director of financial aid for Washington State University, and she is here on behalf of the National Association, and is accompanied by an old friend here, Dallas Martin. We are pleased to have you here, Ms. Finch.

STATEMENT OF LOLA J. FINCH, PRESIDENT AND DIRECTOR OF FINANCIAL AID, WASHINGTON STATE UNIVERSITY, ACCOMPANIED BY A. DALLAS MARTIN, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

Ms. FINCH. Thank you.

Mr. Chairman and members of the subcommittee, I am Lola Finch, director of financial aid at Washington State University, and I am also president of the National Association of Student Financial Aid Administrators. As you indicated, Dr. Dallas Martin accompanies me.

We appreciate the opportunity to discuss the proposals advanced by the Department of Education and the Selective Service to implement——

Mr. SIMON. If I may interrupt for just a moment, if you want to enter your statements for the record, they will be entered in the record. It will save some time for the subcommittee if you wish to summarize or cover points that have not been made, or you may reemphasize whatever points you wish to.

Ms. FINCH. Thank you, sir. I plan to do that.

I would like to indicate that our national association represents over 2,700 postsecondary institutions. We have just completed 3 days of meetings of our governing board which is the national council.

The conference agreement accompanying this law insists that the regulations and the provisions that are necessary to implement the amendment minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards. The January 27 proposed regulations fall short of this intent.

As you well know, the amendment requires a two-step process—a statement of compliance, and secondly the verification procedures. Although on the surface, these procedures seem to be simple, they are in fact complex, time consuming and, as proposed, we think they impose unnecessary administrative procedures, and those in fact are costly. We have addressed our concerns as they relate to each provision, but today I am going to devote more time to the second phase, verification.

I will comment very briefly on the statement of compliance. The Department has proposed to amend the statement of educational purpose to include the compliance requirement. We concur with this decision since, at this time, it appears to be the most viable option.

I do want to point out, however, that these proposed procedures do impose additional burden on those who are not required to register. We agree that we can't come up with a more equitable alternative at this late date.

I do have to comment additionally that the student who has signed the certification is involved and the institution is definitely involved in reviewing each statement of educational purpose with this addition to determine whether that student is male and we must follow up on the tracking. That is in addition to the counseling time that was set forth by the president of Swarthmore.

On the verification of statements of registration compliance, particularly these do not seem to be sensitive to the converence agreement. They, as I said, not only inconvenience those applicants who certify that they are registered, they most certainly impose considerably upon the institutions who are delegated the task of verifying this certification.

The Department contends that other verification alternatives are simply too costly and too time consuming for the Department or the selective service to consider at this time. I would want to make the strong case that, unfortunately, institutions face these same logistical problems and budgetary constraints.

The Department and selective service have indicated that the proposed rules—"* * * in order to avoid excessive delays and implement this new criterion in the most effective and efficient manner * * *"—that the burden of verifying compliance will rest with the student. I think there is a flaw in this proposed approach, in that in many cases the student is entirely at the mercy of the selective service to provide him with the necessary documentation in a timely manner that will not impact the delivery of the aid to the student. There is some strong evidence to suggest that the system maintained by the selective service to identify registrants and to provide them with the required documents is not as efficient as it might be and may in fact cause major delays for students and institutions.

The selective service has indicated it plans to add a statement to the acknowledgement letter informing registrants that, in order to receive Federal aid, GSL and PLUS, males must provide proof of registration. We wonder what time frame they plan to incorporate this statement in. The preamble also suggests that:

> To minimize any delay in the award process, the selective service states that it will provide a copy of his registration acknowledgement letter within two weeks of the request of any registrant who does not have his original acknowledgement letter.

I would question personally, and many of my colleagues do, does this mean 2 weeks after the request is received by the selective service? We have all had indication of postal delays in addition to the proposed 2-week turnaround. We feel that, given the mail time constraint and the other possibilities, that this 2-week turnaround could easily turn into a month.

You might be interested in a personal experience that I had with my college student son. Knowing well of these proposed rules, I asked him where his acknowledgement letter was. He had not heard of it. This caused me a little anxiety. He and his father assured me he had registered on his 18th birthday. So, on January 4, he did write and request the copy of the selective service registration letter. He has received a followup asking him to submit his date of birth. We had done that in a confusing way. We had indicated he had turned 18 on a particular date in 1980. Exactly 1 month from the time he made this request, he received a response from the selective service telling him what his selective service number was and stating that an official verification letter will be mailed from their computer facility. Until you receive the letter, you may use this as evidence.

It is not clear to me in the proposed regulations that this would in fact suffice as a verification. To date, he has not received that verification.

The proposed rules identify three ways in which a student may verify registration compliance. One is by submitting a copy of the registration acknowledgement letter. He must have retained this letter and he must submit it to the institution. It may sound incidental that the student may in fact have this copy but not be able to make a photocopy. I assure you it will add to the confusion and the time consuming efforts of institutions who will try very hard to accommodate students' request to copy this certification, but it will

not be without expense to the institution in terms of this accommodation.

If a registrant is transferring to the institution, he may provide a copy of his financial aid transcript bearing his selective service number. The financial aid transcripts that we presently use do not distinguish the applicant's gender or birthdate. Of course, at this time, they have no provision for collecting the selective service number.

The third alternative is by submitting other approved documentation from the selective service.

The proposed rules further spectify that, until these required documents are received, the institution may not disburse title IV funds, the GLS, or the PLUS loan. But they provide two exceptions, one of which is mandated in the proposed registration.

As proposed, the institution would have no alternative but to make payment to the student who became 18 years of age after March 31, and if he submits a notarized affidavit to the institution to verify his registration, the institution must advance funds. The institution would then have to collect and retain two statements from the student—his compliance statement and his notarized affidavit—and then have to track the student for 120 days. If the student doesn't submit the required documentation, we then have to collect payment back from the student and, if unsuccessful, turn him to the Secretary.

This is truly unacceptable and unrealistic. The proposal obviously assumes that all students in this category attending a particular institution will have their statements notarized, will submit them to the financial aid office, and that this process will occur on a given day so that, thus, 120 days later, all of the students would be notified who must repay funds if they have not provided the documentation. This simply is not the case, praticularly at proprietary institutions where students enroll in programs of study on a daily, weekly or monthly basis.

In fact, it is not typical of even traditional institutions because of the variety of mechanisms we use in the management of student aid, computerized and manual, and because of our efforts to entertain late applicants, the possibility that registration continues over a period of time, which it happens to in our institution.

All of these circumstances and others would compel institutions to resort to individual tracking of students and, therefore, many institutions would be tracking students on a daily basis. Even with elaborate computer systems, it will be very costly to institutions, and I am concerned about the time frame of the proposed regulations to redesign systems to accommodate this tracking.

These are the administrative reasons, and there are some liability concerns which I will discuss next. But I do believe that institutions should be at least given the option of withholding payment until the student produces the required documentation, even though we appreciate the concern and the probable intent of the proposed exception which is mandated.

A similar arrangement exists, but it is at the option of the institution, for older students who have misplaced their acknowledgement letters and who are in the process of requesting a new one. Again, despite the good intentions of the proposed procedure, insti-

tutions fear the financial liability, the extra burden of tracking, and the possibility of having to report students who fail to provide proof of registration.

Again, just to reemphasize, we have concern over the selective service's ability to generate acknowledgement letters on a timely basis. I guess the fact that the Department has suggested an arrangement whereby aid can be disbursed before proof of registration might tend to support this concern.

We have outlined some other concerns which are indicated in the written testimony and which I will not go into now because, on behelf of the national association, we, too want to propose some suggested alternatives.

Our first suggestion would be to encourage the Members of Congress to delay the implementation date of those legislative provisions for 1 year. The 1-year recommendation is important and significant to our delivery cycle of student aid, which I believe, sir, you are very familiar with. We suggest this so that more time and consideration can be given to developing a system that meets the intent of Congress, but does so in a more cost-efficient manner.

I want to refer you to the attached chart which outlines the administrative burden that the proposed rules would require and the impact on institutions.

If it isn't possible to postpone the implementation date, we would like to recommend a series of options that could be considered as alternatives to the proposed regulations.

First is the phase-in approach. This alternative involves requiring institutions to provide all title IV applicants with the statement of registration compliance during the 1983-84 academic year, as proposed. Students who, for whatever reason, do not complete the statement would be denied aid. We would recommend that this be the only procedure required for 1983-84.

Then during the 1984-85 academic year and beyond, we would recommend first that the statement of registration compliance be included on all application forms for title IV aid. Any application which does not include a completed statement would be prevented from being entered into our application system by computer edit checks or internal review procedures. That would remain the responsibility of the financial aid office.

To accomplish the verification intent of the law in 1984-85 and beyond, we would recommend that a sample pool of institutions be identified by the Department of Education on a year-by-year basis. We recommend that a sample percentage of male student-aid recipients who indicate on their statements they have registered be identified at these institutions. Once identified, a list of these students would be sent by the institution to the Secretary of Education. The verification and followup procedures would be strictly the responsibility of the Department of Education or of the selective service.

I might add that there are precedents for this kind of a random audit or program review which all financial aid offices are familiar with.

While similar in some respects to our preferred alternative, we would also like to acknowledge the position advanced by the American Council on Education. This position, as you know, in-

volves the institution in providing the certified statement to applicants and collecting such statement as a condition of title IV eligibility. The verification requirement, however, is met by the institution submitting either a list or copies of the certified statement to the Department of Education. The institution's responsibilities would end at this point and it would become the Department of Education's work with the selective service to monitor this from then on.

There are some other points relative to suggested alternatives which we believe the selective service should consider relative to their current system of registration. If we were successful in advocating our alternative, this would not be necessary. But for fear that we might not be, it would seem far more sensible that the two-part form at the point of origination, at the post office. Where the student begins the registration for selective service process and that second form would be the identification and the certificate for the institution to proceed with financial aid awarding. It would certainly facilitate the process.

Then the person who had already registered but had misplaced the registration acknowlegement letter could just duplicate it; and that could be so indicated. But, again, it would vastly facilitate the process as it applies to title IV aid.

Mr. SIMON. I don't mean to interrupt you, but could you summarize your remarks?

Ms. FINCH. Yes.

Mr. SIMON. We have several more witnesses to hear from.

Ms. FINCH. I would just reemphasize that these proposed procedures would be in addition to some already very demanding requirements imposed on students, and particularly on institutions in the application and the delivery of student-aid programs.

I again call attention to the two charts which I think give a rather objective analysis of the additional procedures that are required by these regulations.

We thank you for the opportunity to testify.

Mr. SIMON. We thank you very much.

[The prepared statement of Lola J. Finch follows:]

PREPARED STATEMENT OF LOLA J. FINCH, PRESIDENT AND DIRECTOR OF FINANCIAL AID, WASHINGTON STATE UNIVERSITY, ACCOMPANIED BY A. DALLAS MARTIN, JR., EXECUTIVE DIRECTOR

Mr. Chairman, Members of the Subcommittee, we appreciate the opportunity to discuss the proposals advanced by the Department of Education and the Selective Service to implement the September 8 amendment to the Military Selective Service Act. The amendment, effective July 1, 1983, eliminates from Title IV student aid eligibility any student who is required to register with Selective Service but fails to do so.

While we appreciate the efforts of the Department of Education and the Selective Service to propose reasonable procedures for the implementation of this amendment, we do not feel that this has been accomplished. The Conference Agreement accompanying this law insists that the regulations and provisions necessary to implement this amendment minimize the administrative burden on colleages and universities and the delays in processing aid applications and awards. The January 27 proposed regulations fall far short of this intent.

The amendment requires a two step process. First, a student, who is otherwise eligible to receive Title IV funds, must certify that he or she is not required to be registered with Selective Service or that he is registered. Secondly, this certification of compliance must be verified. Although on the surface these two steps would

appear to be rather simple, they involve complex, timeconsuming and, as proposed, unnecessary administrative procedures. In order to fully explain the complexities involved, I would like to address our concerns as they relate to each of these provisions.

STATEMENT OF COMPLIANCE

The Department and the Selective Service have proposed to amend the Statement of Educational Purpose to include the required compliance or certification statement. We would concur with this decision since at this time it appears to be the most viable option. The Federal Student Aid Application does not collect the gender of the student aid applicant. It therefore becomes difficult for the institution to make such a distinction in terms of only requiring male applicants to sign the statement of compliance. While the proposed procedure does impose unnecessary burden on those who are not required to register, we would agree that unfortunately, a more equitable alternative is not available at this time. This procedure will, however, require more careful scrutiny and follow-up by institutions to determine: (1) That the student applicant has signed the certification; (2) Whether or not the applicant was required to register or is exempt from this requirement; and (3) If required to register, that he has in fact provided proof of such action. There are a number of institutions with no students required to be registered with Selective Service, such as those with no male students. It would therefore seem unnecessary to impose these additional procedures on those students and institutions.

The actual statement proposed by the Department allows the student to certify that he or she is not required to register for any one of several reasons. One of the reasons listed is that the student is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands. However, our understanding is that these students are only protected as long as they remain on the island, and once they leave to attend school in the Continental United States, they must register with Selective Service. If we are correct in this understanding, institutions should be notified immediately to prevent them from disseminating improper informaiton and to alert them to the need for immediate administrative steps to avoid problems later on.

VERIFICATION OF STATEMENTS OF REGISTRATION COMPLIANCE

Particularly, the verification procedures outlined in the Department's proposed rules do not appear to be sensitive to the Conference Agreement; while they inconvenience only those applicants who certify that they are registered, they impose considerably upon the institutions who have been delegated the task of verifying this certification.

We are sympathetic with the Department's contention that other verification alternatives are simply too costly and/or timeconsuming for the Department and/or Selective Service to consider at this time. Unfortunately, this attitude always seems to prevail when the easy way out is to impose additional burdens on students and institutions.

The Department and Selective Service have indicated in the proposed rules that ". . . in order to avoid excessive delays and implement this new criterion in the most effective and efficient manner . . ." the burden of verifying compliance will rest with the student. The flaw in the proposed approach is that in many cases the student is entirely at the mercy of Selectiove Service to provide him with the necessary documentation in a timely manner. There is some evidence to suggest that the system maintained by Selective Service to identify registrants and provide them with the required documents is not efficient and will cause major delays for students and institutions. The Preamble to the proposed rules states, "The Selective Service plans to add a statement to the Acknowledgement Letter informing registrants that, in order to receive Federal student aid, the letter must be presented as proof of registration." Under what time frame do they plan to incorporate this statement? What about all the men who have already registered? The Preamble also states, "To minimize any delay in the award process, the Selective Service states that it will provide a copy of his Registration Acknowledgement Letter within two weeks of request to any registrant who does not have his original Acknowledgement Letter." Is this to be interpreted to mean two weeks after the request is received by Selective Service? If so given mail time from the date the registrant mails his request, the two seeks could easily turn into a month.

The proposed rules identify three ways in which a student may verify registration compliance:

1. By submitting a copy of his Registration Acknowledgement Letter (SSS Form 3A or 3A-S). If the registrant has retained this letter, he must submit a copy to the institution. It is unlikely, however, that the student would have ready access to a photocopy machine. Therefore, he will have to either find his own method of copying the letter or he will more likely bring the letter to the institution and ask the institution to make the copy. While at first this may seem to be a relatively inexpensive venture for each student or the institution, let me assure you, this process could become costly, timeconsuming, and confusing.

2. If the registrant is transfering to the institution, he may provide a copy of his financial aid transcript bearing his Selective Service number. Financial aid transcripts do not currently contain Selective Service numbers, nor do they distinguish the applicant's gender or birthdate. Once again, institutions would have to revise and reprint their transcript forms to afford the applicant this option. In most cases, this could be both costly and timeconsuming.

3. By submitting other approved documentation from the Selective Service. Since the proposed rules do not identify other approved documentation, how would the registrant or the institutions make such a determination?

The proposed rules further specify that, until the required documentation is received, the institution may not disburse Title IV funds, certify a Guaranteed Student Loan or Parent Loan application, or certify the Pell Grant Alternate Disbursement Request for Payment. Two exceptions are allowed under the proposed rules; one of these exceptions is mandated in the proposed regulations.

1. A student who becomes 18 years of age after March 31 preceding the award year may submit a notarized affidavit to the institution thus temporarily verfiying his registration. Further, he must provide the required documentation to the institution within 120 days. As proposed, the institution would have no alternative but to make payment to the student, certify his GSL or PLUS application, and, if applicable, certify his Pell Grant ADS Payment Request. The institution would then have to collect and retain two statements from the student—his compliance statement and the notarized affidavit—and track the student for 120 days from the date of the notarized statement. If the student does not submit the required documentation, the institution must then try to collect the payment from the student and, if unsuccessful, turn him in to the Secretary. This is unacceptable. This proposal obviously assumes that all students in this category attending a particular institution will have such statements notarized, submitted to the aid office, and will receive disbursements on the same date; then 120 days later those same students will be notified that they must repay the funds if they have not provided the required documentation. This is simply not the case at proprietary institutions where students enroll in programs of study of a daily, weekly, or monthly basis. While this could more likely occur at traditional institutions, many of these institutions, do not have the sophisticated process that is being assumed. Many institutions hold registration over several days and have manual disbursement procedures and accept late applications for aid. All of these circumstances and others would compel institutions to resort to individual tracking of students. Therefore, many institutions would be tracking students on a daily basis. Even with elaborate computer systems, what is the price to the institution of a significant re-design of their system simply for this purpose?

For these administrative reasons and for liability concerns we will discuss next, institutions should at least be given the option of withholding payment until the student produces the required documentation.

2. A similar arrangement exists, but at the option of the institution, for older students who may have misplaced their acknowledgement letters and are in the process of requesting a new copy. While we appreciate the intent—to allow the student to receive aid despite the inadequacies of the Selective Service System to permit more prompt acknowledgement of registration—obvious problems arise with this approach as well. As noted earlier institutions must design elaborate tracking procedures and must anticipate the difficult question of what they will do if the student, for whatever reason, does not submit proof of registration after aid has been disbursed. Despite the good intentions behind this procedure, the fear of financial liability, the extra burden of tracking procedures, and the possibility of having to report students who fail to provide proof of registration may justify institutions adopting a position of "no proof, no aid". Our concern over the Selective Service's ability to generate acknowledgement letters on a timely basis cannot be overemphasized. The mere fact that the Department has suggested an arrangement whereby aid can be disbursed before of registration tends to support this concern.

OTHER CONCERNS

Repeatedly, the assertion is made that the prevailing interest is in keeping the procedures simple. While the Department and the Selective Service are to be commended for proposing a system that they believe may be the lesser of the available evils, nonetheless, it is important to observe the administrative burdens that will be created, particularly in areas where they have not been anticipated by them. For instance, internal filing and tracking of certification statements and copies of the acknowledgement letter from one year to the next within the financial aid office may require extensive redesign of sophisticated computer systems now in place. In fact, many systems currently do not require the capacity for tracking applicant demographics from prior years since the aid application process is an annual one of the student re-applies each year by submitting new forms. In the case of more manually driven systems, an individual review, every year, of each applicant's past material may be necessary to ensure that the proper forms have been signed and that the appropriate documentation has been collected.

While not addressed in the proposed rules, one must assume that students applying for the State Student Incentive Grant Program will be subject to these same requirements. The problem that exists here is that in many cases institutions cannot identify the SSIG portion of State Grant funds. Are we then to assume that institutions would have to impose these requirements on all State Grant recipients, regardless of their source of funds?

SUGGESTED ALTERNATIVES

Our first suggestion is to encourage the members of Congress to delay the implementation date of these legislative provisions for one year. We suggest this so that more time and consideration can be given to developing a system that meets the intent of Congress but that does so in the most cost efficient manner. As we have suggested earlier, and in the attached chart which outlines the administrative burden the proposed would require, the impact on institutions is significant. Many institutions will not be able to inform students of these requirements nor will they be able to develop internal procedures to handle in a reasonable way what has been required. To avoid yet another year of chaos and turmoil in student aid, we ask for postponement of the implementation date by one year.

During this year, we also recommend that the Department of Education be charged with the responsibility to study and report to the Congress findings on ways in which to construct a cost efficient system that will meet the intent of Congress.

If it is not possible to postpone the implementation date we would like to recommend a series of options that could be considered as alternatives to the proposed regulations.

1. The phase-in approach.—

This alternative involves requiring institutions to provide all Title IV applicants with the Statement of Registration Compliance during the 1983-84 academic year. Students who, for whatever reason, do not complete the statement will be denied aid. We recommend that this be the only procedure required for 1983-84.

During the 1984-85 academic year and beyond we recommend first that the Statement of Registration Compliance be included on all application forms for Title IV student aid. Any application which does not include a completed statement would be prevented from entering the application system by computer edit checks or internal review procedures.

To accomplish the verification intent of the law, in 1984-85 and beyond, we recommend that a sample pool of institutions be identified by the Department of Education on a year by year basis. We recommend that a sample percentage of male student aid recipients, who indicate on their statements that they have registered with Selective Service, be identified at these institutions. Once identified, a list of these students would be sent by the institution to the Secretary of Education. The verification and follow-up procedures would be strictly the responsibility of the Department of Education or of the Selective Service.

We also note that the sample verification approach will be, by far, a more efficient and cost-effective system for all parties involved. Further, precedent for this approach can be found in the verification procedures employed by the Internal Revenue Service.

2. The American Council of Education Proposal.—

While similar in some respects to our preferred alternative, we would like to acknowledge the position advanced by the American Council on Education. This position involves the institution providing the certified statement to applicants and collecting such statements as a condition of Title IV eligibility. The verification re-

quirement is met by the institution submitting either a list or copies of the certified statement to the Department of Education. The institution's responsibilities end at this point and the Department of Education works with Selective Service to monitor registration.

In addition to the suggested alternatives, we would encourage the Selective Service to evaluate their current system of registration. This system requires completion of the registration form at the Post Office at which time the Postal Official verifies the information submitted and stamps the form with a cancellation stamp. The form is then mailed to the Selective Service and a Registration Acknowledgment Letter is sent to the registrant.

We would suggest the use of a two part form, one copy of which would be sent to the Selective Service, and the other copy would be stamped and given to the registrant as confirmation of his registration.

This same procedure could be employed for persons who have already registered but who have misplaced their Registration Acknowledgment Letter. Rather than requesting a duplicate Acknowledgment Letter the registrant could simply re-register and indicate on the form that he was registering for a second time.

In any case the Selective Service could as a follow-up mail the registrant an Acknowledgment Letter. In the event verification was required, the student could use either the stamped registration form, or the Acknowledgment Letter. This approach would afford greater flexibility for students who were chosen for verification but who had not yet received a Letter of Acknowledgment.

In closing, I must again emphasize that these proposed procedures would be in addition to the already demanding requirements imposed on students and institutions in the application and delivery of student assistance programs. In an effort to provide an objective analysis of the additional procedures required by these regulations, we have attached two charts which outline the basic steps that students and institutions must follow of these rules are adopted.

Thank you for the opportunity to transmit our concerns about this issue. We would be happy to answer any questions you might have.

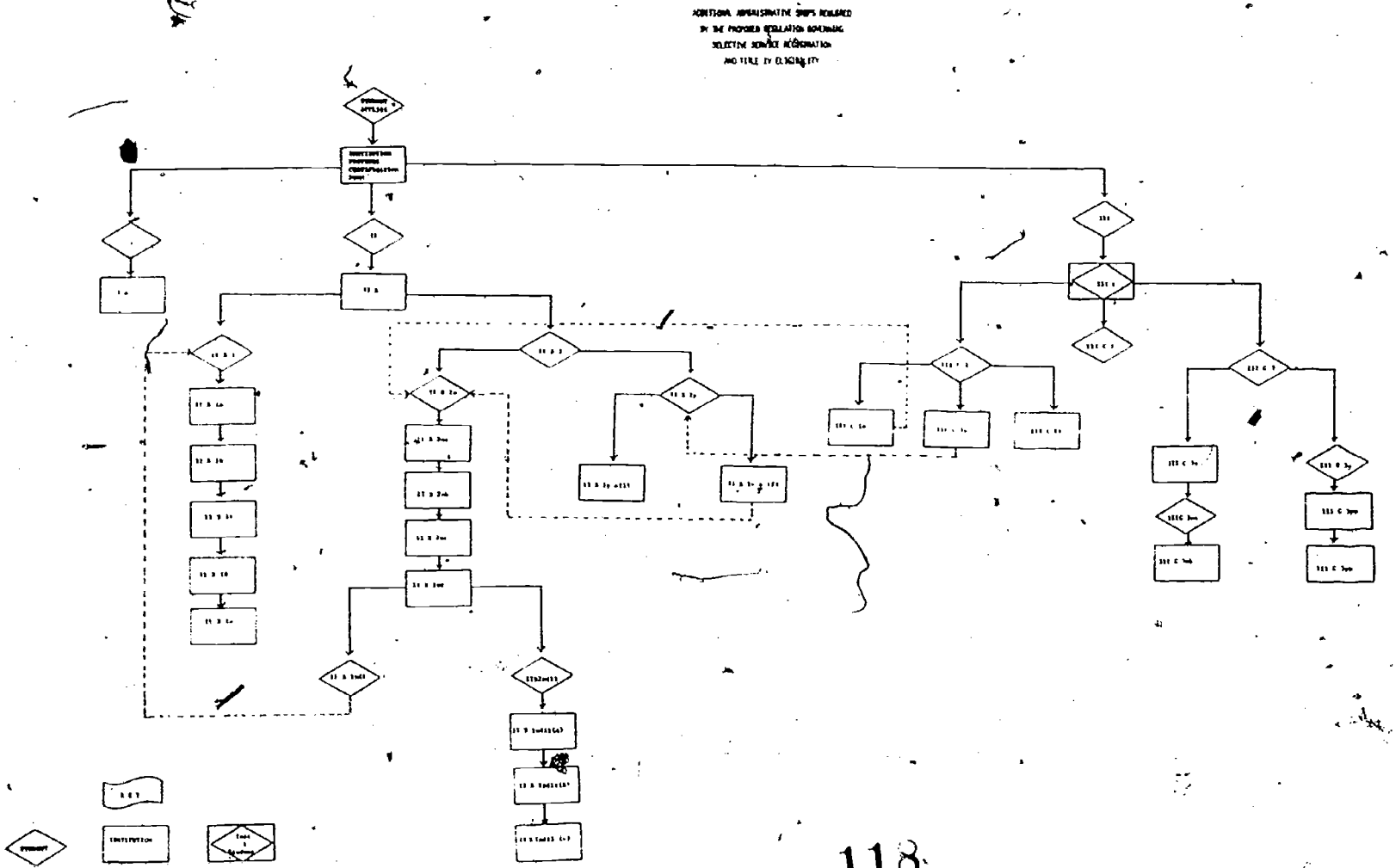
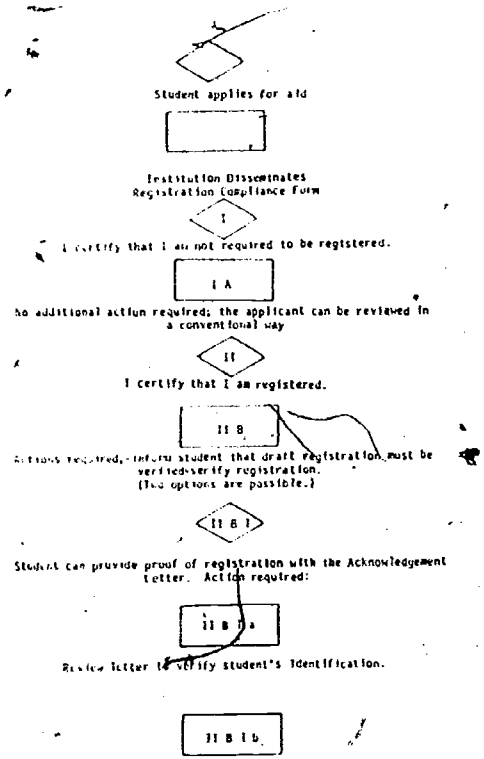


Chart attachment #1

ADDITIONAL ADMINISTRATIVE STEPS REQUIRED BY THE PROPOSED REGULATION GOVERNING SELECTIVE SERVICE REGISTRATION AND TITLE IV ELIGIBILITY



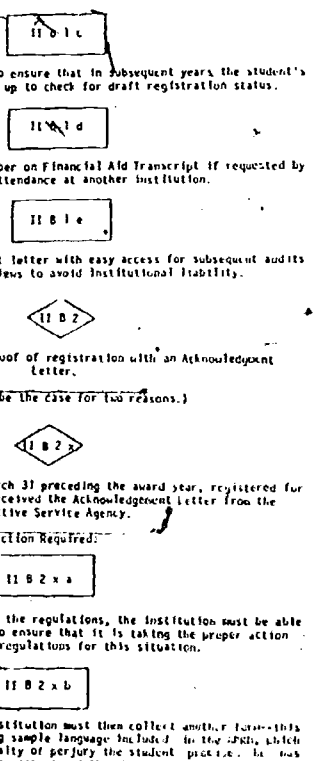


Chart attachment #2

II B 2xc

The institution must then disburse Title IV aid to the student.

II B 2xd

The institution must also establish an individual tracking procedure for each student in this situation, to track the 120 day period in each student's case from the date his affidavit is signed, to ensure that proof of registration is submitted (the Acknowledgement Letter) within 120 days.

Two options are possible.

II B 2xdi

Proof comes within 120 days.

Follow steps in II B 1 above.

II B 2xdii

Proof does not come within 120 days.

II B 2xdii(a)

The school must consider aid disbursed to be in overpayment and must:

II B 2xdii(b)

Make a reasonable effort to recover the overpayment, and, if unsuccessful,

II B 2xdii(c)

Provide the Secretary with the student's name, social security number, and other relevant information.

II B 2 y

The student has registered for the draft, at one time received an Acknowledgement Letter, but has since misplaced it and thus needs another copy from the Selective Service Agency

Action required:
Two choices are available:

II B 2 y a (1)

The institution may choose to withhold any disbursement of student aid funds until the student receives a copy of his Acknowledgement Letter. The advantage of this option to the institution is that it avoids any liability in disbursing aid, avoids having to submit the student's name to the federal government if funds are released and proof of registration is not shown, and the institution avoids the need to track the student through the 120 day period which follows after the notarized statement is dated.

The disadvantage of this approach is that the student will probably be unable to enroll without the needed financial assistance until such time as Selective Service registration can be proved.

II B 2 y a(2)

At its option the institution can disburse aid to the student on the basis of a notarized statement similar to that outlined in II B 2 x. The institution must then follow the disbursement and tracking procedures outlined in II B 2 x d.

III

The student does not file a statement of registration compliance

III C

Action required:
All students must be informed by the institution that completion of the statement of registration compliance and verification of Selective Service registration for those obligated to register is a condition of eligibility for Title IV aid.

Students who do not file a statement of registration compliance are given a grace period, of 30 days or until the end of the payment period to produce proof of registration. This represents yet another class of aid applicants who must be separately monitored and tracked.
There are three types of students in this category.

Chart attachment #3

III C 1

The student who is required to register but has not done so.

In this case, the student may register as he is obligated to do. When he does so, he can then sign the certified statement and verify that he is registered within thirty days or before the end of the payment period, whichever is later.

Three options are available:

III C 1x

In the case of the recent 18 year old, Title IV aid must be disbursed prior to verification of draft registration if the student provides a notarized statement as described in II B 2 x. However, instead of tracking the student for 120 days, this student must be tracked for 30 days or the end of the payment period, whichever is later.

III C 1y

In the case of the older student, the institution may, at its option, disburse Title IV aid prior to proof of registration based on a notarized affidavit, as outlined in II B 2 y. However, instead of tracking the student for 120 days, this student must be tracked for 30 days or the end of the payment period, whichever is later.

III C 1z

In the case of the older student the institution may, at its option, refuse to disburse Title IV aid until draft registration can be proved, as long as it is proved within 30 days or the end of the payment period, whichever is later.

III C 2

A registered student who fails to state and verify that he is registered.

Any student who is in fact registered but has failed to sign a certification statement must do so and thus become eligible for Title IV aid as is outlined in II.

III C 3

The student who fails to file a certified statement.

III C 3x

This student must be told by the institution that he or she is ineligible to receive federal student aid.

III C 3xa

Students may request information regarding available options.

III C 3xb

The institution must provide information regarding the procedures for requesting a hearing before the Secretary of Education.

III C 3y

If a student fails to respond to the request for a certified statement, the institution must:

III C 3ya

Take administrative steps on a case by case basis, to prevent disbursement of federal aid even though at some point in the future a SAR may be submitted to the school, or a GSL application sent in for institutional approval.

III C 3 y b

In addition, the institution must take steps must be taken to ensure that in future years, no such disbursements are permitted until the student can produce a certified statement.

Mr. SIMON. Mr. John Brugel, the director of financial aid at Pennsylvania State University.

STATEMENT OF JOHN BRUGEL, DIRECTOR OF FINANCIAL AID, PENNSYLVANIA STATE UNIVERSITY

Mr. BRUGEL. Thank you, Mr. Chairman.

My name is John Brugel, and I am the director of the Office of Student Aid at Pennsylvania State University. I very much appreciate the opportunity to appear before the committee and speak to the linkage of title IV and Selective Service registration.

My comments will represent clearly the university's position and also the positions of the governmental relations committee of the Pennsylvania and Eastern Aid Associations.

The written testimony that I have submitted—which following counsel's admonition, I will try to be very brief in summarizing—proposes to have an administratively manageable system. It basically has two recommendations. The first recommendation is one that you heard repeatedly, and that is calling for a delayed implementation of the law. The rationale has already been presented of why that makes sense. It deals with the extreme lack of communication to students and to parents about this requirement and the delays that will occur because students will have been misinformed or uninformed. Very often they inform themselves inadequately and inappropriately.

Further, by providing that delayed implementation, the amount of information that institutions and Federal agencies can provide to Selective Service registrants will be very, very helpful in avoiding difficult delays.

The second recommendation speaks to the process of verification as required in the statute. Again, I am not plowing any original ground. This has already been addressed. The preaward or predisbursement verification that is called for in the NPRM clearly violates the dictates of common sense and is unreasonable. It is not required, and if we were to place a system of verification at the end of this system, not up front, we will avoid the onerous burden that is going to be placed on students, placed on the Selective Service agency and placed on the institutions to deal with that system.

The logic of requiring verification after the fact I think can be reviewed by looking at what is the population we are attempting to deal with. We are looking at—I understand yesterday that Director Turnage commented that 98 percent of the required registrants have already done so and are in compliance with the laws—we are looking at a group of 2 percent.

Of that 2 percent, some of those aren't going to need aid, so they are not going to do anything. For those who need aid, they have two options. They can either drop out of school because their conscience does not allow them to sign the statement, or they may sign the statement and submit themselves to the prosecution that would follow. The system that I am proposing in my testimony, after the fact, would identify the very, very small percentage of students who would choose to misrepresent their status and then subject them to prosecution.

It seems to me that the system that we would want to put in place should not place at a disadvantage all of those who are in compliance, i.e., the vast majority, just to identify the small deviant population.

Mr. SIMON. Thank you, very much for your testimony.

[The prepared statement of John F. Brugel follows:]

PREPARED STATEMENT OF JOHN F. BRUGEL, DIRECTOR, OFFICE OF STUDENT AID, THE PENNSYLVANIA STATE UNIVERSITY

I am pleased to have the opportunity to appear before the House Subcommittee on Postsecondary Education to comment on the January 27 NPRM amending the Title IV Student Assistance General Provisions.

I am the Director of the Pennsylvania State University Office of Student Aid. The university currently enrolls approximately 55,000 students on twenty-two campuses. Approximately 30,000 Penn State students receive financial assistance from one or more of the Title IV Student Assistance Programs.

My testimony on behalf of the university has also been endorsed by the Government Relations Committees of the Pennsylvania and Eastern Associations of Student Financial Aid Administrators. Both of these organizations will be forwarding detailed comments to the Department of Education outlining a broad range of concerns.

My comments and recommendations will be restricted to one area of critical concern. If adopted, the recommendations have the potential to provide for an orderly, manageable linkage between Selective Service registration and Title IV Student Assistance eligibility. My specific recommendations are as follows:

1. Delay implementation of Public Law 97-252 until January 1, 1984.
2. Utilize a post-disbursement model for Selective Service verification.

To analyze the merit of these recommendations it is useful to recognize the three basic provisions contained in the Department of Defense Authorization Act, 1983, Public Law 97-252:

1. A Statement of Selective Service Registration Compliance must be filed as a condition of eligibility for Title IV Student Assistance.
2. A system to verify the compliance statements must be established.
3. An appeal system must be established for those deemed to be in non-compliance and therefore ineligible for Title IV aid.

STATEMENT OF SELECTIVE SERVICE REGISTRATION COMPLIANCE

The model Statement of Educational Purpose and Registration Compliance (34 CFR part 668.25) advanced in the NPRM will adequately satisfy the statute. The inclusion of detailed instructions and expansion of the exempt categories to include eligible veterans of the Armed Services will increase the utility of the document.

A combined Statement of Educational Purpose and Registration Compliance satisfies the requirement of the statute without adding additional paper or burden for the institution.

VERIFICATION SYSTEM

The proposed verification system (Sec. 668.26) is seriously flawed. It fails to follow the dictates of common sense and most importantly, it fails to follow the intention of Congress as it places the full burden of the process on students and postsecondary education institutions.

The statute states that the Secretary of Education and Director of Selective Service can match lists to verify the validity of compliance statements submitted by students. The Conference Report noted that "such regulations and procedures necessary to implement this provision minimize the administrative burden on colleges and the delays in processing aid applications and awards". Simply stated, a pre-disbursement verification system cannot minimize administrative burden on colleges not avoid delays in processing applications and awards.

Given the lack of specificity in the statute, the Secretary of Education can design a Selective Service Registration compliance verification system which would:

Comply with Public Law 97-252 and insure the integrity of registration compliance statements filed by the Title IV aid recipients.

Minimize cost and administrative burden for institutions.

Be capable of identifying those submitting false statements of registration compliance.

Create disadvantage only for the small number of students filing false statements of registration compliance.

Cause no difficulty, delay or expense for the millions of students in compliance with the selective service registration requirement.

The issue centers on the comparative merits of a pre-disbursement versus a post-disbursement verification. The former model requires students to provide a copy of their Selective Service Registration acknowledgement to their institutional aid officer. If this letter has been discarded or misplaced the student must request a duplicate from the Selective Service Agency. The acknowledgement must be received, recorded and stored in the students aid records prior to disbursing or processing aid.

Permissable exceptions to the above arise when males reach ". . . age 18 after March 31st preceding the award year" and in those cases where the ". . . student claims to have registered . . . but is unable to produce the required documentation". In the first case, the institutions must accept a "Temporary Verification by Affidavit". In the latter case, the institutions may, at its option, accept a temporary verification.

The exceptions will further add to the Administration burden as they extend 120 days and then involve the institution in canceling aid, seeking repayment etc. The institutional expectations are outlined in alarming detail in sec. 668.26.

Suffice to say, while the pre-disbursement system may hold some particular charm for the Dept. of Education, it is not easily nor inexpensively administered. The delays and confusion which the proposed system will generate should not be overlooked nor understated.

As proposed, the pre-disbursement verification system will needlessly inconvenience millions of students and families and further complicate a national aid delivery which is incomprehensive to many families.

Fortunately, an attractive alternative exists. The Department of Education could propose and administer a post-disbursement verification system which would:

Require institutions ". . . to provide a list to the Secretary of Education or to the (Selective Service) Director of persons who have submitted . . . statements of compliance" (P.L. 97-252).

Permit the Secretary of Education and Director of Selective Service to verify compliance statements.

Place the responsibility for verification where it is intended by the statute and conference report.

Efficiently and effectively comply with the statute while providing an orderly, timely aid delivery with no unreasonable administrative burden.

Provide the opportunity to identify fraudulent filers of Compliance Statements and subject them to federal prosecution.

A post-disbursement verification should work as follows:

Students required to submit the statement of registration compliance (Sec. 668.24 in the NPRM) will attest to their Selective Service registration. This requirement satisfies the intent of the statute as most eligible males have registered with the selective service system (see Figure 1, population B-1). Those who have not registered, population B-2 will either; (a), remain in school without aid; (b), register with selective service to gain aid; (c) drop out of school, or in a limited number of cases; (d) falsely submit a statement of registration compliance. It is the small number of cases falling in this category (B-2, d) which the verification system must identify and isolate as they are ineligible to receive Title IV Student Aid.

SYSTEM OF APPEAL

The proposed system of appeal should be modified to reflect necessary due process considerations for those believed to have misrepresented their registration status to receive aid. this system would involve the Department of Education, Selective Service, and the Department of Justice.

SUMMARY

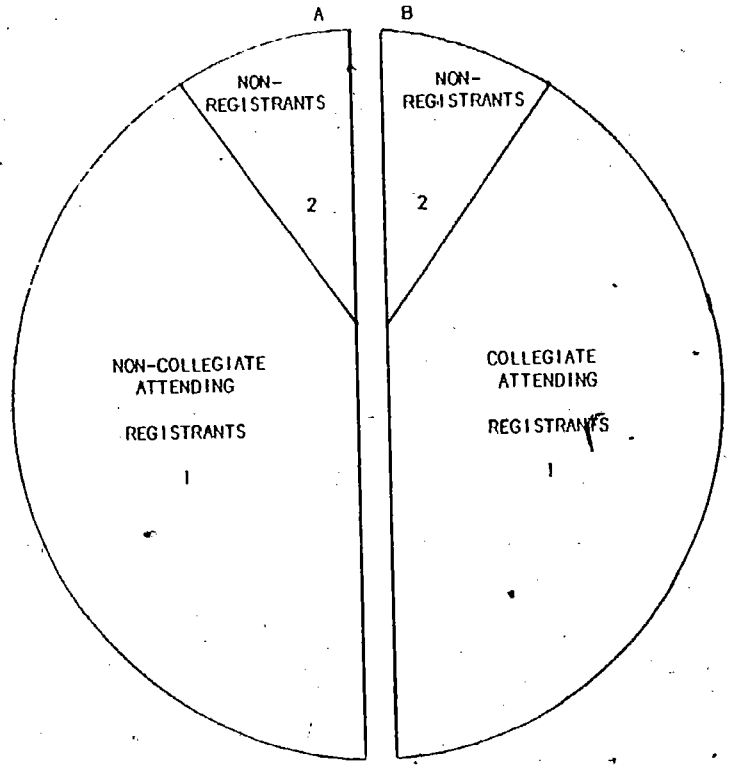
Aid application activity for the 1983-84 award period was initiated several months ago and will approach its peak during the next several months. The prospect of the Department of Education adding the proposed pre-disbursement verification requirement is alarming. The post-disbursement model would minimize disruption and delays and would constitute no undue administrative burden.

If this model proves infeasible due to perceived or real record keeping inadequacies of the involved governmental agencies, the implementation of the law must be delayed until the records base or technical problems can be corrected.

FIGURE 1

UNIVERSE OF MALE POPULATION

ELIGIBLE TO REGISTER FOR SELECTIVE SERVICE



POPULATION A

Eligible males not attending school

CLASS 1 -

Registered with Selective Service

CLASS 2 -

Not Registered with Selective Service

POPULATION B

Eligible males attending school

CLASS 1 -

Registered with Selective Service

CLASS 2 -

Not Registered with Selective Service

OPTIONS FOR B-2 POPULATION

a. Remain in school without aid (stay in B-2)

b. Register with Selective Service to gain aid (move to B-1)

c. Drop out of school (move to A-2 or A-1)

d. Falsify statement of Registration Compliance

Mr. SIMON. Philip Rever.

STATEMENT OF PHILIP REVER, VICE PRESIDENT, HIGHER EDUCATION ASSISTANCE FOUNDATION

Mr. REVER. Thank you, Mr. Chairman. I am Phil Rever, vice president of the Higher Education Assistance Foundation, a private, multistate guarantor of student loans.

At the current time, I should report to you that institutions and lenders and guarantee agencies are not accepting loan applications for periods of instruction begining on or after July 1, 1983, until approved family contribution tables for that academic year have been published. If at the time those approved tables are published guarantors believe that they face an unacceptably high risk of increased defaults due the temporary verification procedures provided under the proposed regulations, they will not guarantee loans disbursed to students under those provisions.

In assessing their risk of increased defaults, guarantors will recognize the following facts; 95.3 percent of all registration eligible young men have registered. However, 18 year olds have historically had the lowest registration rate, which ranges from 70 to 80 percent. In addition, registrants would be asked for the first time since registering to produce a registration acknowledgment letter and a sizable proportion may not be able to produce them.

Second, any increase in defaults will primarily be the result of releasing loan proceeds to students and parents of students who have registered with the draft but have failed to file their registration acknowledgment letters.

Under the proposed regulations, checks may be disbursed then to students who are attending schools in foreign countries, to virtually all PLUS borrowers, and apparently must be disbursed to recent 18 year olds.

If the Department requires lenders to obtain lump-sum repayments of loans disbursed to what are subsequently determined to be ineligible applicants—that is, the Department does not allow repayment in installments—defaults will be more likely.

Finally, institutions will have difficulty informing lenders about temporarily ineligible recipients of loans who have failed to submit their registration acknowledgment letters within the allowed 120 days.

Finally, HEAF recognizes that, despite the best efforts of all affected parties, it is inevitable that some loans under the temporary verification procedures will have to be collected. It is inevitable that some students will not receive their registration acknowledgment letters on time because of letters lost in the mail or simply not forwarded to their current address. It is inevitable that some students who receive their letters will fail to submit them on time. It is inevitable that some students will encounter difficulties when their loan checks arrive on campus but their previously submitted letters cannot be located because they were misfiled. It is inevitable that some misinformation is inadvertently communicated to lenders, causing them to attempt to collect loans from eligible students and parents.

These inevitabilities are manageable if they are rarely encountered.

However, if they become the norm rather than the rare exception, the entire loan system could collapse next fall.

We are reasonably confident that the inevitabilities will be manageable. Our confidence, however, could be substantially increased if the Selective Service would take the following actions. One, allow young men to register 120 days in advance of their 18th birthday rather than the current 30 days. Two, allow a duplicate post office canceled registration card, SSS form 1, to serve as proof of registration. Three, allow registrants to reregister at any time so they could obtain a duplicate post office canceled SSS Form 1 when needed. Four, allow the Selective Service's planned verification information documents that are intended to be mailed to 19 and 20 year olds to also serve as proof of registration.

Under my suggestions, the need for temporary verification and disbursements in the absence of registration letters of acknowledgment, the cause of HEAF's concerns could be virtually eliminated. In the absence of adopting my suggestions, HEAF and other guarantors are considering not guaranteeing loans disbursed to temporarily eligible applicants, although such loans are currently routinely disbursed to temporarily eligible applicants who are not enrolled in institutions at the time they make loan applications.

However, by the Department's requirement that institutions disburse loans to enrolled students and recent 18 year olds who have not submitted their registration letters, they are enlarging our pool of potential defaults substantially. Since these provisions are of particular concern to the guarantors, we suggest that they be looked at again.

We have a number of questions that need clarification from the Department of Education which we believe can be satisfied and fully addressed. For example, it is quite likely that there will be a conflict between the provided 120-day grace period and the current requirement for institutions to return uncashed checks 30 days after they are received.

We also need to know the precise point of time at which loans become forfeited so that we can determine the amount of interest that has been billed to the Government and how much needs to be collected and the like.

These are minor difficulties which are easily resolvable. It is the broader issue of the likelihood of increased defaults under the temporary verification procedures that cause us the greatest amount of concern.

I will answer any questions you may have, Mr. Chairman.

Mr. SIMON. Thank you very much. Thank you for your practical suggestions here.

[The prepared statement of Philip R. Rever follows:]

PREPARED STATEMENT OF PHILIP R. REVER, VICE PRESIDENT, HIGHER EDUCATION ASSISTANCE FOUNDATION

Mr. Chairman and members of the subcommittee, I am Philip R. Rever, vice president of the Higher Education Assistance Foundation [HEAF], a private, nonprofit, multistate agency that guarantees loans made under the Guaranteed Student Loan Program and PLUS Program. As a guarantor of education loans, HEAF will be affected by the Department of Education's January 27, 1983 proposed regulations

that relate to the "Solomon Amendment" to Public Law 97-252. Consequently, I am pleased to share with you HEAF's concerns about the proposed regulations and to suggest some actions that could be taken by the Department of Education and the Selective Service which would allay our concerns.

CONCERNS

HEAF's concerns arise as a result of the Department of Education's and the Selective Service's good intentions to develop and propose procedures that recognize potential difficulties in implementing the "Solomon Amendment." Unfortunately, their efforts to accommodate potential problems allows the disbursement of loan checks to "temporarily eligible" students and their parents. Some of the "temporarily eligible" recipients will be judged ineligible for a variety of reasons and some of these ineligible recipients will be classified as "defaults." Since guarantee agencies like HEAF may experience increased default rates as a result of the proposed regulations, and because our reinsurance formulas may be adversely affected, a review of the provisions is in order.

We understand the proposed regulations affecting the Guaranteed Student Loan Program are as follows:

1. Between now and July 1, lenders but not institutions may disburse checks to students and to parents of students who have not filed a Statement of Compliance and, if appropriate, Registration Acknowledgement Letters.

2. Students who receive loan proceeds between now and July 1, 1983 and who fail to submit the required documentation, "forfeits the right to receive or retain the loan check or its benefits, as well as the right to the payment of interest benefits on that loan. The borrower shall, if demanded by the lender, immediately repay that disbursement."

3. After July 1, 1983 institutions may not disburse any Title IV funds or certify loan applicants unless the applicants have submitted Statement of Registration Compliance's and, if appropriate, Registration Acknowledgement Letter's. Two exceptions to this general regulation apply:

(a) Institutions must certify applications and disburse loan checks to registrants who turned 18 within 90 days of the beginning of their award year, and

(b) Institutions my certify applications but may not disburse loan checks to registrants who are awaiting receipt of duplicate Registration Acknowledgement Letters.

(c) In both cases, the registrants must file an affidavit of registration before institutions certify their loan applications.

4. Lenders may disburse checks directly to recent 18 year olds and to parents of registrants who have filed their Registration Acknowledgement Letters.

5. Lenders holding "forfeited" loans may bill the government of the Special Allowance, must refund interest billed to the government since forefeiture, and must collect principal and interest from borrowers. Failure to collect constitutes a default.

It should be noted that the preceding understanding of the proposed regulations were made with some trepidation and by giving an interpretation to some unclear points that tend to minimize potential defaults. But several key points are unclear in the regulations. For example, the preamble and the regulations appear to contradict themselves about institutions' authority to disburse loan checks to recent 18 year olds. In addition, it seems contrary to the Solomon Amendment and the regulations to allow ineligible borrowers to repay their loans in installments as implied in the regulations and for holders of these loans to continue collecting their Special Allowance. Hence, some clarifications will be necessary regarding these matters in the near future. If our understanding is in error, it will only exacerbate guarantors' risk of increased defaults.

INCREASED DEFAULTS

Fortunately, the risk of increased defaults will be relatively small because actions by other parties in the loan making process will limit the risk. Institutions and lenders will probably not process loan applications for students unless the students file the required documents.

For example, it is reasonable to expect institutions to process loan applications of students whose statements, and if appropriate, Registration Acknowledgement Letters are on file, accompany their applications. By not certifying applications until all documents are submitted, institutions avoid the burden of monitoring temporarily eligible applicants' compliance with the law. In addition, institutions would avoid having to inform lenders and the Secretary which applicants failed to file affidavits and, if appropriate, Registration Acknowledgement Letters. Hence, institutions' policies will restrain guarantors' default rates.

In addition, lenders will also act to restrain defaults caused by applicants' failure to file the appropriate documents. Although lenders may be willing to forward loan checks to institutions for disbursements to students, they will not authorize institutions to release checks to students unless all necessary forms are on file. In addition, lenders are not likely to forward checks directly to students or parents unless notified that all necessary forms are on file. Were lenders to do other than expected, they would risk losing interest benefits on the loans and incurring the cost of collecting the loans.

The costs could be sizable. According to the proposed regulations, institutions must report "temporarily eligible" applicants who fail to file the required documents on time, to lenders. Under the extraordinary burdens on institutions this coming spring and summer it is unreasonable to expect institutions to be able to report these failures in a timely manner. This means collection will be difficult because recipients will have spent a sizable portion of the loans by the time collection efforts are made. Hence, many will be defaulted. Recognizing this likelihood, lenders will probably not authorize the release of checks or send loan checks to students and to parents of students unless all necessary documents are on file.

In addition to the expected actions of institutions and lenders that will reduce guarantors' exposure to increased defaults, guarantors may also take actions to reduce their exposure. For example, they may not guarantee any loan disbursed to students or parents of students who have failed to file the necessary documents at the time institutions certify loan applications. Many agencies may determine that it is to their advantage to establish such rules because of the unusual difficulties that may prevail this spring. Guarantors recognize:

1. The vast majority, 95.3 percent according to the Selective Service, of eligible men register with the Selective Service.
2. The largest group of unregistered men are 18 year olds among whom 70 to 80 percent register.
3. Although the 20 year olds and older have the highest compliance rate, over 97 percent, this spring will be the first time since registering they will be asked to produce a copy of their Registration Acknowledgement Letters.

Thus, although few loans will be made to students and parents of students who refuse to register or have not registered; many loans will be made to "temporarily eligible" applicants. If 18 year olds increase their registration "rate" this Spring and if the Selective Service is able to meet the expected demand for replacement Registration Acknowledgment Letters from older registrants, loans can be disbursed when needed by students. On the other hand, if for any reason, registrants are unable to provide their Registration Acknowledgment Letters within the required 120 days, the entire system could break down.

Because a system break down means defaults, guarantors are uneasy about this Spring. Accordingly, some will adopt rules that will unnecessarily delay loan application processing and therefore loan disbursements.

SUGGESTED ACTIONS

HEAF's uneasiness about the Spring could be relieved if the Selective Service would adopt the following suggestions.

1. Allow young mean to register 120 days before their 18th birthday instead of the current 30 days.
2. Allow the Selective Service's planned address and information verification system intended for 19 and 20 year olds to serve as proof of registration.
3. Allow a SSS Form 1; appropriately canceled by the Post Office to serve as proof of registration.
4. Allow registrants to re-register any time after their 18th birthday so they can obtain a duplicate, canceled, SSS Form 1 when needed.

HEAF's suggestions are intended to provide young men with access to immediate proof of registration and recent 18 year olds plenty of time to register before applying for aid. If adopted, institutions could be prohibited from certifying applications unless applicants have filed the necessary documents without imposing unnecessary hardships on registered applicants.

It seems likely that HEAF's suggestions have been considered and rejected for what may be seen as sound reasons, some of which are apparent in previous GAO reports about the registration system. However, in light of the potential disruption to the timely availability of aid next Fall, the suggestions deserve further consideration. They eliminate the need for any temporary verification of registration, the primary source of HEAF's concerns.

Mr. SIMON. If I may followthrough right away on your hard suggestions so that I understand them, can you repeat what you are suggesting?

Mr. REVER. They are similar to what the student aid officers are suggesting, Mr. Chairman. As a young man goes to the post office to register, he completes a card which is, as I understand it, Form SSS-1, which provides name, address, birthdate, social security number and the like. The postal clerk is then supposed to ask for identifying information to corroborate that which has been presented on the card. Once that information is corroborated, he cancels that card. According to the Selective Service and the post office, they hold those cards and they are accumulated over a week's period and, each week, they deliver them to the selective service.

All I am suggesting is let the applicant or the registrant complete another card, have it canceled, and allow that to be used as proof of registration.

Mr. SIMON. All right.

Mr. Brugel and Ms. Finch talked about delay. Yesterday, we heard recommendations for a 1-year delay. But it was intriguing to me today that there was a suggestion for a 6-month delay. In fact, a 6-month delay would postpone the impact 1 academic year, and probably would be easier to get through Congress.

Is there any difference as far as the impact, as far as you can see, of having a 1-year or a 6-month delay.

Mr. BRUGEL. My recommendation did speak to 6 months, Mr. Chairman. It was on the basis that I felt that would be an adequate leadtime for us to get our literature out before next year and to get our administrative procedures put in place. I would prefer 12 months, or even 18 months, but I figured, much as you do, sir, that that is unlikely.

Mr. MARTIN. Mr. Chairman, if I may, let me just comment that I think if you would look at the delay from the standpoint of the operation of the institutions and the auditing of an award cycle, if the date began on July 1—which is the recognized date by the Department for auditing purposes of programs—if you were going to delay it, you would delay it to next July 1. I agree wholeheartedly with what John has said about the need for leadtime and getting the brochures changed. But that way, when we come in and audit it, it is all in that particular year and it is clean.

One of our problems is when we implement things in midstream, we impact upon other operations that should be occurring, and if we do it at the beginning of an awards cycle, it just makes a lot more sense.

Mr. SIMON. But if we face a choice—and I am thinking about our colleages in the Armed Services Committee who are going to have to approve this change also—if we face a choice of a 6-month delay or no delay——

Mr. MARTIN. We will take 6 months, but we would certainly appreciate a year.

Mr. SIMON. Thank you, Mr. Harrison.

Mr. HARRISON. Than you, Mr. Chairman.

Just briefly, Mr. Rever, have you discussed the suggestions that you made here today with the selective service people?

Mr. BRUGEL. I have discussed the recommendation to provide a greater leadtime for registration rather than the 30 days with their general counsel. There seems to be some responsiveness to that, although, in general, I was directed to put it in writing and they would consider it.

Mr. HARRISON. What about the second postcard idea that you suggested?

Mr. BRUGEL. I have not discussed that. I believe Mr. Martin has discussed a similar concept with them.

Mr. MARTIN. We had discussed this suggestion. In fact, we wrote up the suggestion and sent it to the Department of Education, Mr. Chairman, several months ago before the regulations came out. We have had intimate discussions with the people there. We had asked to meet with the selective service people to discuss this. It was my understanding that they had at least had some conversation between the people in the Department of Education and the Selective Service people that were putting this together.

But it would require selective service going out and amending the way in which they currently do registration. I appreciate some hesitancy on their part to do that, but it would probably be simpler than what is going to occur otherwise and much more cost-effective in the long term for them.

MR. HARRISON. Mr. Chairman, I would be grateful if either of these gentleman were to receive written replies from Selective Service as to their response if we could include that in the record of this subcommittee.

Mr. MARTIN. We would be happy to provide that.

Mr. HARRISON. I would just like to comment that there are a number of us who may find ourselves in a very difficult position because we are in sympathy with the concept of the Solomon amendment, that if people are going to apply for benefits from the country, they should, at a minimum, obey its laws, whether they agree with them or not; but that on the other hand, we are in very strong disagreement, both philosophically and practically, with the idea that colleges and universities should become adjuncts for the Department of Justice.

I don't know where we go from that dilemma, Mr. Chairman. I would certainly welcome a way out if somebody could find a more practical and less intrusive on academia solution to these regulations. I would welcome any comments any of you may have on that but, apart from that, I have no questions.

Mr. MARTIN. Mr. Harrison, we agree with you. We recognize that it is the law and we are not in any way trying to divert that. We are very concerned about the burden.

The irony of this is while people from the selective service and the Department have implied there is no burden, I think there is ample evidence that suggests that there is.

I can recall the days when we used to carry out a similar system in which we had local draft boards throughout the United States with literally thousands and thousands of employees that carried on these kinds of activities. If it is no burden, then I don't understand why the Selective Service couldn't handle this paperwork, either through the lists that the American Council on Education has proposed, or by changing the registration procedures to make it

more reasonable rather than this ridiculous delay of coming back and forth.

As I read the law, once the student has actually registered, which he does at the moment he signs that card at the post office, he is entitled to those benefits. It seems to me unfair to suddenly delay that whole process on his part simply because of paperwork and redtape and potential delays or where his mailing address is or something else. That just seems ludicrous in terms of what we are all about.

Mr. REVER. Mr. Chairman, may I offer a comment with regard to some plans to have documents or lists of students sent to selective service?

As a guarantor who has first responsibility for default, I am reluctant to be enthusiastic about such an approach, because I can anticipate that we would now, under that scheme, be disbursing loans, the proceeds of loans, to students whose eligibility is uncertain. Now we ask the selective service to verify a student's compliance and, if that student has not complied, then it is turned over to the Justice Department or the Department of Education, or whomever, to collect our loans, the loans we guaranteed.

We are much more confident in the ability of private lenders and ourselves to collect those loans than we are about Federal agencies. That is a concern. I encourage those who are making those proposals to be cautious in that regard.

Mr. SIMON. If my colleague would yield, if I may follow through on that, you are not concerned, however, that your guarantee would be in jeopardy?

Mr. REVER. I can't imagine that anyone would do that to us. I hope not.

What we may find, however is, let's say the Department assumes responsibility for collecting those loans that have been disbursed to students or their parents who are eventually determined ineligible. We are notably aware that they have been unsuccessful in doing that. It jeopardizes our insurance rate when we turn that responsiblity over to someone else. We would prefer to retain that responsibility and work with our lenders to see that collection efforts are made conscientiously.

Mr. BRUGEL. Mr. Chairman, if we refuse to go to lists that are provided, then we must place the burden on the institutions. Just following the logic of the number of students who would willfully misrepresent their compliance, I think that the numbers that we are working with will be so terribly small they will be insignificant. Should it occur—I can understand Mr. Rever's concern—it certainly is not going to be a large number. We would then be able to provide advance notice to the students who are signing this, if you misrepresent your status, this is what you are subject to.

Mr. SIMON. If I may followthrough on your comment, when we talk about lists, is it easier for you to simply provide a copy of an affidavit that is signed or to actually compile the list?

Mr. BRUGEL. We are a very highly computerized office serving 22 campuses. We have 30,000 students receiving one or more title IV student aid funds. It would be no difficulty at all, and I could produce that type of list overnight. But to physically collect copies of something, I find that to be a very, very burdensome task.

Ms. FINCH. Sir, if I may comment.

Mr. SIMON. Yes.

Ms. FINCH. I think that in the interest of the financial aid community, however, because of the diversity in management procedures, that both alternatives should be available, because particularly small offices would likely prefer to provide the copies.

Mr. HARRISON. Mr. Chairman.

Mr. SIMON. Yes.

Mr. HARRISON. Mr. Brugel is coming from Penn State. I have two of your campuses within my district. I think I completely sympathize with your thought that a list on your computer is one thing, but I think we have all become familiar enough with the post office that I wouldn't want to put Penn State to relying on it for communication between 22 campuses and sending the lists back and forth.

So I would second the idea that both alternatives should be made available.

Mr. SIMON. I would like to ask one other question. I am thinking out loud now, and I am not suggesting that I will be doing this. But we could put together a bill with a 6-month delay and also have in it a requirement that GAO report back after a certain period of time whether or not in fact we are accomplishing anything. My instinct is we, in a moment of overzealousness, passed a law that is simply going to result in a mountain of paperwork and nothing more.

How long do you have to have a law in effect before you can make an assessment of whether it is having any impact? In other words, if we ask for a GAO study, should it be 12 months after the law is in effect, or 24 months, or how long?

Mr. REVER. In this case, Mr. Chairman, if I may respond immediately, it seems to me we should experience some—I think primarily the greatest impact will be on the 18 year old. Remember that, according to selective service data, they are the age group that has the lowest compliance rating. I think if this law is having an effect, what we will find is that their registration rate goes up.

Mr. Brugel has pointed out on several occasions, what is the likelihood that we are currently giving aid to young men who should be registered with the selective service and are not? The likelihood—if you want to talk about probabilities as a statistician—is that it is very, very small at the current time. What effect can we expect? With those kinds of probabilities we are talking about, we are not going to see significant increases, in my judgment, in the overall compliance rate with the registration law. It is just not possible.

Mr. SIMON. I accept everything you said. But some of my colleagues are going to want to know, in practice, what has happened.

Mr. MARTIN. I think, Mr. Chairman, that the timeframe of when GAO would be able to have any evidence of what the impact might be and whether or not it was working and what the costs were and the imposition upon everybody involved would depend in part on which way you proceed. If you took the Department's approach and proceeded with what they have proposed, you might find out very quickly—and I don't think GAO would have any trouble coming up with a report that would prove to the Congress that it was a pretty absurd exercise.

If you had a program more like the list kind of approach where we send the lists in and then it took the selective service some time to go through and compare that against their computers—I don't know what their ability is to do that, but I would guess that they may find it is going to be about a minute with each of these students to go through these stacks of paper and sort it all out and check it against their computer, or at least that is what they have implied to us. So it would be probably a year for them.

Mr. SIMON. OK.

Mr. Gunderson, do you have any questions?

Mr. GUNDERSON. No, Mr. Chairman.

I apologize for the delay. We have been in the Agriculture Committee marking up emergency farm credit legislation for the last hour and a half. So we are dealing with credit on all sides of the Congress right now.

Mr. SIMON. We thank you all very, very much for your testimony.

The next witness is Randy Hayman, a student at the University of Michigan at Ann Arbor.

We have two witnesses left. Let me just say that we are going to try to get out of here by noon. So if the two witnesses can be fairly brief, we would appreciate it. I don't mean to be pressing.

Mr. Hayman, we are pleased to have you with us.

STATEMENT OF RANDY EDGAR HAYMAN, STUDENT, UNIVERSITY OF MICHIGAN AT ANN ARBOR

Mr. HAYMAN. Thank you very much.

Good morning, Mr. Chairman, and members of the committee. I am both proud and pleased to have this opportunity to speak before you this morning.

My name is Randy Edgar Hayman. I am 19 years old and was born and raised in St. Louis, Mo. I am presently in my second year of prelaw studies at the University of Michigan with a dual major of economics and political science. During the past 2 years, the financial aid that I have received has made it possible for me to obtain an education and to remain at the university. Also during this past academic year, I have been trained and worked as a financial aid peer adviser. So I am in the unique position of being a student, administrator, and also a counselor. So I have some understanding of the problems of applying for financial aid.

Mr. Chairman, I appreciate the effort being put forth by you and the members of this committee to obtain different points of view from so many diverse segments of the college community.

Since I am studying political science, I understand the importance of national defense. Because of this reason, as part of my civic duty, I registered for the draft prior to my 18th birthday. I do not oppose draft registration. But I am opposed to the threat of taking away financial aid to guarantee such an act.

I have spoken to many of my fellow students and administrators about this pertinent issue. I feel that their negative attitudes toward the amendment, along with mine, stem from two areas of concern: first of all, an obvious public policy concern exists; and second, a more hidden personal concern exists.

Of public policy concerns, of course, those who have spoken before me are better qualified to deal with the complex legal issues of this amendment. But at the same time, I feel compeled to express the basic concerns that students have.

No. 1, the bill of attainer. The amendment allows someone to be punished by legislation rather than through the judicial process.

No. 2, lack of due process.

No. 3, question of conscience. Many students are confused and believe that the amendment fails to allow a student who, because of religious beliefs is against the principle of war, to abstain from registering.

No. 4, no procedure for lost documents. No retroactive aid, no room for the filing mistakes of a bureaucratic system. Basically, if you do not hand in an application for financial aid by a set due date, you will not be allocated any aid.

No. 5, I feel, is the most important legal aspect of this law, its discriminatory aspect. The amendment discriminates by gender, heritage, and economic status. This regulation will have a disproportionate impact on males and minority college students who are the most economically disadvantaged. Financially secure students who do not depend on financial aid will not have to register for the draft and, at the same time, they will be allowed to continue their college education. Middle class and poor students who are just as academically capable will be forced to unfairly stop their education and be unfairly denied their right to an education.

Now we go on to the more personal concerns. I feel that students' personal concerns mainly circle around one goal—receiving a first-rate education. At first glance, this may seem to be a very simple task. A student needs to only buy his books, go to class and do his homework. But in reality, college life is not that simple. Once we look closer at the situation, we find that many unnecessary bureaucratic obstacles stand between the student and his goal. Imagine for a few minutes that you are a student.

Before you even have the money to buy your first book, you have to fill out four forms for financial aid, four forms that you have to sign, send to your parents, and then hand into the office of financial aid or your local bank. Then you have to wait for up to 6 weeks for your papers to be processed, or even longer if an error is made. Before you can go to your first class, you may have to wait 2 to 4 hours in a long line just to register for your classes. You then will be lucky if spaces are available in the classes that you have to take to earn a degree.

Now, if we add to this already complicated process a regulation which states that you have to not only register for the draft, but also prove that you registered for the draft, the student's mind is even more diverted from his studies. Many students like myself never received their registration acknowledgment letter. And up to just a few days ago, I didn't know I was even supposed to receive one.

Three things could have happened. It may have been lost in the mail. It may have been sent to my father and I never received it. Or, better yet, it was never sent at all. What happened to it? I do not know. If you were the office of financial aid and at this time you asked me to present it, I could not.

I feel that I have a very unique situation with my father because any mail that comes to the house, he automatically opens it and reads it to me over the phone. I have heard nothing from him up to this date. The regulation says that this is not a problem. A student only needs to sign a notarized affidavit saying that he is registered. He is then given 120 days to prove that in fact he is registered.

This process, in the short run, is inappropriate, and in the long run, inefficient. It unfairly forces the student to go 120 days which can be thought of in student language as 17 weeks or 86 hours of classes worrying about whether or not his letter from the selective service is going to come. Also during this 120-day time period, a student cannot receive a guaranteed student loan and, as a result, he may not be able to buy all of the books he needs, or better yet, pay the tuition and room and board bill that comes up at the end of the month. If the acknowledgement letter fails to come or is misfiled, the student can find himself in debt for thousands of dollars at the end of the term. During this 120-day time period, the student's mind should be solely on passing his next calculus test or writing a 10-page term paper for his English class.

Mr. Chairman and committee members, I do not feel that I would be overstating the issue by saying that if a student does not keep his mind solely on his studies for the first 3 weeks of the term, his chances of passing class, let alone performing well in the class, are limited. The mental stress that this regulation would cause to the student is unjustified.

At the same time, it is important that we realize that for a student to leave school because he cannot afford it is a tragedy. Yes, a tragedy which affects only one person, but it is a tragedy nonetheless. Between the ages of 18 and 20, students develop a mind set, work habits and goals which will direct them to a certain position on the social/economic scale of life. It is unfair to stop a student's education, no matter what the time period is. Because the horror of the situation is that once he leaves the university, chances are that he will never return. Mistakes do happen in the bureaucratic system of financial aid.

If I can, I would like to just give you a quick understanding about myself and a very quick story that happened to me.

My parents both work for the St. Louis Board of Education. My father has been a principal and a school teacher for 49 years. As you can imagine, I missed very few days of school when I was a young man going to high school. I went on to a private institution named John Borroughs, which is about 30 minutes away from where I live.

I basically made education my main concern and my main goal. I put aside social life and other things that many teenagers did to obtain a first-rank education. When I graduated from John Burroughs High School, I was accepted at Notre Dame University, Northwestern University, Tufts University, Cornell University, and the University of Michigan.

At that point, I was determined to go on to college, and I was also thinking about graduate school at a very young age. But a mistake happened. The first year in college, I had no problem at all. I received all of the financial aid I needed, I received the college work study, National Direct Student Loans. Everything went OK.

But between my first year of college and my second year of college, a mistake did happen. There was a misfiling with my application. So, instead of receiving my award notice in June when I should have, I received nothing.

When we called in August asking about my financial aid situation, they said, "No problem. Just wait and call at the end of August." We called at the end of August and they said they did not know a Randy Hayman, they did not know that I existed, and I had at that moment no financial aid. We were passed the due date for the applications. We were passed the date for me to apply for a Government loan of any kind.

I was just lucky at the University of Michigan that when we brought this to the attention of the office of the financial aid administrator, they were compassionate enough and understanding enough, and feel that they are very much dedicated to making sure that qualified students remain at the university, that they went out of their way to find funds so that I could continue my education.

Now in my sophomore year of studies, after this tragic mishap, I went on to become president of the minority council in my dorm, I have an internship with the support of an academic organization at the university, I am a financial aid peer adviser, and I am about to enter the honor section of political science.

I often wonder about the nightmare of what would happen if, because of a mixup, a simple paper mixup, a human mistake, what would happen to me? Where would I be today? I don't think I would be here talking to you, that is for sure.

I feel that middle class and poor students cannot afford the luxury of stopping their education. If I was denied aid, I, too, would probably be forced to give up my dream of going to law school for the reality of getting a job in a factory. Quite frankly, because of my training, I think that I would make a better lawyer than an unemployment statistic.

In conclusion, Mr. Chairman, I feel our Government should make applying for financial aid as uncomplicated as possible. Access to higher education, free from bureaucratic complexity, is a basic part of America. For these reasons, I feel that the intent of this amendment may be honorable, but its effect is unjust.

Mr. Chairman, I would be pleased to respond to any questions you or the members of your committee might have.

[The prepared statement of Randy Edgar Hayman follows:]

PREPARED STATEMENT OF RANDY EDGAR HAYMAN, STUDENT OF THE UNIVERSITY OF MICHIGAN

INTRODUCTION

Good Morning, Mr. Chairman and members of the Committee. I am both proud and pleased to have this opportunity to speak before you this morning.

My name is Randy Edgar Hayman. I am nineteen years old and was born and raised in St. Louis, Missouri. I am presently in my second year of pre-law studies at The University of Michigan with a dual major of economics and political science. During the past two years, the financial aid that I have received has made it possible for me to remain in school. Also, during this past academic school year I have been trained and worked as a Financial Aid Peer Advisor. So I have some understanding of the process of applying for financial aid.

Mr. Chairman, I appreciate the effort being put forth by you and the members of this Committee to obtain different points of view from so many diverse segments of the college community. It is my purpose this morning to express to you a student's opinion on the amendment to the Defense Authorization Act (Public Law 97-252), which finds any student who fails to register for the draft ineligible for Title IV student financial aid (Pell Grant, Supplemental Education Opportunity Grant, College Work-Study, National Direct Student Loan/Plus Loan and State Student Incentive Grant Programs).

Since I am studying to be a political scientist I understand the importance of National Defense. Because of this reason, as part of my civic duty I registered for the draft prior to my eighteenth birthday. I do not oppose draft registration. But I am opposed to the threat of taking away financial aid to guarantee such an act.

I have spoken to many of my fellow students and administrators about this pertinent issue. I feel that their negative attitudes toward the amendment, along with mine, stem from two areas of concern; first of all an obvious public policy concern exists and secondly, a more hidden personal concern.

PUBLIC POLICY CONCERNS

Of course, those who have spoken before me are better qualified to deal with the more complex legal issues of this amendment. But I feel compelled to express the basic concerns that students have:

1. Bill of Attainer:

(a) The amendment allows someone to be punished by legislation rather than through the judicial process.

2. Lack of Due Process.

3. Question of Conscience:

(a) Many students are confused and believe that the amendment fails to allow a student who, because of religous beliefs, is against the principle of war the right to abstain from registering.

4. No Procedure for Lost Documents:

(a) No retroactive aid—no room for the filing mistakes of a bureaucratic system.

5. Discriminatory:

(a) The amendment discriminates by gender, heritiage and economic status. This regulation will have a disproportionate impact on males and minority college students who are the most economically disadvantaged. Financially secure students who do not depend on financial aid will not have to register and at the same time they will be allowed to continue their college careers. While middle class and poor students who are just as academically capable will be unfairly denied their right to an education.

PERSONAL CONCERNS

Students' personal concern mainly circle around one goal—recelving a first rate education. At first glance this may appear to be a very simple task. To obtain this goal a student only needs to buy his books, go to class and do his homework. But in reality, college life is not that simple. Once we look closer at the situation, we find that many unnecessary bureaucratic obstacles stand between the student and his goal. Imagine for a few minutes that you are a student.

Before you even have the money to buy your first book, you have to fill out four forms for financial aid—four forms that you have to sign, send to your parents and then hand in to the Office of Financial Aid or your local bank. Then you have to wait six weeks for your papers to be processed—or even longer if an error is made. Before you can go to your first class you may have to wait two to four hours in a long line just to register for your classes. You then will be lucky if spaces are available in the classes that you have to take to earn a degree.

Now, if we add to this already complicated process a regulation which states that you have to not only register for the draft but also prove that you registered for the draft, the student's mind is even more diverted from his studies. Many students, like myself, never received their Registration Acknowledgement Letter (SSS Form 3A or 3AS). And up to just a few days ago, I did not even know that I was supposed to receive one. The regulation states that this is not a problem—a student needs to only sign a notarized affidavit stating that he has registered. He is then given 120 days to prove that he did, in fact, register. This process in the short run is inappropriate and in the long run inefficient. It unfairly forces the student to go 120 days, which can be thought of as 17 weeks or 86 hours of lectures worrying about whether or not his letter from the Selective Services is going to come. Also, during this 120 day time period, a student can not receive a Guaranteed Student Loan and as a

result, he may not be able to buy all the books he needs. If the acknowledgment letter fails to come, a student could find himself in debt for thousands of dollars at the end of the term. During this 120 day time period a studnet's mind should be solely on passing his next calculus test or writing a ten-page term paper for his English class. Mr. Chairman and Committee members, I do not feel that I would be overstating the issue by saying that if a student does not keep his mind mainly on his studies for the first three weeks of the term his chances of passing the class, let alone performing well in class, are limited. The mental stress that this regulation would cause the student is unjustified.

At the same time, it is important that we realize that for a student to leave school because he cannot afford it is a tragedy. Yes, a tragedy which affects only one person, but it is a tragedy none the less. Between the ages of eighteen and twenty, students develop a mind set, work habits and goals which will direct them to a certain position on the social economic scale of life. It is unfair to stop a student's education, no matter what the time period is. Because the horror of the situation is that once he leaves the University, chances are that he will never return. Middle class and poor students can not afford the luxury of stopping their education. If I were denied aid, I too would probably be forced to forget my dream of going to law school for the reality of getting a job in a factory.

In conclusion, Mr. Chairman, I feel our government should make applying for financial aid as uncomplicated as possible. Access to higher education, free from bureaucratic complexity is a basic part of America. For these reasons I feel that the intent of this amendment may be honorable, but its effect is unjust.

Mr. Chairman, I would be pleased to respond to any questions you or the members of your Committee might have.

Mr. SIMON. Thank you very much. We appreciate your excellent statement. In addition to your other qualifications, since you are from St. Louis, you probably know where Carbondale, Ill. is.

Mr. HAYMAN. Yes, sir.

Mr. SIMON. You are by far the best witness we have had today.

Let me ask you just one question. You heard the talk about the possibility of having a statement that you could simply check off. You could have a statement such as suggested by the president of Swarthmore, for example. Would that offend you? Is that practical, from your viewpoint?

Mr. HAYMAN. Are we talking about a checking off of——

Mr. SIMON. A checking off of either "I am not required to register," or "I have registered."

Mr. HAYMAN. That is checking off to determine whether or not you are receiving financial aid?

Mr. SIMON. Forget the letter. You simply check off.

Mr. HAYMAN. If my understanding of the situation is clear, I don't think that would solve the problem. There would still be a discriminatory effect.

Mr. SIMON. I agree with you. What you are talking about there is the law itself. I don't happen to like the law; you don't happen to like the law. But we are going to have to live with the law.

The question is how do we make that law workable, how do we make it as inoffensive as possible?

Mr. HAYMAN. I think the best thing to do is to take it out of the hands of the colleges and universities and set it aside with the Selective Service or another part of the government to dictate what the law is, to enforce it. I don't feel that the universities should have that responsibility at all. I don't feel it should be on the application. I feel that they should be able to have a law—which we already do have—which states that if you do not register, you will be fined or you will be imprisoned. I feel that it should be done outside of the colleges.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. I don't have any questions, Mr. Chairman. I would just like to join with you in congratulating this young man on a very fine statement.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

As a fellow "Big 10'er," I want to welcome you to the committee. However, I must say that I was a little disappointed or offended that of all of these colleges you applied to and were accepted, that you didn't even apply at Wisconsin.

Mr. HAYMAN. It just slipped my mind.

Mr. GUNDERSON. What I would like to get at, Randy, is the intent of Congressman Solomon when he introduced the amendment on the floor of the House, and that was not as a compliance feature of registration. If that is our intent, I think it is a crazy way to try to accomplish registration compliance.

I think, rather, he was looking at it more from the philosophical statement that a student who was unwilling to at least give their country their name and address in time of a national emergency. So that they could be called up more quickly and efficiently, it is not proper for that society—or at least it is not expected of that society—to provide that student with either a grant or a subsidized loan.

Recognizing this, I am trying to find a way in which we can accomplish that with the least administrative process or burden on the university. Again, as the chairman said, it is not a question whether one likes or dislikes the law, how do we make it most efficient?

Based on what I have heard today and what I heard yesterday, I am wondering whether it would make some sense to automatically give a student the loan that first year, eliminating the paperwork. But then, before the student gets financial aid the second year, we would have had time for the Department of Education and the Selective Service Commission to verify through their records whether or not the student is registered.

So, yes, we would lose the first year. We will give financial aid to the student, whether he is registered or not, during the first year. It seems to me that, as a society, we are going to get what Congressman Solomon intended if we deny him financial aid years 2, 3, 4 and law school or whatever graduate degree he might be seeking.

Would that sound acceptable to you in terms of an administrative process, regardless of your philosophical feelings on the law itself or not?

Mr. HAYMAN. You are saying that if we were to go ahead and give the person the loan or the financial aid for the first year and then try to catch up with him later on down the line.

No. To me, it doesn't get rid of the fact that the law is discriminatory. That is the bottom line. Sure, you will give me the money the first year, but if I was a student who did not want to register for the draft and I was a rich student, for my second and third year I could still not register for the draft and still continue my college education. Whereas if I am middle class or poor, you are automatically forcing me to register for the draft.

As I said, I have already registered, but I am thinking about the views of other students. They will say there is a lack of due process. The constitutional question still exists at the bottom line of this law.

So, no, I do not feel that by postponing the discriminatory act by 1, 2, or 3 years that it is going to solve the issue.

Mr. GUNDERSON. OK. So, in your opinion, there is really no way that we can implement this law that is satisfactory.

Mr. HAYMAN. I would have to say that there is no way that the colleges could implement it without touching upon the constitutional question.

I think that maybe—as I was trying to express before—outside the universities, registration could be handled very much—this is very simplistic—I was going to say very much in the way that driver's licenses are handled, that another bureau is responsible for it. Another bureau has the records, another bureau enforces the law.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mr. SIMON. We thank you very much for your testimony and for being here.

Mr. HAYMAN. Thank you.

Mr. SIMON. Our final witness is John Shattuck, the director of the American Civil Liberties Union.

STATEMENT OF JOHN SHATTUCK, DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. SHATTUCK. Thank you very much, Mr. Chairman.

I will be brief. I am pleased to follow the very eloquent young man from Michigan.

In my testimony this morning, I would like to return to the basic underlying question of the statute, the Solomon amendment. You have heard a great deal of testimony concerning the proposed regulation.

But I would like to return to the underlying statute because I believe the flaws in the proposed regulation, as they have been articulated here, are a direct result of the profound constitutional defects in the underlying law. These defects are, as you know, Mr. Chairman, the subject of a constitutional challenge in a case now pending in Federal court in Minneapolis and the decision is forthcoming.

Mr. Chairman, the Solomon amendment is an unfortunate current example of one of the oldest and most notorious forms of legislative tyranny, the bill of attainder, which is, very simply, the punishment of individuals without a trial. That is really what the underlying issue is here.

This amendment is, in a way, the purest and simplest form of bill of attainder. It is aimed at a clearly identifiable group, nonregistered for the draft, and it seeks to punish them without a trial. It assumes the guilt of all draft age male students conditionally and penalizes them. If they fail to submit the required statement of compliance, they are denied financial aid and, therefore, the higher education for which they would otherwise qualify.

Applicants who cannot submit the required oath are then punished automatically, inescapably, and without the protection of a

trial by jury in which the Government must prove guilt beyond a reasonable doubt.

Whether or not we like that news that I am bringing to the subcommittee, Mr. Chairman, the Supreme Court has repeatedly struck down as unconstitutional less egregious forms of legislative punishment than the Solomon amendment. I will give you one example, and that is that 20 years ago, the Court declared unconstitutional a section of the Immigration and Nationality Act which stripped pacifists who have fled that country to avoid military services of their citizenship, whether or not they have been convicted of draft evasion, perhaps a much more compelling instance in which the Congress might act to strip citizenship than the circumstances here.

If that statute was a bill of attainder, I think there can be little doubt that the Solomon amendment is similarly unconstitutional.

But I think it is important to move away from the very volatile and emotional issue of the draft and draft registration to see the implications of the Solomon amendment and legislation of this kind, which I think is very dangerous and very far reaching. Many Members of Congress, were they to have to act on it in a different setting, would think twice.

The use of bills of attainder as a legislative strategy can be pursued in many ways for many political purposes. Let me just cite three examples.

If this amendment remains law, what is to stop the Congress, for example, from passing a statute denying Small Business Administration loans without a trial to businesses suspected of violating environmental protection laws. Or barring veterans' benefits without a trial to anyone who has not filed an income tax return on time before they have had an opportunity to state why in a court of law. Or precluding FHA mortgage applications without a trial to persons who do not file affidavits swearing that they are not members of the Communist Party or the John Birch Society or the Moral Majority, assuming that it could be made illegal to join any of those organizations, which I don't think it could.

None of these hypotheticals is far fetched, and all of them are bills of attainder. They pose a serious threat to our constitutional system. All the more so because the Solomon amendment shows how easy and how attractive it is for the Congress to act in this manner.

Unfortunately, the defects of the Solomon amendment are not limited to its status as a bill of attainder. Let me very briefly list four other major constitional flaws in the statute.

First, it violates the 5th amendment privilege against self-incrimination, on the one hand by penalizing students who assert the privilege to decline to file a statement of compliance and, on the other hand, by forcing those who do file statements of compliance to incriminate themselves if they have, for example, mistakenly failed to comply with the registration requirements or otherwise think they may have complied when they haven't.

Second, the statute violates the equal protection principles of the Constitution by discriminating against middle class and poor students who need Federal loans to attend college. As Senator Durenberger pointed out when the amendment was debated on the

Senate floor, we are punishing middle class lawbreakers more than we punish those who are wealthy enough to pay their own way through college and more than those who attend college at all.

Third, the statute discriminates unconstitutionally on the basis of race, because it will have a disproportionate impact on minority students who are especially reliant on Federal aid in obtaining postsecondary education.

Fourth and finally, Mr. Chairman, I believe the Solomon amendment discriminates in spirit on the basis of sex because it will affect male applicants for Federal tuition assistance. Any statute that classifies individuals on the basis of gender must have an exceedingly persuasive justification, as Justice O'Connor pointed out in an important Supreme Court sex discrimination opinion last year. I submit, Mr. Chairman, there is no justification, let alone an exceedingly persuasive justification, for differentiating between men and women when it comes to determining their eligibility for student financial aid.

This, I am sure, is the view of some members of the subcommittee, perhaps not all, and some Members of Congress. I think that the analysis that I have presented, which is, of course, pending as a challenge to the Solomon amendment in Federal court, is something that the Congress should very seriously take into consideration in determining whether to go forward with this whole proposal.

I respectfully submit that the Congress should not wait for the Federal courts to invalidate it, but should take prompt action to rectify the constitutional harm that has been done by the enactment of the Solomon amendment.

In this regard, I would urge the subcommittee to report the bill sponsored by Representative Edgar who testified before the subcommittee yesterday to repeal section 1113 of the Defense Department Authorization Act.

I haven't focused on the regulations, but I think you can understand, Mr. Chairman, that I don't think that the situation can be cured by tampering or working with any of the proposals that have been brought before the subcommittee today, although I think they are all brought in very good spirit and in good faith and, in some respects, some of them will ameliorate the problems facing colleges and universities having to administer this amendment.

But the underlying problem, as the very eloquent young man who preceded me stated, is really a problem of the basic injustice and inequity of this kind of an amendment, using the student aid process as a way of trying to get at a wholly different problem, which is the problem of draft registration, where the Selective Service System is now fully charged with enforcing the law and the law is covered with criminal penalties, and prosecutions are going forward. Whatever one's view may be about draft registration, it should not be dragged into this student loan business in a way that severely impacts and discriminates against those who are most reliant on student aid.

Thank you, Mr. Chairman.

Mr. SIMON. I thank you.

[The prepared statement of John Shattuck follows:]

PREPARED STATEMENT OF JOHN SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee to present the views of the American Civil Liberties Union on the issue of draft registration and eligibility for federal student financial assistance. The ACLU is a nationwide nonpartisan organization of more than 275,000 members devoted solely to protecting and enforcing the Bill of Rights.

There are two aspects to this issue and I understand the Subcommittee wishes to examine both of them. First, the recent action by the Congress in adopting the "Solomon Amendment," [1] requiring student loan applicants to furnish conclusive proof that they have registered with the Selective Service before their applications can be processed, raises fundamental questions of constitutional law and public policy which go far beyond the issues of draft registration and federal student aid. Second, the proposal last month by the Department of Education of a regulation to implement the Solomon amendment raises additional questions about the impact of the new statute on the academic freedom of colleges and universities which are obligated to administer it and students or prospective students who are obligated to comply with its terms.

In my testimony this morning I would like to focus on the first question—in part because I know the Subcommittee will hear extensive testimony from other witnesses about the damaging impact of the proposed regulation, and in part because I believe the flaws in the proposed regulation are in direct result of profound constitutional defects in the Solomon amendment itself. These defects are the subject of a constitutional challenge to the statute in litigation brought by the ACLU's Minnesota affiliate, together with the Minnesota Public Interest Group now pending in federal district court in Minneapolis.[2] I have attached to my testimony excerpts from the plaintiff's brief in support of a motion for preliminary injunction in the case.

Mr. Chairman, the Solomon amendment is an unfortunate current example of one of the oldest and most notorious forms of legislative tyranny: The Bill of Attainder.

The first article of the Constitution specifically states that "[n]o Bill of Attainder or Ex Post Facto Law shall be passed [by the Congress]." This prohibition is deeply rooted in the struggle against abuses of power by the English parliament, and it clearly and specifically denies legislatures the right to punish individuals and identifiable groups without a trial. Alexander Hamilton put it best when he said, "If the legislature may banish at discretion all those whom particular circumstance render obnoxious, without a hearing or a trial, no man can be safe or know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government would be a mockery of common sense." [3] Again and again, over the years, the Supreme Court has reaffirmed this view. As the Court put it in 1946, "our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned." [4]

The Solomon amendment is the purest and most egregious form of Bill of Attainder. It is aimed at a clearly identifiable group—non-registrants for the draft—and it seeks to punish them without a trial. It assumes the guilt of all draft-age male students and penalizes them conditionally. If they fail to submit the required "statement of compliance" they are denied financial aid, and therefore the higher education for which they would otherwise qualify. Applicants who cannot submit the required oath are punished automatically, inescapably and without the protection of a trial by jury in which the government must prove guilt beyond a reasonable doubt.

The Supreme Court has repeatedly struck down as unconstitutional less egregious forms of legislative punishment than the Solomon amendment. Twenty years ago, for example, the Court declared unconstitutional a section of the Immigation and Nationality Act which stripped pacifists who had fled the country to avoid military service of their citizenship, whether or not they had been convicted of draft evasion.[5] If this statute was a Bill of Attainder, there can be little doubt that the Solomon amendment is similarly unconstitutional.

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[1] Section 1113 of the Department of Defense Authorization Act of 1983, Public Law 97-252, 96 Stat. 748 (1982), codified as section 12(f) of the Military Selective Service Act, 50 U.S.C. App. § 462(f) (1982).

[2] *Doe* v. *Selective Service System*, Civ. No. 3-82-1670 (D. Minn.).

[3] Quoted in III, J.C. Hamilton, "History of the Republic of The United States" (1859) at 34.

[4] *United States* v. *Lovett*, 328 U.S. 303, 318 (1946). See also *United States* v. *Brown*, 381 U.S. 437, 442 (1965); *Cummings* v. *Missouri*, 4 Wall. 277, 18 L.Ed. 366 (1867); *Fletcher* v. *Peep*, 6 Cranch 87, 138, 3 L.Ed. 162 (1810).

[5] *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144 (1963).

Mr. Chairman, much more is at stake here than enforcement of the draft registration laws or the integrity of federal student loan programs. The implications of the Solomon amendment are exceptionally dangerous and far-reaching. The use of Bills of Attainder is a legislative strategy that can be pursued in many ways for many political purposes. If this amendment remains law, what is to stop the Congress, for example, from passing a statute denying Small Business Administration loans without a trial to businesses suspected of violating environmental protection laws, or barring veterans' benefits without a trial to anyone who has not filed an income tax return on time, or precluding FHA mortgage applications without a trial to persons who do not file affidavits swearing that they are not members of the Communist Party, or the John Birch Society, or the Moral Majority, assuming it could be made illegal to join any of those organizations? None of these hypotheticals is far-fetched and all of them are Bills of Attainder. They pose a serious threat to our constitutional system—all the more so because the Solomon amendment shows how easy and attractive they are to pass.

Unfortunately, the defects of the Solomon amendment are not limited to its status as a Bill of Attainder. Let me briefly list four other major constitutional flaws in the statute. First, it violates the Fifth Amendment privilege against self-incrimination, on the one hand, by penalizing students who assert the privilege and decline to file a statement of compliance, and on the other hand, by forcing those who do file Statements of Compliance to incriminate themselves if they have not registered. Second, the statute violates the Equal Protection requirements of the Constitution by discriminating against middle-class and poor students who need federal loans to attend college. As Senator David Durenburger (R-MN) pointed out when the amendment was debated in the Senate, "We [are] punishing middle-class lawbreakers more than we punish those who are wealthy enough to pay their own way through college, and more than those who do not attend college at all." [6] Third, the statute discriminates unconstitutionally on the basis of race, because it will have a disproportionate impact on minority students who are especially reliant on federal aid in obtaining post-secondary education.

Fourth, and finally, the Solomon amendment discriminates on the basis of sex because it will affect only male applicants for federal tuition assistance. Any statute that classifies individuals on the basis of gender must have an "exceedingly persuasive justification," as Justice O'Connor pointed out in an important Supreme Court sex discrimination opinion last year.[7] These is no justification, let alone an "exceedingly persuasive justification," for differentiating between men and women when it comes to determining their eligibility for student financial aid.

These, then, are the constitutional flaws in the statute. I urge the Subcommittee to weigh them carefully, together with the substantial burden on academic freedom posed both by the statute and the proposed implementing regulations, and conclude that whatever one's opinion may be about draft registration, the Solomon amendment is a profoundly dangerous and counterproductive law. I respectrully submit that the Congress should not wait for the federal courts to invalidate it, but should take prompt action to rectify the constitutional harm that has been done by its enactment. In this regard I urge the Subcommittee to report favorably H.R. 1286, a bill to repeal Section 1113 of the Defense Department Authorization Act of 1983.

I would be happy to answer any questions you may have. Thank you for the opportunity to appear before the Subcommittee.

Attachments.

[6] 128 Cong. Rec. S4945 (daily ed. May 12, 1982).
[7] *Mississippi University for Women* v. *Hogan*, U.S. , 73 L.Ed. 2d 1090, 1095 (1982).

Appendix

[Excerpts From Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, *MPIRG and Doe* v. *Selective Service System,* Civ. No. 3-82-1670 (D. Minn.) (Motion for Preliminary Injunction Pending)]

I. INJUNCTIVE RELIEF SHOULD BE GRANTED AS THIS CONSTITUTIONAL CHALLENGE OF SECTION 1113 OF THE DEFENSE AUTHORIZATION ACT IS LIKELY TO SUCCEED ON THE MERITS

A. SECTION 113 LEGISLATIVELY DETERMINES GUILT AND INFLICTS PUNISHMENT UPON AN EASILY ASCERTAINABLE GROUP WITHOUT THE PROTECTIONS OF A JUDICIAL TRIAL, AND IS THEREFORE AN UNCONSTITUTIONAL BILL OF ATTAINDER

The first article of the United States Constitution specifically states:

"No Bill of Attainder or Ex Post Facto Law shall be passed [by the Congress]." U.S. Const. art. I, § 9, cl. 3.

This prohibition, along with a similar ban applicable to the states, clearly and specifically denies legislatures the right to punish individuals and identifiable groups through the use of Bills of Attainder.

Widespread support for prohibition of these bills by the Constitutional Framers resulted, in large part, from English abuses of the legislative power of Attainder. This power allowed the Parliament to bypass the often cumbersome judicial process in order to legislatively declare an individual or identfiable group guilty of crimes and sentence them to death. A similar power allowed the issuing of Bills of Pains and Penalties for less serious offenses. II Wooddeson, A Systematical View of the Laws of England, p. 638 (1792).

Bills of Attainder and of Pains and Penalties were primarily punitive in nature and were often directed at rebellious nobility and those accused of treason. Bills of Attainder implied capital punishment, while Bills of Pains and Penalties often included punishments such as banishments, forfeiture of property, and "corruption of the blood" which interrupted the offenders line of succession. Chafee, Jr. Three Human Rights in the Constitution of 1787, (1956). There are numerous examples, however, where these bills were used as deterrents or as incentives for alleged offenders to present themselves for judicial trial. Chafee, *Id.* at 103-118; *See also* "Act for the Attainder of the Pretended Prince of Wales of High Treason," 13 Will. 3, c.3 (1700).

The use of Bills of Attainder and of Pain and Penalities was not limited to England. During the American Revolution all thirteen states passed Bills of Pains and Penalties against those who remained loyal to the English crown. *Respublica* v. *Gorden,* 1 Dall. 233, 1 L.Ed. 115; *Cooper* v. *Telfair,* 4 Dall. 14, 1 L.Ed. 721, *See also* Thompson, Anti-Loyalist Legislation During the American Revolution, 3 Ill. L. Rev. 81, 147.

As a direct result of English and American abuses of the power of Attainder such bills were specifically prohibited by the Framers of the Constitution. The reasoning which underlies this unanimous decision is best expressed by Alexander Hamilton:

"Nothing is more common than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment by Acts of the legislature. The dangerous consequences of this power are manifest. . . . [I]f it [the legislature] may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense." III (John C.) Hamilton, History of the Republic of the United States p. 34, (1859).

The United States Supreme Court after considering both the infamous history of Bills of Attainder and the response to that history of the 1787 Constitutional Congress, has concluded that, "When our Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned, and they proscribed Bills of Attainder." *U.S.* v. *Lovett,* 328 U.S. 303, 318, (1946).

The Constitutional proscription of Bills of Attainder has been broadly interpreted by the Supreme Court to include Bills of Pains and Penalties. In *Fletcher* v. *Peck,* 6

Cranch 87, 138, 3 L. Ed. 162 (1810), Chief Justice Marshal stated that, "[a] bill of attainder may affect the life of an individual, or may confiscate his property, or may do both." So too has the Court done away with requirements that the proscribed Bill of Attainder identify offenders by name or specifically declare their guilt. *Cummings* v. *Missouri*, 4 Wall. 277, 18 L. Ed. 366 (1867); *Ex Parte Garland*, 4 Wall. 333, 18 L. Ed. 366 (1867). The perspective of the Supreme Court in identifying Bills of Attainder was clearly stated by the Court in *United States* v. *Brown:*

"The best available evidence, the writings of the architects of our constitutional system, indicated that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general sageguard against legislative exercise of the Judicial function, or more simply-trial by legislature." 381 U.S. 437, 442, (1965).

The Supreme Court has consistently defined Bills of Attainder in such a way as to include three key elements. These three elements were most recently outlined in *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 468 (1977), where the Court defined Bills of Attainder as legislation which: first determines guilt of an individual or identifiable group; second, inflicts punishment upon that individual or group; and finally, inflicts punishment without the protections of a judicial trial. *See United States* v. *Brown*, 381 U.S. at 445, 447; *United States* v. *Lovett*, 328 U.S. at 315–316; *Cummings* v. *Missouri*, 4 Wall. at 323, 18 L. Ed. 363. Each of the elements of a Bill of Attainder will be addressed in the context of Section 1113. It will be demonstrated that Secton 1113 both determines the guilt of alleged non-registrants and inflicts punishment, all without benefit of Judicial trial.

1. Section 1113 legislatively determines the guilt of an easily ascertainable group.

In order for a legislative act to qualify as a Bill of Attainder it must impose punishment without benefit of judicial trial upon a specific individual or an easily ascertainable group. *Cummings, supra; Lovett, supra; Brown, supra.* Section 1113 of the Defense Authorizations Act is very specifically directed at an easily ascertainable group in much the same way that Missouri's State Constitution was directed at doctors, lawyers and clergymen in *Cummings*, and the Labor-Management Reporting and Disclosure Act was directed at Labor Union Officers in *Brown*. In both of these cases the legislation in question required that members of the targeted groups take affirmative action, in the form of an oath or confirmation, in order to escape the presumption of guilt placed upon them by the legislative action. In *Cummings*, *Brown* and now in Secton 1113 the offensive legislation is spcifically targeted at a group which was identifiable prior to the legislation in question. *Brown*, 381 U.S. at 450–452.

Section 1113, like other examples of Legislative Bills of Attainder, is directed at a very specific group of persons, in this case young male students who require financial aid to complete their college educations but cannot truthfully submit statements of compliance in accordance with Section 1113. That section reads in relevant part:

"(f)(1) Any person who is required under section 3 to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any rule or registration issued under such section, shall be ineligible for any form of assistance or benefit provided under Title IV of the Higher Education Act of 1965.

"(2) In order to receive any grant, loan or work assistance under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et.seq.*), a person who is required under Section 3 to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with secton 3 and regulations issued thereunder." Pub. Law 97-252 (2nd Sess.) 1982 (Codified at 50 U.S.C. App. § 462).

The legislative mandate of this section is directly analogous to the oath requirements placed upon doctors, lawyers and clergymen in *Cummings, supra*. In that case the Missouri State Legislature enacted a post-Civil War amendment to the State Constitution which required every member of the targeted groups to swear an oath that, among other things, they had never, "been in armed hostility to the United States," nor had they, "entered or left the State for the purpose of avoiding enrollment or draft in the military service of the United States." 4 Wall. at 318, 18 L. Ed. at 361. Any member of the targeted groups who failed to truthfully swear the required oath was automatically disbarred from their vocation. Cummings, a priest, refused to take the required oath and challenged his disbarment from his chosen vocation.

In striking down the Amendment as an unconstitutional Bill of Attainder the U.S. Supreme Court dismissed arguments that the legislation failed to specifically find guilt in those who failed to take the required oath. The Court described the difference between specific declaration of guilt and an Act which in effect assumed guilt as, "one of form only, and not of any substance." The Court continued, "The existing clauses presume the guilt of priests and clergymen and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath—in other words, they [the State Legislature] assume the guilt and adjudge the punishment conditionally." 4 Wall. at 324, 18 L.Ed at 363.

A similar example of legislative assumptions of guilt can be found in *U.S.* v. *Brown, supra,* where the Labor-Management Reporting and Disclosure Act of 1959 conditioned a labor union's access to the National Labor Relations Board, a vital element of the union's effectiveness, upon the filing of affidavits by all of the union's officers attesting that they were not members of the Communist party." 318 U.S. at 439. In holding the Labor-Management Reporting & Disclosure Act an unconstitutional Bill of Attainder the Supreme Court cities with approval the reasoning of *Cumming* v. *Missouri, supra.* 281 U.S. at 447-449.

Congress, through the enactment of Section 1113, has revived the same offensive legislative techniques condemned in *Cummings* and in *Brown.* Section 1113 assumes the guilt of all draft age male students and punishes them conditionally. If they fail to submit the required "Statement of Compliance" they are automatically denied financial aid, and therefore the higher education for which they would otherwise qualify. Much like the clergymen in *Cummings* or the Labor Union officials in *Brown,* male students who cannot truthfully submit the required oath are punished automatically, inescapably and without protection of judicial trial.

As in *Cummings, supra,* Section 1113 requries an oath from each member of the target group relating to that individual's past actions. Based on that past action, punishment under Section 1113 is inescapable for many members of the targeted group. As noted *supra.,* Section 1113 punishes any person who fails to register, "in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under this section . . ." 50 U.S.C. App. § 453(f)(1). Current regulations, 32 CFR § 1600, *et seq.* and Executive Order No. 4771, 45 Fed. Reg. 45247 (July 2, 1980), both require young men to register with the Selective Service within thirty (30) days of their eighteenth birthday. For those members of the target group who have failed to register within that period the legislative determination of guilt and the corresponding infliction of the punishment is automatic and inescapable. *American Communications Association* v. *Douds,* 339 U.S. 382, 413 (1949). The practical effect of Section 1113 is that members of the target group who are unable to prove their innocence are automatically found guilty of failing to register, a criminal offense, and are legislatively punished.

This method of legislatively determining guilt and imposing punishment has been addressed in the Supreme Court in *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144 (1963). In that case, the Court declared unconstitutional that portion of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1481(a) which stripped pacifists who fled the country to avoid military service of their U.S. citizenship, whether or not they had been convicted of draft evasion. The Court held such assumptions of guilt and inflictions of punishment to be in direct violation of the Fifth and Sixth Amendments to the Constitution. The Court concluded: ". . . Congress in these sections decreed an additional punishment for the crime of draft avoidance in the special category of cases wherein the evader leaves the country. It cannot do this without providing the safeguards which must attend a criminal prosecution." 372 U.S. at 184, *See Trop* v. *Dulles,* 356 U.S. 86 (1962).

In an identical fashion Section 1113 calls for additional sanctions for persons already liable for prosecution for non-registration under the Selective Service Act simply because of their current or anticipated status as students. These additional sanctions are applicable to members of this target group regardless of whether or not they have been convicted of draft evasion before a Judicial Court with all of its protections. For Congress to so determine guilt and inflict punishment for a chargeable criminal offense not only filies in the face of *Kennedy,* but also deprives individuals of the due process protections guaranteed by the Fifth and Sixth Amendments to the U.S. Constitution.

2. Section 1113 legislatively inflicts punishment upon an easily ascertainable group

Legislative infliction of punishment is generally accepted as an essential element in violations of the Bill of Attainder Clause. *Cummings, supra; Flemming* v. *Nester,* 363 U.S. 603 (1959); *Communist Party of the U.S.* v. *Subversive Activities Control Board,* 367 U.S. 1 (1960); *Brown, supra.* "Punishment" as an element of a Bill of At-

tainder violation has been defined in various ways throughout this country's constitutional history. A common element of these definitions has been that punishment is more broadly defined that simply the deprivation of life, liberty or property. Early definitions of punishment established by the Supreme Court include the deprivation of the right to enjoy life, liberty and property and to pursue chosen vocations and occupations:

"The deprivation of any right, civil or political, proviously enjoyed may be punishment; the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction or impeachment. Disqualification from the pursuits of a lawful avocation, or from a position of trust, or from the privilege of appearing in courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment." *Cummings*, 4 Wall., at 320, 18 L.Ed at 362.

More current Supreme Court definitions recognize that punishment need not always be punitive but may be imposed for a variety of different purposes. As noted in *Brown*, 381 U.S. at 458:

It would be archaic to limit the definition of "punishment" to "retribution". Punishment serves several purposes; retributive, rehabilitative, deterrent and preventive. One of the reasons society imprisons those convicted of crimes is to keep them from inflicting future harm, but that does not make imprisonment any less punishment."

The determination of whether legislative sanctions do indeed constitute punishment hinges, in large part, upon the factual circumstances which surround those legislative sanctions. *Nixon* v. *Administrator of General Services, supra.* In evaluating those surrounding circumstances several tests have traditionally been applied to determine the character of the legislatively imposed sanctions. These tests have been outlined by the Supreme Court in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. at 168–169, and are as follows:

"Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiree, and may often point in different directions. Absent conclusive evidence of congressional intent as to the penal nature of the statute these factors must be condidered in relation to the statute on its face."

With this definition, which is consistent with recent Supreme Court decisions, in mind, Section 1113 will be condidered in light of each of the outlined criteria. These considerations demonstrate that the legislation in question is indeed punitive and can serve no purpose except those usually achieved by punishment—retribution and deterrence.

a. *Congressional intent.*— The tests set forth in *Kennedy, Supra*, are by definition only employed in the absence of conclusive evidence of penal intent on the part of Congress. The short but direct legislative history of Section 1113, like that of the legislation struck down in *Kennedy*, clearly demonstrates that Congress had no intention but to apply additional punishment to a particular group of persons who were already subject to criminal prosecution and punishment under Section 12 of the Selective Service Act. 50 U.S.C. App. § 462. In the words of the Amendment's sponsor, spoken on the floor of the U.S. House of Representatives:

". . . I intend not only to offer this amendment to this legislation, but as other legislation comes down the pike, such as the jobs training bill, such as home loans in various categories, I intend to offer the same amendment until every young man is deprived of any kind of Federal assistance unless he has obeyed the law. . . ." Comments of Representative Solomon, 128 Cong. Rec. H4757, (July 28, 1982).

This comment was followed by those of Representative Montgomery, who agreed, "As the gentleman said, the 500,000 [who have not registered], it is a felony, they have violated the law, and they are not entitled to those educational benefits." Cong. Rec. H.4757. This Congressional call was clearly for additional penalties to supplement the already stiff sanctions (5 years imprisonment or $10,000 fine or both) imposed by the Selective Service Act upon conviction of failure to register for the draft, a felony. The imposition of additional penalties was questioned by some Representatives:

"I also question the premise that [additional] punishment should be used in order to induce young men to obey the law. This amendment has the obvious primary objective of increasing the number of men registered for the draft. However, it also

has a secondary, and more subtle, objective, which is to punish those individuals who do not register." Comments of Representative Edgar, 128 Cong. Rec. H4760, (July 28, 1982). Each motivation for passage of the Amendment expressed in House floor debates was one associated with punishment, either retribution for failing to register or deterrence as a method of enforcing an unpopular law. No mention was made about the Amendment's relationship to the goals of the Higher Education Act or to any other education objectives. Quite to the contrary, as Representative Schroeder clearly demonstrated, the link between the Selective Service and the Department of Education is tenuous indeed:

"Do we really want to deputize America's bankers to enforce the selective service law? Do we really want to deputize all the different schools to enforce the selective service laws? Let me propose a further amendment. I think every student ought to be registered to vote. Do we want to say that before they get student aid we want to make sure that they are registered to vote? Do we want to say that anybody who is violating the EPA laws cannot get SBA loans? I mean, we can turn this thing into a big, gigantic police state, and I think that is the problem" 128 Cong. Rec. H4762, (July 28, 1982).

The Congressional Record provides conclusive evidence that Congress at no time considered educational objectives or anything even vaguely related to education (save administrative inconvenience) in enacting this Amendment. Instead, Congress focused its energies on the infliction of additional sanctions upon non-registrants with two stated goals in mind, to punish those who had violated the law and to deter future non-compliance through this example. The intent of Congress is also revealed in that Section 1113 was designed not as part of any education act but as an amendment to the Section of the Selective Service Act which imposes sanctions.

As in *Brown*, both retribution and deterrence fall squarely within the definition of punishment. The very punishment that the Congress is not at liberty to inflict upon an identifiable group without benefit of judicial trial. 381 U.S. at 458-460. The motivations expressed by the author of this Amendment and its supporters provide conclusive evidence of the Congressional intent to punish a specific group of young men for their failure to register for the draft.

b. *Affirmative disability or restraint.*—Despite this clear showing of Congressional intent to punish, it will nevertheless be demonstrated that Section 1113 meets each test put forth in *Kennedy* for determining if legislative enactments constitute punishment.

Section 1113 involves both a restraint and an affirmative disability upon male students. Section 1113 specifically prohibits students from receiving educational benefits under Title IV of the Higher Education Act of 1965 unless they are able to truthfully submit a "Statement of Compliance" as required by that section. For those students who are unable to comply with that requirement because of past acts, i.e., failure to register within the thirty day time limit, Section 1113 constitutes restraint. Those students are restrained from applying for or receiving financial aid to attend institutions of higher learning in this country. Perhaps more significant than the initial restraint on receiving financial aid is the disability which flows from that restraint. In the case of a significant number of financial aid recipients, denial of financial aid in effect places an affirmative disability upon them in that they are unable to attend an institution of higher education. This disability in turn will prevent that individual from pursuing the vocation of their choice and from qualifying for various careers. As noted by the Fifth Circuit in *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150, 157 (5th Cir. 1961):

"It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society. Without sufficient education the plantiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfull as completely as possible the duties and responsibilities of good citizens."

These cases indicate that restraints upon a student's ability to receive financial aid, and therefore to attend institutions of higher education constitute a disability not unlike the disability suffered by doctors, lawyers and clergymen in *Cummings, supra*, or the disability suffered by government employees in *Lovett, supra*, or finally, disability suffered by labor-union officials in *Brown, supra*.

As argued in *Cummings:*

"You can punish in two ways: you can charge with the alleged crime and prove it, punish for it; or you can require a party to purge himself on oath and if he refuses, punish him by exclusion from privilege or employment. To exclude from office, to exclude from employment, to disqualify from any career usually open to the citizen is punishment." 4. Wall. at 290, 18 L.Ed at 359.

c. *Historically recognized as punishment.*—Deprivation of benefits previously enjoyed has historically been considered punishment in the context of Bills of Attain-

der. Punishment for Bills of Attainder in Britain often included forfeiture of lands, personal property or royal charters. Such punishments may also include removal from office or from vocation. Chaffee, Three Human Rights in the Constitution of 1787, pgs. 103-105 (1965). Early colonial legislative sanctions ofter contained conditional Bills of Attainder as a method for attaining oaths of allegiance from loyalists under threats of forfeiture or banishment. III Hamilton, History of the Republic of the United States, pg. 25 (1859).

Early Supreme Court precedent—most notably *Fletcher* v. *Peck*, and *Cummings* v. *Missouri*, stands for the proposition that Bill of Attainder clause is not be restricted to statutes inflicting any rigidly defined class of deprivation. *Fletcher* included Bills of Pains and Penalties within the definition of Bills of Attainder, while *Cummings* specifically expands the scope of attainder beyond the deprivation of life, liberty or property to "include under liberty freedom from outrage on the feelings as well as restraints on the person . . . under property those estates which one may acquire in professions, although they are often the source of the highest emoluments and honors. 4 Wall. at 320, 18 L.Ed at 362. The Court then goes on to explain the underlying rationale for this definition of protective rights:

"A theory upon which our political institutions rest is that all men have certain inalienable rights—that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness *all vocations, all honors, all positions*, are open to everyone . . . any deprivation or suspension of any of *these rights* for past conduct is punishment. . . ." 4 Wall. at 321-322, 18 L.Ed at 362 (emphasis added).

Throughout the history of Bills of Attainder both in England and in the American states, legislatures have attempted, without benefit of judicial trial, to deprive citizens of not only the traditionally recognized rights to life, liberty and propery, but also to the rights associated with the pursuit of happiness, those being the right to choose and pursue a vocation, the right to a career and the honors that go with position. Section 1113 attempts to deprive students of their means of attending institutions of higher education and therefore of their ability to pursue and achieve vocations and careers which make their lives meaningful and productive.

d. *Effective only on finding of scienter.*—Section 1113 does not come into play only on a finding of *scienter*, instead the Section goes one step further in assuming scienter on the part of all male students who apply for financial aid. The practical effect of this legislation is that every student who fails to affirmatively demonstrate that he is in compliance with Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, is assumed to possess the guilty intent of not registering. Therefore, Congress is in fact administering punishment for the crime of non-registration without requiring that one of its key elements, willfulness or guilty knowledge, be demonstrated, *U.S.* v. *Boucher*, 509 F.2d 991 (8th Cir. 1975).

e. *Promotion of aims of punishment.*—Section 1113 as noted in § a. *supra*, perfectly promotes the two traditional aims of punishment—retribution and deterrence. *Trop.* v. *Dulles*, 356 U.S. at 96. It is evident from the face of the legislation in question that Congress could have had only two intentions in enacting Section 1113. The first intention clearly must be retribution. Through this Act, which amends the enforcement section of the Selective Service Act, Congress is attempting to add additional punishment to the already grave sanctions imposed by the Selective Service Act, for those who fail to register in accordance with that Act. Congress has merely sought to expedite the prosecution procedure by legislatively inflicting punishment as the Courts are currently overburdened with cases due to a relatively high rate of noncompliance with the registration requirement. This effort on the part of Congress is directly analogous to its attempt in 1959 to revoke the citizenship of those young men who fled the United States in an effort to avoid being drafted for the Vietnam War. Fleeing the country to avoid the draft was already punishable as a criminal offense and Congress' attempted disenfranchisement of those persons was struck down by the Supreme Court as an effort to inflict additional punishment upon these draft evaders over and above the current criminal sanction. *Kennedy, supra.*

A second integral part of Congress' intention in levying this additional sanction upon those already liable for criminal prosecution was one of deterrence. By threatening to deprive non-registrants of financial aid benefits which are crucial to their future vocational and career pursuits, Congress is clearly attempting to deter or dissuade future non-registrants from their chosen course.

f. *Non-registration is already a criminal offense.*—Failing to register for the draft is currently a punishable, criminal offense under Section 12 of the Selective Service Act, 50 U.S.C. App. § 462. Under that section those who knowingly refused to register in accordance upon conviction can be fined up to $10,000 or be imprisoned for not more than five years or both. Clearly, for Congress to impose sanctions in addition to those already incorporated into the Selective Service Act can be categorized

only as punishment. The Supreme Court in *Kennedy, supra*, reviewed a number of cases in which already criminal behavior was penalized in nonjudicial ways. 372 U.S. at 168. Among these is *United States* v. *LaFranca*, 282 U.S. 568, (1931). In that case the United States government levied a $1,000 "tax" upon anyone convicted of selling liquor in violation of the National Prohibition Act, 27 U.S.C. § 52. This tax was approximately twice that of what would usually be charged for similar business activities. In striking down the tax as being in fact a penalty, the Court said, "No mere exercise in the art of lexicography can alter the essential nature of an act or thing; and if the exaction be clearly a penalty it cannot be converted to a tax by the simple expedient of calling it such." 282 U.S. at 572.

The logic employed by the Court in *LaFranca, supra*, and *Kennedy, supra*, also applies to Section 1113, wherein Congress decreed additional punishment for the crime of non-registration in the special category of cases where the non-registrant is a student. Despite attempts to characterize this penalty as a mere conditioning of a benefit, it must be recognized as punishment. The conditioning homestead tax credits upon a loyalty oath was so recognized in *Speiser* v. *Randall*, 357 U.S. 513 (1958). For Congress to administer this punishment without benefit of judicial trial violates the protections afforded by the Fifth and Sixth Amendments of the Constitution and by the Bill of Attainder clause.

g. *Rational alternative purpose.*—Section 1113 can, by no reasonable interpretation, bear any rational relationship to a student's qualifications to receive financial aid for higher education. See §a, *supra*. While it may be argued that students who have registered for the draft are better qualified as students, a similar argument was squarely rejected by the Supreme Court in *Cummings, supra*. In that case it was argued that those who had taken an oath confirming that they had not fled the state during the civil war to avoid the draft were better qualified as doctors, lawyers and clergymen. The Court's response to this argument follows:

"Qualifications relate to the fitness of capacity of a party for a particular pursuit or profession. . . it is evident from the nature of the pursuits and professions of the parties placed under disabilities by the Constitution of Missouri, that many of the Acts, from the taint of which they must purge themselves, have no possible relation to their fitness for the pursuits and professions. There can be no connection between the fact that Mr. Cummings entered or left the state of Missouri to avoid enrollment in the draft of military service of the United States, and his fitness to teach the doctrines or administer the sacraments of his church. . . ." 4 Wall. at 319, 18 L.Ed at 361-362.

Given this lack of rational relationship between compliance with Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, and eligibility for financial aid with which to attend institutions of higher learning, this Court can only be left to conclude that the purpose for which Section 1113 was enacted is to enforce draft registration and to punish those who fail to comply.

After considering each of the tests used by the Supreme Court to determine the presence of punishment in legislative actions, the conclusion is inescapable that Congress, by its enactment of Section 1113, has inflicted punishment upon those young men who are desirous of attending an institution of higher education but cannot afford to do so and who cannot truthfully supply Statements of Compliance in accordance with Section 1113. For Congress to so punish these young men without benefit of judicial trial and the protections which it affords constitutes a Bill of Attainder in violation of the United States Constitution.

h. *Excessive in relation to alternative purpose.*—Assuming the alternative purpose of Section 1113 is to deny financial aid to young men who are not in compliance with Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, that section is clearly excessive and is overbroad in its application. *U.S.* v. *Brown*, 381 U.S. at 456. The scope of Section 1113 too broadly and indiscriminately deprives students of the right to higher education. *Aptheker* v. *Secretary of State*, 378 U.S. 500, 509-511 (1964). This Section not only deprives students who have intentionally failed to register of the right to higher education, but also all of those who have inadvertently failed to register as well as those who were unaware of the requirement or believed they were exempt under one of the various provisions of Section 6 of the Selective Service Act, 50 U.S.C. App. § 456(a). The overbreath of this provision is further demonstrated by the fact that tens of thousands of students may be denied financial aid due to errors in registry by the registrant or government errors in processing.

Each of these applications of Section 1113 demonstrate that this legislation was enacted without regard to whether there existed any demonstratable relationship between the characteristics of the person involved and the evil that Congress sought to eliminate. As noted in *Schware* v. *Board of Bar Examiners of State of New Mexico*, 353 U.S. 233, 246 (1956), it cannot be automatically inferred that all mem-

bers of a group, in this case those who fail to file statements of compliance, share evil purposes or participate in illegal conduct. Congress in passing Section 1113 has done just that, it has assumed the guilt of every person who fails to swear to their innocence.

3. *Section 1113 of the act legislatively determines guilt and inflicts punishment without benefit of the protections of a judicial trial*

The evils sought to be remedied by the Framers of the Constitution in adapting the bill of attainder clause are twofold: to enforce the carefully designed separation of powers and to insure that individual rights not be infringed upon without benefit to judicial due process. These two evils are clearly in evidence in the enactment of Section 1113 of the Defense Authorizations Act.

In establishing three separate and distinct branches of government the Framers hoped not to promote government efficiency but to inspire a system which would serve as a bulwark against tyranny. In the words of James Madison:

"The accumulation of the powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary self-appointed, or elected, may justly be pronounced the very definition of tryranny." The Federalist, No. 47, pgs. 373-374 (Hamilton Ed. 1880).

In order to achieve this objective, the Framers sought to guard against such dangers by limiting legislatures and the Congress to the task of rulemaking. This function was recognized by the Supreme Court in *Fletcher* v. *Peck, supra.* when it stated, "It is the particular providence of the legislature to proscribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." 6 Cranch 87, 136, 3 L. Ed. 162. This protection has been carried forward by the Supreme Court to the present day. In *U.S.* v. *Brown* the Court noted:

"The Bill of Attainder clause not only was intended as one implementation of the general principle of factionalized power, but also reflected the Framers' belief that the legislative branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific person." 381 U.S. at 445.

In addition to concerns expressed by the Framers regarding the separation of powers between the legislative and judicial branches, it is also clear that due process protections extended to the accused under the Fifth and Sixth Amendments of the Constitution are threatened by legislative infliction of punishment. Thus, if the Congress made it illegal for pacifists to leave the country for the purpose of evading the draft but left the courts to determine whether such a purpose was present in each case, the statute would have bill of Attainder specificity but would not be a bill of Attainder. If, however, such a statute imposed this sanction automatically without meaningful judicial intervention, it would fall precisely within the Attainder prohibition. *Kennedy, supra.* Similarly, if specifically identified individuals were deprived of their federal jobs because they believed to be "subversive" the effect of the rider would be inflict punishment upon an identifiable group without the safeguard of judicial trial, and therefore constitute a bill of Attainder. *U.S.* v. *Lovett, supra.*

As noted by the Court in *Lovett,* the bill of Attainder clause was included in the Constitution, ". . . to safeguard the people of this country from punishment without trial by duly constituted courts." The Supreme Court went on to describe the due process rights to which every accused is entitled:

"An accused in a Court must be tried by an impartial jury, has the right to be represented by counsel, must be clearly informed of the charge against him, the law which he is charged with violating must have been passed before he committed the act charged, he must be confronted by the witnesses against him, he must not be compelled to incriminate himself, he cannot twice be put in jeopardy for the same offense, and even after conviction no cruel or unusual punishment can be inflicted upon him." 328 U.S. at 317-319.

See Chambers v. *State of Florida,* 309 U.S. 227, 235-238. As these protections were denied in *Kennedy, supra, Lovett, supra,* so have they been denied in Section 1113, which is currently being considered.

It is often argued that Constitutional protection, such as the right to due process can be altered or diluted as demanded by national security or national defense. In response to this very argument the Court in *Kennedy* specifically replied:

"It is fundamental that the great powers of Congress to conduct war and to regulate the nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safeguarding these rights to procedural due process under the gravest emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the

greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental actions. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all the classes of men, at all times, under all circumstances." *Ex Parte Mulligan*, 4 Wall. 2, 120-121. 372 U.S. at 164-165.

Finally, it can be argued that due process requirements are fulfilled in that Section 1113 authorizes regulations which provide, "the Secretary [of Education] may afford such persons an opportunity for hearing to establish his compliance [with Section 3 of the Selective Service Act] or for any other purpose." 50 U.S.C. App. § 453(f) (4). Not only does this regulation shift the burden of demonstrating compliance or non-compliance with the Selective Service Act from the United States Government to the financial aid applicant, but it also affords no meaningful judicial protection. This provision provides for none of the protections offered in a criminal prosecution or indeed before any judicial court. Nor will the Secretary of the Department of Education be able to address the grave constitutional questions embodied in Section 1113. This provision for hearing as enacted by Congress constitutes merely an afterthought, a due process "band-aid" which demonstrates Congress' awareness of the Act's lack of due process protection.

For all of these reasons Section 1113 of the Act clearly constitutes a bill of Attainder as prohibited by Article I of the United States Constitution. The Act determines guilt and inflicts punishment upon an easily ascertainable group without protection of judicial trial. The evil of bills of Attainder and the appropriate response of the judicial branch was best summarized by Alexanger Hamilton when he observed:

"By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of Attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved and practiced no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of this Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." The Federalist, No. 78, pgs. 576-577 (Hamilton Ed. 1880).

The responsibility of Courts to limit legislative authority by striking down bills of Attainder is no less crucial to the preservation of individual rights now than it was when these words were written. As long as legislatures continue to excede the bounds of their authority the judiciary has the responsibility to contain them. Section 1113 of the Defense Authorization Act clearly excedes the legislative limits outlined by Article I of the United States Constitution.

SECTION 1113 OF THE DEFENSE AUTHORIZATION ACT, IN REQUIRING "CERTIFICATE OF COMPLIANCE" OF FINANCIAL AID APPLICANTS' VIOLATES THE FIFTH AMENDMENT PROTECTION AGAINST SELF-INCRIMINATION

The Fifth Amendment protection against disclosing incriminating information applies to both formal and informal proceedings, oral proceedings and written submissions. This protection is based on the recognition that our system of government is accusatorial, not inquisitorial, and that the government must therefore gather evidence for criminal prosecutions without demanding the assistance of the defendant. *Malloy* v. *Hogan*, 378 U.S. 1, 7-8 (1964). Due to the historical significance of this right, the Supreme Court has rejected narrow construction of the Fifth Amendment in favor of broad application of this protection. *Ullman* v. *United States*, 350 U.S. 422 (1956); *Quinn* v. *United States*, 349 U.S. 155 (1955). Under this broad interpretation an individual may "plead the fifth" during any government proceeding where he or she believes they might incriminate themselves. *In Re Gault*, 378 U.S. 1 (1967).

Certain students will be required to incriminate themselves in order to comply with the requirements of Section 1113, in that "Certificates of Compliance" are required of all draft-age students as part of the financial aid application process. If these students either fail to submit the required proof of compliance or refuse to supply this information under protection of the Fifth Amendment Right against self-incrimination they will automatically forfeit their right to apply for or to receive financial aid under the Higher Education Act. Forfeiture of this aid not only means loss of actual dollars to the student, but also forfeiture of the right to higher education and to pursue a chosen career for which the student is otherwise qualified.

1. Applicants are entitled to invoke the privilege against self-incrimination during the process of applying for financial aid

The Fifth Amendment right against self-incrimination extends to the process of applying for and receiving financial aid for post-secondary education under Title IV

of the Higher Education Act. The Fifth Amendment right can be claimed in any governmental proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory. In *re Gault*, 387 U.S. 1, 147-49 (1967); *Murphy* v. *Waterfront Commissioner of NY Harbor*, 378 U.S. 52 (1964). The distribution of financial aid benefits is a governmental proceeding and is regulated by the United States Department of Education. 20 U.S.C. § 1070 *et seq.* Each college or university administering the programs established under Title IV of the Higher Education Act has a standard process for distributing such aid. Historically, a proceeding, both in common parlance and legal terms, implies a progressive course of action involving established procedures. *See Beers* v. *Haughton*, 34 U.S. 329, 362 (1835). Clearly, the steps a student must take to receive *federal* financial aid constitutes an administrative proceeding protected by the right against self-incrimination.

Each required step in the aforementioned process is protected by the right against self-incrimination. *See Lyncy* v. *Baxley*, 386 F. Supp. 378, 394 (1974). Therefore, any statement which a college student must make as part of the financial aid application process is also protected by the Fifth Amendment. Section 1113 of the Defense Authorization Act specifically requires a student to file a written statement of compliance with draft registration requirements established pursuant to Section 3 of the Selective Service Act, 50 U.S.C. App. § 462(f)(2), with his school in order to obtain financial aid. Written, as well as oral, statements are covered by the right against self-incrimination. *Albertson* v. *SACB*, 382 U.S. 70, 78 (1965). Issuance of such statements of compliance is a mandatory step in a process which is protected by the Fifth Amendment. Consequently, students are protected by the Fifth Amendment when they issue written statements of compliance with draft registration laws *as part of* the financial aid application process.

2. Students who apply for financial aid under title IV of the Higher Education Act will incriminate themselves for failure to comply with section 3 of the Selective Service Act

There is a grave potential that students will incriminate themselves under the proof of draft registration requisite to receiving financial aid, and therefore be stripped of their Fifth Amendment protection. The required information, which could be used in a criminal prosecution, or provide leads to other incriminating evidence, could directly result in their prosecution. *Gault*, 387 U.S. at 47-48, *Murphy*, 378 U.S. at 52.

Section 1113 requires male students between the ages of 18 and 26 to directly and indirectly provide information concerning their registration status. Students must file a "Certificate of Compliance" with the registration requirements in order to receive financial aid under Title IV of the Higher Education Act. Students who issue false statements either because of mistaken belief of compliance or uncertainty regarding the requirement will directly incriminate themselves for perjury and noncompliance. Students who feel they have a valid defense to violation of the registration requirement and wish to contest a denial of financial aid due to an inadequate statement of compliance will *directly* be forced to incriminate themselves for failure to comply in a forum totally unrelated to the Selective Service System. Students who forego financial aid will incriminate themselves because of their conspicuous absence in or failure to complete the application process. The information supplied by these students could lead to a criminal felony conviction carrying a possible $10,000 fine and 5 year prison term. 50 U.S.C. App. § 462. Applicants should therefore be able to claim protection under the Fifth Amendment in response to the financial aid office's request for disclosure of information pertaining to draft registration status.

a. *Students who unknowingly provide a false statement of compliance with the Selective Service Act in order to receive financial aid may incriminate themselves.*—The new enforcement provision of the draft registration laws, Section 1113, will incriminate students who mistakenly believe that they have complied with the registration provision (Section 3) of the Selective Service Act. The Fifth Amendment protects against disclosures which may reasonably be believed to be incriminating. *Gault*, 387 U.S. at 47-48, (1967), *Murphy* 378 U.S. at 52. The student who applies for financial aid under the new law must submit a statement of compliance with Section 3 in order to qualify for financial aid. 50 U.S.C. § 462(f)(3). Any man who provides a mistakenly false statement of compliance will subject himself to prosecution for perjury (under 20 U.S.C. § 1097) and non-registration. The Secretary of Education need only discover the student's error in the verification process. The student's statement of compliance therefore tends to incriminate him both directly and indirectly. The statement initiates a verification procedure which indirectly leads to incriminating evidence concerning non-compliance. Moreover, it provides a prosecutor with evi-

dence to use directly in establishing perjury (or impeaching the student's testimony). Students who provide a mistakenly false statement of compliance are therefore deprived of Fifth Amendment protection.

The Court should note that the possibility of mistaken belief in the draft registration process is not at all remote. It is as much a crime for men to register more than thirty days after their eighteenth birthday as it is not to register at all. 50 U.S.C. App. § 453, 462. One assumes that given resources in the Selective Service System and governmental prosecutorial discretion, such a violation ordinarily would not be discovered or prosecuted. However, during the verification process, not only will the student be denied financial aid but, also his own statement may cause him to be singled out for prosecution. Additionally, a student may reasonably believe he is exempt from registration. Not all men need register. Section 6 of the Selective Service Act lists at least ten exemptions from the registration requirement, among them being members of the armed forces, reserve members on active duty, aliens not admitted for permanent residence and students enrolled in certain approved programs at military colleges. 50 U.S.C. App. § 456(a). A student may believe that he is properly included in one of these categories and discover that he is wrong only after receiving notice of disqualification from the Secretary of Education. The dangers of indirect criminal sanction are most apparent here, where a student may unknowingly incriminate himself.

Students who are uncertain as to whether they have complied with Section 3 may also incriminate themselves. A college education is a very important commodity in today's society, and many students cannot obtain one without financial aid. *See* Legislative History of Title IV, Higher Education Act. U.S. Code Cong. and Adm. News 4027 (1965). *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961). The threat of lost financial aid will encourage needy students who are uncertain of their registration status, for any of the reasons enumerated above, to issue a statement of compliance. Those students will incriminate themselves for perjury and non-compliance with the Selective Service Act if they guess incorrectly.

b. *Students who wish to contest denial of financial aid under the hearing provision of 50 U.S.C. App. 462(f)(4) will incriminate themselves.*—The enforcement procedure granting financial aid only to students who have demonstrated compliance with Section 3 to the Secretary of Education will cause some students to incriminate themselves at post-denial hearings. Section 1113 requires the Secretary of Education to give notice of proposed financial aid denial to students who fail to prove that they have complied with draft registration requirements. The student may then request a hearing with the Secretary of Education "to establish his compliance or for any other purpose." 50 U.S.C. App. § 264(f)(4). Some students may wish to contest the Secretary's findings of non-compliance. Other students who are denied financial aid may choose to seek a hearing in order to establish that they have a valid defense to non-compliance, and therefore should receive financial aid.

Information which a person discloses at an administrative hearing that can be used against him at a later criminal trial is incriminating. *Melson* v. *Sard*, 402 F. 2d 653, 655 (D.C. Cir. 1968). A prosecutor will be able to use the evidence presented to the Secretary of Education at a trial for non-registration. Students who make use of the hearing mechanism and are not completely successful will incriminate themselves for violation of Section 3. Furthermore, even if they present an adequate defense to the Secretary of Education, they would still be subject to criminal prosecution because it is the courts that must decide what constitutes an adequate defense to violation of a criminal statute.

c. *Students who do not file a statement of complinace with their college may incriminate themselves.*—The group of students who remain silent, i.e. do not provide a statement of compliance, do not plead a valid defense, or who fail to apply for financial aid altogether, may be incriminating themselves for failure to register on time. The Fifth Amendment right does not merely encompass evidence which may lead to criminal convictions. It also includes information which would furnish a link in a chain of evidence which could lead to criminal prosecution. *Maness* v. *Mayers*, 419 U.S. 499, 461 (1975). The fact that a student did not apply for financial aid after Section 1113 was enacted, and did apply and receive aid in other years, is a link that enforcement officials might well grasp onto in their search for violations. Incomplete applications are also a link.

Evidence a reasonable individual believes could be used against him in a crimnal trial is incriminating. *Manness, supra.* The student may reasonably believe that a prosecuting attorney will use the fact that he did not apply for financial aid or issue a statement of compliance as evidence of knowing non-compliance in a subsequent trial. Therefore, students who remain silent, as well as students who mistakenly

claim compliance and students who wish to contest denial of financial aid, incriminate themselves under the provisions of Section 1113.

3. Denial of financial aid to students who cannot comply with aid application requirements because certain requirements would tend to incriminate them unconstitutionally burdens those students' right to claim fifth amendment protection.

Denying financial aid to students who do not prove compliance with Section 3 of the Selective Service Act is an unacceptably burdensome means of enforcing draft registration. Congressional objectives cannot be pursued by means which needlessly interfere with the exercise of basic constitutional rights. *United States* v. *Jackson*, 390 U.S. 570, 582 (1968). The right not to incriminate oneself is a basic constitutional right. *See Jackson*, 390 U.S. at 582-583, *Turley, supra, Ullman, supra.* It cannot be infringed upon by overly broad enforcement provisions.

Where burdens on the right against self-incrimination are present, the important question is whether the effect is unnecessary and therefore excessive. *Jackson*, 390 U.S. at 582. Congress has many viable means of enforcing draft registration of the Selective Service Act which do not conflict with students' constitutionally guaranteed rights. It could directly prosecute non-registrants. Direct prosecution would be consistent with the objectives of the Fifth Amendment right against self-incrimination, as laid out in *Malloy* and *Ullman*. Indirect enforcement under Section 1113 would therefore needlessly burden students' ability to assert the right against self-incrimination and should be sticken.

a. *Section 1113 unconstitutionally penalizes students' rights not to incriminate themselves.*—The government cannot constitutionally impose penalties upon students' right not to disclose incriminating information concerning their draft status. The Fifth Amendment guarantees a potential defendant the right to remain silent until he chooses to speak as an unfettered exercise of his own will. *Malloy*, 378 U.S. at 8. In *Spevak* v. *Klein*, 355 U.S. 511, 515 (1967), where a lawyer was disbarred for refusing to produce incriminating documents, the Supreme Court held that disclosure of incriminating information is not voluntary when the government attaches a penalty to a person's refusal to incriminate himself. Here, the denial of the ability to practice a certain profession was found by the Court to be penalty.

Where self-incrimination is involved, a penalty is any sanction which makes assertion of the Fifth Amendment costly. *Spevak*, 355 U.S. at 515. Contrast the automatic denial of rights under Section 1113 and in *Spevak, supra* for failure to supply required documents under protection of the Fifth Amendment, with *Field* v. *Brown*, 610 F. 2d 981 (D.C. Cir. 1979), *Cert. Denied*, 446 U.S. 939 (1979) where the mere posibility of investigation for failure to supply documents was upheld by the Court in the face of Fifth Amendment challenges.

Following the reasoning in *Spevak*, in the instant case, the denial of financial aid clearly constitutes a sanction which makes non-disclosure of information concerning draft registration status *costly*. If forecloses the ability of needy students to obtain a college education and, subsequently, pursue professions of their selection. The choice of whether or not to apply for financial aid is hardly a voluntary one.

Post-secondary education is an important credential in today's society. The Fifth Circuit Court of Appeals recently found that the interest in pursuing higher education deserved due process protection, in *Dixon* v. *Alabama State Board of Education*, the court opined:

"It requires no argument to demonstrate that education is vital, and indeed, basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens." 294 F. 2d at 157.

Indeed, Title IV of the Higher Education Act was originally enacted because Congress recognized the importance of higher education, and that many people, even from middle class families could not afford such education without financial assistance. U.S. Code Cong. and Adm. News 4027 (1965). Denial of aid under Secton 1113 would penalize the Fifth Amendment rights of needy students by making a college education prohibitively expensive. In addition to the threat of disbarment in *Spevak*, the Supreme Court has held that the potential loss of a job and employment benefits, *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), loss of ability to contract with the government, *Lefkowitz* v. *Turley*, 414 U.S. 70 (1973), and denial of public office to persons who invoke the right against self-incrimination, *Lefkowitz* v. *Cunningham*, 431 U.S. 801 (1977), are all panalties that cannot be imposed upon a person's right to invoke Fifth Amendment protection. As the Supreme Court said in *Cunningham*, these cases settle the fact that the government cannot penalize assertion of the constitutional right against compelled self-incrimination by imposing sanctons to compel testimony which has not been immunized. Direct economic sanctions and im-

prisonment are not the only penalties capable of compelling self-incrimination in violation of the Fifth Amendment. 431 U.S. at 806.

The denial of finanial aid in the context at bar is a penalty which unconstitutionally penalizes students' Fifth Amendment Rights. Therefore, this Court should find that Section 1113 of the Defense Authorization Act which promotes such penalty is unconstitutional.

b. *Section 1113 unconstitutionally penalized the Fifth Amendment rights of students who wish to contest denial of financial aid by depriving them of a meaningful hearing.*—Section 1113 of the Defense Authorization Act deprives students of an opportunity to contest denial of financial aid for non-compliance with draft registration requirements without incriminating themselves. The denial of a meaningful hearing is an unconstitutional penalty.

In *Melson, surpra*, the Court of Appleals for the District of Columbia held that the Fifth Amendment was an impermissable burden where the defendant was forced to remain silent at a parole board hearing in order not to incriminate himself at a future trial. *See also Carter* v. *McGinnis*, 351 F. Supp. 787 (D.C.N.Y. 1972).

Denial of an opportunity to defend oneself without foregoing the right not to incriminate oneself was found to be an unconstitutional penalty. Section 1113 provides that students who are denied financial aid because they fail to comply with registration procedures can contest the decision at an administrative hearing. Students who are denied financial aid are deprived of the ability to present evidence at an administrative hearing without incriminating themselves, just as in *Melson*. The Court should adopt the reasoning of *Melson* and find that depriving students of a chance to defend themselves without a grant of immunity unconstitutionally penalizes their right not to incriminate themselves.

The Supreme Court has carefully distinguished cases where only a strategic choice in presenting a criminal defense is involved. *See Baxter* v. *Palmigiano*. 96 S. Ct. 1551 (1976); *Ryan* v. *State of Montana*, 580 F.2d 988 (9th Cir. 1978). Compare these with the cases herein where non-criminal sanctions, such as denial of financial aid, flow directly from a person's silence at an administrative hearing. *See Lefkowitz* v. *Cunningham*, 431 U.S. 801 (1977), *Lefkowitz* v. *Turley*, 414 U.S. 70 (1973), *Spevak* v. *Klein*, 385 U.S. 493 (1967).

c. *The government cannot deny financial aid to students who utilize the right against self-incrimination without first proving that those students have not legally registered for the draft.*—Section 1113 of the Defense Authorization Act violates the due process clause of the Fifth Amendment by summarily denying financial aid to students who claim their right against self-incrimination. The government cannot constitutionally impute a sinister meaning to a person's exercise of the Fifth Amendment right. *Slochower* v. *Board of Higher Education of City of New York*, 351 U.S. 551, 557 (1956). Thus in *Slochower*, the City of New York could not fire a teacher for refusing to answer questions at a Senate investigation of subversive activities. They had to first prove his guilt. *See also Ault* v. *Unemployment Compensation Board of Review*, 157 A.2d 375 (1960), where a Pennsylvania court, relying on *Slochower*, held that a plaintiff who invoked the right to remain silent could not be denied unemployment benefits. Similarly, in *Wieman* v. *Updegraff*, 344 U.S. 183, 188–191 (1952), the state could not deny unemployment benefits to people who refused to take loyalty oaths undess it first proved that they had violated a criminal statute. Laws which penalize the right against self-incrimination, which is claimed by both the innocent and guilty, are arbitrary and violate the due process clause.

In both *Slochower* and *Wieman* the government erred failing to meet the burden of proving that the people involved were guilty of criminal conduct. Far from assuming any burden of proof, the government sought to make the accused party prove his innocence. The Fifth Amendment self-incrimination clause was put into the Constitution to ensure that the government, not a potential defendant, carries the burden of proof. *Malloy* v. *Hogan*, 378 U.S. 1, 7–8 (1964). The government unconstitutionally infringes upon a person's right not to disclose incriminating information when it automatically penalizes people who do not come forward and prove that they are innocent of criminal activity.

In the case at bar, the government also places unconstitutional burdens upon students. Fifth Amendment right against self-incrimination by summarily denying them financial aid unless they prove their innocence. Students may only receive financial aid if they prove to the Secretary of Education that they have complied with Section 3 of the Selective Service Act. Not all students who refuse to prove compliance or cannot prove compliance without risking self-incrimination are quilty of non-registration. A person may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who would otherwise be snared in ambiguous circumstances. Griswold, *The Fifth Amendment*

Today (1955). Like the laws invalidated in *Slochower* and *Wieman*, Section 1113 of the Defense Authorization Act cannot stand because it deprives the plaintiff of due process by arbitrarily and impermissably attaching sanctions to the right against self-incrimination.

C. SECTION 1113 DENIES STUDENTS IN NEED OF FINANCIAL AID EQUAL PROTECTION UNDER THE LAW

1. Section 1113 violates equal protection requirements under the fifth amendment

Section 1113 violates Equal Protection requirements under the Constitution because it discriminates on the basis of wealth, sex, and age, as well as creating a disparate impact on blacks and other minorities.

a. *Section 1113 is discriminatory on the basis of wealth.*—The Section 1113 requirement to prove compliance with draft registration obligations as a prerequisite to obtaining federal assistance for post-secondary education establishes an extra burden and penalty on those who cannot afford to go to college without such assistance. The very purpose of the Higher Education Act and the provisions for federal financial aid was to encourage attendance to colleges and universities for the ultimate benefit of society. Congress recognized the need for higher education and its importance to growth in society. Placing an unnecessary burden on this class of students constitutes a violation of Equal Protection requirements under the Constitution on the grounds that it works to discriminate on the basis of wealth.

During the Senate debates which resulted in the passage of Section 1113, Senator Durenberger of Minnesota argued that Congress, upon approval of this amendment, "would be punishing [the] middle class . . . more than we punish those who are wealthy enough to pay their own way through college, and more than those who do not attend college at all." 128 Cong. Rec. S4945 (May 12, 1982). Congressman Dellums of California addressed the same issue during the debates on Section 1113 in the House of Representatives:

". . . [T]o create at least the dichotomy of those persons in need of Federal programs and those persons not in need of Federal programs, you have created a dichotomy that speaks to discrimination . . . But middle-class individuals, working poor individuals, and poor people in this country will be the only ones that will be affected by this kind of legislation." 128 Cong. Rec. H4765 (July 28, 1982).

The Supreme Court has been reluctant to elevate the standard of review of discrimination based upon wealth to that level which is required for discrimination on the basis of race, religion, or alienage. However, that is not to say that the High Court has not viewed wealth discrimination with consternation and contempt. It appears that such discrimination based upon wealth will only be sustained if it is related to a rational legislative purpose and is not "invidious" *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). There is absolutely no rational relationship between enforcement of the draft requirements of the Selective Service Act and this interference with the financial aid process.

The enforcement mechanism for non-registrants is very clear, 50 U.S.C. App. § 462 (1981). Non-registration is a crime subject to indictment, trial, conviction, and punishment, all reflecting the proper constitutional protections. Section 1113 of the Defense Authorization Act, adding new Section 12(f) to the Selective Service Act, creates an unconstitutional burden upon a class of students based upon their lack of wealth which is wholly unnecessary and serves no legitimate legislative purpose. Moreover, such a legislative purpose cannot be invented under the guise of "national security." In fact, the law appears to have been enacted as a result of a personal crusade by one Congressman, Congressman Solomon of New York:

"As far as the gentleman from California (Mr. Dellums) is concerned, he says they are discriminating against the wealthy, and maybe the poor. I do not know. But let me say this; that the majority of the wealthy families in America in years past have been taking advantage of the college loan programs. They have been borrowing it whether they needed it or not and investing it in money market securities at 16 and 17 and 18 percent at the taxpayer's' expense in this country.

"Now, maybe we are discriminating against the poor. And if we are, I guarantee I am going to come back with legislation on this floor tomorrow and the next day and the next day and every day of this session with amendments that will prohibit any funds from being used for the Job Training Act if they are not registered, for any unemployment compensation insurance if they are not registered, and for any kind of taxpayer's money if they are not registered." 128 Cong. Rec. H4767 (July 28, 1982).

In light of this discussion, it would be difficult to discover a governmental purpose to support the sustaining of Section 1113.

Justice White's concurring opinion in *Vlandis* v. *Kline*, 412 U.S. 441 (1973), concerning resident and non-resident fees at the University of Connecticut, suggests the type of review to be proffered by this Court in the instant case:

". . . [I]t is clear that we employ not just one, or two, but, as my Brother Marshall has so ably demonstrated, a "spectum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause." *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 98-99 [1973] (dissenting opinion). Sometimes we just say the claim is "invidious" and let the matter rest there, as Mr. Justice Stewart did, for example, in concurring in *Frontiero* v. *Richardson*, 411 U.S. 677 (1973). But at other times we sustain the discrimination, if it is justifiable on any conceivable rational basis, or strike it down, unless sustained by some compelling interest of the State, as for example, when a State imposes a discrimination that burdens or penalizes the exercise of a constitutional right. *See*, e.g. *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). I am uncomfortable with the dichotomy, for it must now be obvious, or has been all along, that, as the Court's assessment of the weight and value of the individual interest escalates, the less likely it is that mere administrative convenience and avoidance of hearings or investigations will be sufficient to justify what otherwise would appear to be irrational discriminations.

"Here, it is enough for me that the interest involved is that of obtaining a higher education, that the difference between in- and out-of-state tuition is substantial, and that the State, without sufficient justification, imposes a one year residency requirement on some students but not on others, and also refuses, no matter what the circumstances, to permit the requirement to be satisfied through bona fide residence while in school. It is plain enough that the State has only the most attenuated interest in terms of administrative convenience in maintaining this bizarre pattern of discrimination among those who must or must not pay a substantial tuition to the University. The discrimination imposed by the State is invidious and violates the Equal Protection Clause. (Emphasis added.)

Here the interest involved is very definitely that of obtaining a higher education. The interest, if any, in maintaining Section 1113 does not approach the critical importance of higher education to society and therefore should be struck down.

b. *Section 1113 is discriminatory on the basis of sex.*—Utilizing the same standard of review as described § a, *supra*, the Supreme Court has struck down many laws for discriminating on the basis of sex. *Frontiero* v. *Richardson*, 411 U.S. 677 (1973). The Court in *Frontiero* found that gender-based classifications cannot be sustained merely because they promote some governmental interest, such as administrative convenience. At the very least, such a classification "must be reasonable, not arbitrary, and rest upon some ground of difference having a *fair and substantial* relation to the object of legislation." *Reed* v. *Reed*, 404 U.S. 71, 76 (1971) (*emphasis added*).

Plaintiff recognizes that the Supreme Court has upheld the sex-based characteristic of the all male draft. *Rostker* v. *Goldberg*, 453 U.S. 56 (1980). However, J. Brennen, in deciding upon the appropriateness of a stay of the lower court decision invalidating the draft pending full review by the Supreme Court, recognized that the standard of review in the Supreme Court regarding gender-based discrimination is still unsettled. *See Rostker* v. *Goldberg*, 448 U.S. 1306 (1980). Plaintiff requests that this Court view the sex-based classification created by Section 1113, not in the context of draft registration, but in the context of potential denial of financial aid. This extra burden placed upon men should be found unacceptable under the Constitution.

c. *Section 1113 is discriminatory on the basis of age.*—It is not very often that a statute results in discrimination of young adults instead of the "old". However, this is one of those cases. Section 3 of the Selective Service Act requires registration for males between the ages of 18 and 26. Plaintiff concedes that this range of ages is reasonable with regard to preferability for the draft. However, as in the case of the sex-based classsification discussed § b, *supra*, such classification is not reasonable when looking at eligibility for financial aid. This group of young men has already been singled out to fight for our country if necessary. They are once again singled out by Section 1113 of the Defense Authorization Act in that they may potentially lose financial aid to attend college while those in other age groups do not possess the burden of that risk. We respectfully request this Court to not allow this burden, where the Selective Service System has an adequate array of constitutional mechanisms to enforce draft registration.

d. *Section 1113 has racially disproportionate impact on students, and therefore is discriminatory on the basis of race.*—The leading Supreme Court case enunciating the Court's view of the effect of disparate impact of a law in the finding of racial discrimination is *Washington* v. *Davis*, 426 U.S. 229 (1976). In that case, the Court

found that discriminatory purpose in creating the classifications within the law could be inferred from the disproportionate impact on the law. The Court, however, ruled that the disproportionate impact test was not necessarily conclusive when dealing with a neutral law on its face:

"Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevent facts, including the fact, if it is true, that the law bears more heavily on one race than another. It is also not infrequently true that the discriminatory impact-in the jury cases for example, the total or seriously disproportionate exclusion of Negroes from jury venires-may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds. Nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of the government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of the one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious discrimination forbiden by the Constitution." 426 U.S. at 2048-9.

It is important to note that the Supreme Court here required that the law be neutral on its face. The neutrality of Section 1113 is questionable. Congress' intent in enacting the financial assistance programs under the Higher Education Act was to help the underprivileged attend college. Certainly, Congress was aware of the numbers of minorities included in that class of underprivileged. In burdening the distribution of the funds in the manner prescribed by the law, there was clearly a potential that minorities would suffer to the greatest extent. Specifically, during the 1978-79 school year, approximately 16 percent of all post-secondary students in the United States were either Black, Hispanic, Asian, or American Indian, totalling approximately 1,800,000 students. Almost 60 percent of these or approximately 1,080,000 minority students, at least received Pell Grants, one type of financial assistance provided under Title IV of the Higher Education Act. It is clear that any denial of financial aid would certainly create an untenable burden on minority students. *See* Affidavit of Dr. Brett A. Smith, Exhibit A to Plantiff's Motion for Preliminary Injunction for more discussion on the impact of a denial of financial aid on minorities. Plantiff urges this Court not to ignore this disparate impact and likewise suggests that Section 1113 of the Defense Authorization Act be stricken on the basis that it is a violation of equal protection requirements of the Fifth Amendment.

D. SECTION 1113 VIOLATES THE PRIVACY ACT OF 1974

Recognizing the need for the protection of an individual's privacy in this era of computerized information gathering and sharing, Congress enacted the Privacy Act of 1974, 5 U.S.C. § 552a *et seq.* (hereinafter "Privacy Act"). The stated purpose of the Privacy Act is to limit the collection of identifiable personal information by a Federal Agency to that which is relevent and necessary to accomplish a lawful purpose of the agency, and to prevent the agency from releasing that information to be used for another purpose without the individual's consent. 5 U.S.C. § 552a(a), § 552a(e). The "sharing" of information between agencies of the government is also prohibited unless the disclosure would be, *inter alia,* for routine use or for a civil or criminal law enforcement activity if the person in charge of the activity makes a written request to the agency maintaining the records, specifying the particular information required and the law enforcement activity for which the records are sought. 5 U.S.C. § 552a(b).

The Privacy Act does not replace the constitutional right to privacy; it supplements it. *Doe* v. *U.S. Civil Service Commission,* 483 F. Supp. 539 (S.D.N.Y. 1980). On a financial aid application there is a lot of information required by the school administering the aid that is not routinely reported to the Department of Education, such as the sex and age of the potential recipient. This type of information is not relevent or necessary to the Department of Education in the distribution of the funds. Information pertaining to draft registration, and consequently information on age and sex, bears no actual relation to the eligibility of an individual to receive financial aid. Therefore, the Privacy Act dictates that a requirement that such information be furnished to the Department of Education is contrary to the purpose of that act.

Section 1113 of the Defense Authorization Act artificially connects the Department of Education and the Selective Service system, two agencies with completely unrelated purposes, and allows for a flow of information between the two which also is in direct violation of the Privacy Act. Not only must the Department of Education collect information improper for its purposes, but some of its vital yet nevertheless private information may be released, intentionally or inadvertently, to the Selective

Service System. The converse is also true, i.e. the Selective Service System may release important private information to the Department of Education. Both can have a damaging result on an individual and his or her desire for privacy. Both constitute violations of the intent of the Privacy Act.

The presence of the law enforcement exemption described above does not cure the problems with the information sharing between the Department of Education and the Selective Service System. The Privacy Act serves to safeguard the public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store and disseminate personal information about individuals. *Doe* v. *U.S. Civil Service Commission, supra.* Section 1113 of the Defense Authorization Act requires that the Department of Education collect information beyond the scope of its purpose and duty. Here the Department of Education is acting as an intermediary on behalf of the Selective Service System in a scheme to procure a result, i.e. the collection of certain information, that could not be required directly by the Selective Service System. To allow that information to "flow" to the Selective Service System without impunity would fly in the face of the protections guarded by the Privacy Act. In other words, Section 1113 is a subterfuge and devises a way for the Selective Service System to conceal unconstitutional enforcement procedures. *See also Parks* v. *U.S. Internal Revenue Service,* 618 F.2d 677 (10th Cir. 1980).

It should be mentioned that many private universities utilize social security numbers to classify their students. Section 7 of the Privacy Act was enacted to discourage government agencies from forcing disclosure of an individual's social security number, and thereby, classifying each individual under a "universal identifier." The District Court for the District of Columbia in *Wolmen* v. *United States,* 501 F. Supp. 310 (D.D.C. 1980) found that the Selective Service System lacked authority to require registrants to furnish social security numbers. Information provided by universities to the Selective Service System may result in the transfer of an individual's social security number without consent of the individual. This potential acts to support the view that Section 1113 of the Defense Authorization Act violates the Privacy Act, as it does not protect against disclosure of private information.

Mr. SIMON. I think you understand the problem that the subcommittee faces, that we have to deal with the law as it is. I happen to agree with the thrust of your testimony.

There is one other aspect of the law itself that concerns me, and that is, for the first time, we are using student aid for another purpose. It is a precedent that is not good. It is a precedent—somebody on the floor may suggest that we have to certify that you haven't had an abortion or that your parents paid their income tax or any 1 of 100 other things that soon could be part of this program.

There is one very practical question we face that you may have an answer for. When is the decision in Minnesota likely to be rendered?

Mr. SHATTUCK. I had hoped, Mr. Chairman, to appear before you today with a copy in hand. But I am afraid all I have is my statement and the brief which I submitted. We expect it momentarily. Of course, that won't be the end of the matter. I expect that either party who loses will take an appeal. But the motion for preliminary injunction has been argued and should be decided any day now.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. I have no questions, Mr. Chairman.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. We have arrives at the magic hour, Mr. Chairman.

I would like to briefly reflect for the record on this subject and hope Mr. Shattuck will take the opportunity to respond to my comments.

I taught part time in a small college for 13 years before coming here. Just about all of the students whom I taught were recipients

of some form of financial assistance, and most would not have been there without it. What troubles me about this issue—and I say this as a longtime admirer of the ACLU, although we are on opposite sides on this one—is that there were many young men in those classes receiving student aid who did not want to register for the draft, who thought it was a silly law, but who did register because it was the law. I would not doubt that there were also a couple who had not registered.

I wonder what the affect is on the mind of a young man who, despite thinking it is a stupid law, has registered because he recognizes it as his duty under the law, when he sits alongside someone whom he knows has not registered and realizes, "Hey, the Government is helping both of us to go to school." The registrant has done something he did not want to do and thought was stupid, but did it because it is the law. Meanwhile, the other fellow is allowed to be off on a frolic of his own doing as he pleases, disregarding the law. Yet both of these young men are sitting in class by virtue of the fact that the Government has guaranteed their loans.

I believe this situation breeds a certain attitude about the law, a disrespect for the law, and disregard for compliance, and this concerns me. That is the root of my position in this matter, Mr. Chairman. I would be grateful to have Mr. Shattuck's comments on my perspective.

Mr. SHATTUCK. Let me just say several things very briefly in response, Mr. Harrison.

First, I think the number of students in the category of nonregistrants in the college that you taught at or any other college in the land is very small in proportion of the large number of registrants. As we all know, the registration figures are relatively high, although they are certainly not as high as the Selective Service System would like to have it be.

The underlying problem, though, is people who haven't registered may not have done so for any number of reasons, including those where they believe they are entitled to 1 of the 10 exemptions that exist to the registration scheme, that is written into the law, or they may have thought that they have registered within the 30-day period and they didn't.

The point is that they are entitled to proceed fairly to get the student assistance that they are entitled to without having to jeopardize the possibility that they might be prosecuted for failure to register, and perhaps failure to register in good faith. Or perhaps it might be a conscientious objection. Of course, as you know, there is no opportunity to register a conscientious objection to registration. That would come later in the context of the draft.

So I don't believe that there is the kind of cynicism that you state exists on campus. To the extent that there is, I think it is relatively small. I think the injustice, as the chairman pointed out, of tying together this wholly separate system of student loan programs with a problem perceived by Members of Congress with respect to registration is a very dangerous one and could take us down the road with all kinds of unjust and unconstitutional conditions imposed, not only on student loan programs, but any number of other kinds of programs, several of which I have cited in my testimony, including businesses who might find themselves unable to

get SBA loans if they have failed to comply, or if somebody thinks they have failed to comply, with certain other kinds of requirements.

So I ask you, Mr. Harrison and members of the subcommittee to weigh the competing evils here. I think that the ones I have pointed out are considerably greater than the ones that you have pointed out.

Mr. HARRISON. Thank you very much.

Mr. SHATTUCK. Thank you.

Mr. SIMON. Thank you very much for your testimony.

This concludes our hearing.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

LEGISLATIVE HEARING: REGULATIONS ON THE SOLOMON AMENDMENT TO THE DEFENSE ACT OF 1983

WEDNESDAY, MARCH 23, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:02 a.m., in room 304, Cannon House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Harrison, Owens, Andrews, Coleman, Petri, Packard, and Gunderson.

Staff present: William A. Blakey, majority counsel, Maryln McAdam, majority legislative assistant; John Dunn, majority fellow; John Dean, assistant minority counsel; and Betsy Brand, minority legislative associate.

Mr. SIMON. There is a vote on and I have just checked with Mr. Solomon and I assume it is a vote to approve the Journal. I am just going to skip the vote on the floor.

Mr. COLEMAN. I hate to miss the testimony of my distinguished colleague. I look at the votes as how to explain away when you don't vote, so I am going to go vote, Mr. Chairman.

Mr. SIMON. We'll act quickly while you are gone. [Laughter.]

Mr. COLEMAN. I assume you will restrain yourself from marking the bill up while I am gone.

Mr. SOLOMON. I will draw it out as long as I can.

Mr. COLEMAN. All right, Jerry.

If you are going to have an opening statement, I will wait for that.

Mr. SIMON. I will not read my opening statement, but let me summarize it very briefly, and enter it for the record.

We have several bills before the subcommittee. H.R. 1286 by Mr. Edgar, H.R. 1567 by Mr. Burton, both of which would repeal the Solomon amendment on draft registration and student aid. We have 1622 by Mrs. Schroeder which would postpone it for 1 year and H.R. 2145, my bill, which would postpone it for 7 months.

[Text of H.R. 1286, H.R. 1567, H.R. 1622, and H.R. 2145 follows:]

98TH CONGRESS
1ST SESSION

H. R. 1286

To repeal the provision of the Military Selective Service Act prohibiting the furnishing of Federal financial assistance for post-secondary education to persons who have not complied with the registration requirement under that Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1983

Mr. EDGAR introduced the following bill; which was referred jointly to the Committees on Armed Services and Education and Labor

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A BILL

To repeal the provision of the Military Selective Service Act prohibiting the furnishing of Federal financial assistance for post-secondary education to persons who have not complied with the registration requirement under that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 12 of the Military Selective Service Act (50 U.S.C. App. 462(f)) is repealed.

98TH CONGRESS
1ST SESSION

H. R. 1567

To repeal the provision of the Military Selective Service Act prohibiting the furnishing of Federal financial assistance for post-secondary education to persons who have not complied with the registration requirement under that Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1983

Mr. BURTON of California introduced the following bill; which was referred jointly to the Committees on Armed Services and Education and Labor

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A BILL

To repeal the provision of the Military Selective Service Act prohibiting the furnishing of Federal financial assistance for post-secondary education to persons who have not complied with the registration requirement under that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 12 of the Military Selective Service Act (50 U.S.C. App. 462(f)) is repealed.

98TH CONGRESS
1ST SESSION

H. R. 1622

To delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983, to July 1, 1984.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1983

Mrs. SCHROEDER (for herself, Mr. SABO, Mr. YATES, Mr. FRANK, Mr. ORTIZ, Mr. FOGLIETTA, Mr. GARCIA, and Mr. EDWARDS of California) introduced the following bill; which was referred jointly to the Committees on Armed Services and Education and Labor

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A BILL

To delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983, to July 1, 1984.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1113(b) of the Department of Defense Authorization Act, 1983 (Public Law 97-252; 96 Stat. 748), is amended by striking out "for periods of instruction beginning after June 30, 1983" and inserting in lieu thereof "for periods of instruction beginning after June 30, 1984".

98TH CONGRESS
1ST SESSION

H. R. 2145

To delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983, to February 1, 1984, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1983

Mr. SIMON (for himself, Mr. KOGOVSEK, Mr. GUNDERSON, Mr. JEFFORDS, Mr. GOODLING, Mr. OWENS, Mr. EDGAR, and Mr. AUCOIN) introduced the following bill; which was referred jointly to the Committees on Armed Services and Education and Labor

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A BILL

To delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983, to February 1, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1113(b) of the Department of Defense Authorization Act, 1983 (Public Law 97–252; 96 Stat. 748), is amended by striking out "for periods of instruction beginning

after June 30, 1983" and inserting in lieu thereof "for periods of instruction beginning after January 31, 1984".

SEC. 2. The Comptroller General shall conduct an ongoing study of the impact of section 12(f) of the Military Selective Service Act (50 U.S.C. App. 462(f)) on enforcement of the registration requirements under section 3 of such Act and the efficiency and effectiveness of enforcing such requirements through programs of student assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). The Comptroller General shall submit to the Congress a report on the results of such study not later than March 1, 1985.

Mr. SIMON. My colleague and I have had some discussions on this, and while I don't happen to agree with the Solomon amendment, I recognize that the majority of the House does want the Solomon amendment. The question is, how do we get it in workable shape. I have proposed the 7-month postponement, which would take it, for most schools, beyond the next academic year. This would give us a chance to work out both the legal problem from the Minnesota courts and we have some very practical problems.

I want to commend the Department of Education for coming up now with a new regulation. I, frankly, have not had a chance to see the new regulation. The very fact that we have a new regulation means a review by Congress and universities. It would require a little time.

We are in a situation where there is appreciable uncertainty. I just had breakfast this morning with a group of students and one of them said, "Rutgers University is going to skip all financial aid for students," and I said, "Well, I am sure that Rutgers University is not going to skip all student financial aid," but there is that feeling out there.

My instinct is that we ought to proceed with some caution in a matter as important as this. I would simply point out one thing I did not catch when we first went through the regulations, and that is that the original regulation said if any student in a school had not complied, that all student aid would have to be withheld. Well, that really is not the intent of the Department. It is not Jerry Solomon's intent. It is not what the subcommittee wants.

I mention that simply to suggest, let's make sure we are on solid ground, and for that reason I have suggested the 7-month postponement.

That is my opening statement.

[Prepared statement of Chairman Simon follows:]

PREPARED STATEMENT OF HON. PAUL SIMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON POSTSECONDARY EDUCATION

The Subcommittee on Postsecondary Education meets today to consider several bills which would repeal or postpone the effective date of the so-called Solomon Amendment to the Military Selective Service Act. The Solomon Amendment was adopted in the House and by the Congress during consideration of the Department of Defense Authorization Act of 1983 (Public Law 97-252). The Solomon Amendment proposes to deny Federal student aid authorized under Title IV of the Higher Education Act to any student who does not register with the Selective Service System under current law. The bills currently before the Subcommittee include: H.R. 1286 by Mr. Edgar of Pennsylvania and H.R. 1567 by Mr. Burton of California, which would repeal the Solomon Amendment. In addition, H.R. 1622 by Mrs. Schroeder of Colorado and my bill H.R. 2145, which enjoys bi-partisan sponsorship of several members of the subcommittee, would delay the effective date of the Solomon Amendment for one year and seven months respectively.

While the Subcommittee will hear this morning from Mr. Solomon, the Undersecretary and representatives of the higher education community regarding all of these bills, the mark-up which would follow this hearing will address only the question of postponement.

On February 28, 1983 the public comment period closed for receipt of comments on the Secretary of Education's proposed regulation to implement the Solomon Amendment. This regulation has been the subject of a great deal of public comment and correspondence, both to the Department, as well as, to Members of Congress and to this Subcommittee. Almost all of the correspondence that I have received opposed the proposed regulation for several reasons: (1) the regulation imposes unnecessary burdens on institutions of higher education; (2) the regulation proposes to re-

quire verification of all registration information prior to disbursement of aid to the student—a policy and paperwork function not contemplated by Congress and one which will surely delay disbursement of student aid in 1983-84—and (3) the regulation wholly ignores the statutory due process requirements mandated by the Congress. (I would like to include in the record at this point the letters that I have received from college presidents and student aid administrators regarding the Solomon Amendment).

One statement in the Secretary's proposed rule is especially troublesome:

"The statute also requires the Secretary, in agreement with the Director of Selective Service, to prescribe procedures for verifying students' Statement of Registration Compliance. In developing these proposed regulations, the Selective Service recommended, and the Department agreed that in order to fully implement the intent of this legislation the verification of all student Statements of Registration Compliance must be conducted before the institution disburses any title IV aid." (34 CFR 668). January 27, 1983 Federal Register.

This means, that at the Pennsylvania State University, no title IV funds could be awarded until all of the 30,000 student aid recipient applications and compliance statements were verified.

Because of the concerns enunciated regarding the regulation, and the timing involved in developing and implementing a system for the 1983-84 school year, it appears doubtful that any system could be implemented that would not involve delay of student aid awards in 1983-84. This delay is totally unacceptable, in light of the delays which attended the system in the past two years and the resulting effect on many students and institutions of higher education.

Finally, as many of you know, a U.S. District Court in Minnesota on March 9, 1983 enjoined the Secretary and the Selective Service System from enforcing Section 1113 of the Department of Defense Authorization Act pending a review of the constitutionality of the Solomon Amendment on the merits. However, the Court specifically indicated that the Secretary and the Director ". . . are not enjoined from promulgating and adopting regulations pursuant to Section 1113 pending final disposition of this action."

It is my personal judgment that both of these circumstances necessitate a delay in the implementation. Hence, I introduced on Wednesday, March 16, 1983 legislation which would postpone the effective date of the Solomon Amendment until February 1, 1984. I believe this postponement is necessary for the following reasons:

We should not have students, their parents, college and university administrators and GSL lenders waiting for an uncertain period of time to find out whether or not the Solomon Amendment will be in effect for the 1983-84 school year—this uncertainty will have an adverse effect on student applications, the processing of student aid applications and the ability of GSL lenders to make final decisions on loan applications;

The existence of a "final" regulation promulgated by the Department with a July 1, 1983 effective date (assuming the constitutional issues were resolved by that time) would still lead to delays in processing applications for the 1983-84 school year—unless all issues, both legal and regulatory are resolved immediately, the 1983-84 application process will begin without a set of defined rules governing draft registration and student aid eligibility, and

The pending legal action in Minnesota demands postponement because of the basic nature of the constitutional issues involved—the Bill of Attainder and self incrimination issues discussed by Judge Alsop go to the heart of the Solomon Amendment itself.

I want to commend the Department and the Selective Service for responding positively and quickly to the Subcommittee's concerns, which were set forth in our February 28 letter to Secretary Bell. As I read the Department's testimony, however, you have only addressed part of our concerns. I am anxious to know how you will respond to several others in the Department's Final Regulation. Perhaps we can cover those issues and other concerns the Members may have in questions.

I look forward this morning to hearing from our colleague Jerry Solomon, the Undersecretary of Education and representatives of the higher education community about the pros and cons of postponement, and what time period is appropriate.

We are under a severe time constraint this morning because several Members of this Subcommittee have another mark-up beginning at 10:00 a.m. and I expect to begin chairing that Select Education Subcommittee markup no later than 10:30 a.m. Let's proceed.

Mr. SIMON. Mr. Coleman, I would be happy to have some words of wisdom from you.

Mr. COLEMAN. Very briefly, I think we also should proceed on solid ground and that's why I am very glad that we are having this hearing this morning, because the Department has come forward with new regulations, frankly, as a result of the hearings we have had and the discussions that have led us to find some problems with the amendment.

It is my understanding they will testify today that they are proposing new regulations which I would suggest may go to the heart of some of the problems that we have encountered. I believe that it would be rather premature for this committee to enact legislation based upon a first-instance decision in the Federal courts out in Minnesota before the issue has been finally adjudicated.

I would think from a practical standpoint, the new regulations, if I understand the Department's proposal this morning, should eliminate most of the practical problems that this amendment has presented to us. It would be a wise thing to know where we are going, what grounds we are doing it on, and take our time.

I would suggest that if, after this testimony that we have heard today, substantial new information and changes in the administration on the Solomon amendment have occurred, we, in fact, delay the markup of these proposals until we have a better opportunity to know exactly what the effect might be.

Mr. SIMON. Let me just mention, and we shouldn't be having the debate before we let our witness testify here, but this also has to be rereferred to Armed Services, where I am sure it is going to be given careful study. They are not going to be rushing into anything.

I am concerned about the time problem here. July 1 is going to be here very, very rapidly so the inclination of the Chair is to move ahead here today, knowing that it will be rereferred to Armed Services, and, as I recall, you serve on the Armed Services Committee.

Mr. SOLOMON No, Mr. Chairman, Foreign Affairs.

Mr. SIMON. Foreign Affairs.

In any event, I am sure the other committee is going to take a good, careful look at this before they move ahead.

Mr. Harrison, do you wish to add anything in the way of an opening statement.

Mr. HARRISON. No, Mr. Chairman, I would just like to be excused to vote and I will be back in a couple of minutes to hear the distinguished gentleman.

Mr. SIMON. Certainly.

Mr. Solomon.

STATEMENT OF HON. GERALD SOLOMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLOMON. We will go head on.

Mr. SIMON. Yes, you may proceed.

Mr. SOLOMON. Mr. Chairman, thank you first of all for allowing me the opportunity to testify before you today on an issue that I think is very important to all of us in this room, and to all of America.

I apologize for not being able to testify at the previous hearings, I happened to be in El Salvador that week.

Mr. Chairman, although you and I don't always agree on the issues, I just want you to know that I do respect the very fine work that you have done for the education community in this country and certainly my constituents and my students are aware of that and they appreciate it also. I would like to put a feather in your cap.

Mr. SIMON. Thank you.

Mr. SOLOMON. Last year the House and the Senate overwhelmingly approved my amendment to deny Federal student assistance to young men who had failed to register with the Selective Service. The President and the Congress support a continuation of the peacetime registration program very strongly, as you know, and in approving the program, Congress recognized that the peacetime registration program contributes up to 2 months to our national readiness posture in the unfortunate event that America would have to mobilize for war.

The peacetime registration program also signals to our NATO allies and our adversaries alike that we are serious about defending our commitments at home and abroad.

If I may, I would like to quote from the recent Washington Post editorial, which is not known for its conservative stances as a rule, which strongly endorsed the action of my amendment. "It is hardly surprising that Congress," and this is quoting from that editorial—"It is hardly surprising that Congress having decided that registration is an important enough responsibility to warrant criminal penalties should seek to limit Federal subsidies to those disobeying the law. Higher education is still a scarce commodity. Why offer aid to a youth who is not willing to accept the minimum requirements of citizenship?"

Mr. Chairman, I share much of your concern over the possible impact of the Solomon amendment on the higher education community. I have met many times in recent weeks with representatives from the National Association of Financial Aid Administrators and the representatives from the Higher Education Assistance Foundation and the Selective Service Commission and the Department of Education. And after listening to everyone's concerns I had a meeting last night in my office with the Selective Service Director, General Turnage, and Education Under Secretary Jones and requested that they address the concerns by restructuring the regulations.

Today, the Department of Education will announce a modified proposal which is, in my opinion, and in the opinion of most people, very responsive to the concerns that have been expressed by the higher education community. Their proposal eliminates the need to delay or repeal the implementation of this statute. For the 1983–84 and 1984–85 award years, a signed statement of registration compliance will be considered sufficient to meet the requirements of this amendment.

Under this new approach, the institutions may disburse funds under title IV of the Higher Education Act and certify a GSL loan application after receiving only a signed statement from that stu-

dent. Students will not need the compliance letter from the Selective Service in order to receive assistance.

These new provisions will avoid the bulge resulting from the implementation of the verification requirements in the coming 2 academic years.

This new approach will substantially reduce the administrative burden that colleges believe is inherent in the proposed rule.

Mr. Chairman, the major complaint that colleges have had was that the young men who have inadvertently lost their compliance letters and that colleges would have to go back to the files once they received a new letter.

Now, that difficulty will no longer exist. These new steps by the Department of Education will insure that colleges and universities can deliver financial aid in a smooth and effective manner. In a recent letter that I received, both the National Association of Student Financial Aid Administrators and the Higher Education Foundation stated that they support these administrative steps because they will substantially reduce the problems in the delivery of student financial aid for the coming 2 years.

Mr. Chairman, the Selective Service Commission, working with the Department of Education, has succeeded in making the Solomon amendment workable in the eyes of the education community. The Solomon amendment has had, and will continue to have, a very positive impact on the registration process.

Mr. Chairman, registration is important to our national defense. Registration is vital to our Nation's ability to mobilize in the event of an emergency.

Let me just digress for a minute about the original intent of the legislation, Mr. Chairman, when Congress reinstated draft registration, there was a big play in the national news media, on television and in the major newspapers across the country, that Congress had acted to reinstate draft registration.

It then disappeared from the news media, and for a period of about 7 or 8 months, it was never brought up again. I clip most of the major newspapers and watch all of the national television network news and not once was it mentioned during that period of time.

Consequently, when the law became effective, we had something like 78 percent compliance throughout the country, with millions of young men, young American citizens, in violation—people like my son. From the publicity that began on February 1, 1982, when President Reagan issued a grace period for all those young men that might be in violation, and from that day when I introduced my legislation, that compliance has jumped from 78 percent up to 96 percent.

Today, we have fulfilled the intent of my amendment and that intent, Mr. Chairman, was, first of all, to educate all of the young men and all of the American people that the law existed, that we had reinstated it, that it was a serious law with a felony conviction attached to it which would really affect the lives of these young men for the rest of their lives. Not that any student would ever get the maximum penalty of 5 years in jail or a $10,000 fine, but, Mr. Chairman, even if they were given the minimum sentence, the very minimum, which would, let's say, be a suspended sentence, it

means that they would be saddled with that felony conviction on their record for the rest of their lives.

In my State, New York State, for instance, it means that no young man who was convicted of that felony would ever be able to become a doctor, a lawyer, a stockbroker, hold any license in the State of New York. He would lose many, many citizenship rights, including the right to vote.

Mr. Chairman, I have five children, three boys. One is registered for the draft right now and I can tell you that from the intent of the legislation and from the day that it was enacted, that hundreds of thousands of young men from across the country, whether they were intentionally or unintentionally in violation of that law, have come forward and most of those that were in violation at that time, have come forward, they have lived up to their obligation as American citizens and they have lived up, more importantly, to the law.

Mr. Chairman, you and I and the Congress have done those young men a favor because they will never be saddled with that possible felony conviction.

So, in effect, the Solomon amendment, although it doesn't take effect until July 1, has already affected the lives of hundreds of thousands of young men. I think the worst thing that we can do is to delay or to repeal this legislation. Already from the court decision that has taken place, in my conversation with students and with heads of colleges and universities, many students think that the draft registration itself has been put on hold, which you and I know isn't true.

I think that any further clouding of this issue is going to put more doubts in the minds of these young men. You and I know this bill, my amendment, is not going to be repealed. There is absolutely no chance that it would be repealed through the House and Senate, and certainly, even if that were to happen, the President would veto it, and there is no chance for a veto to be overridden.

In my conversations with the colleges and universities and the two associations that I have spoken to, the two main concerns were the fact that students who were young and going to graduate in June didn't have enough time to register in their senior year in high school because the laws and the regulations now say that you cannot register until you are within 30 days of your 18th birthday.

The Selective Service and the Department of Education are going to extend that period to 120 days rather than 30 days prior to their birthday. That eliminates one major stumbling block that could have created a financial burden for the institutions and it also guarantees that those new students who will be coming of age and attending college for the first time will not be held up.

The other, and perhaps the most major that I stated in my testimony, was the fact that the Department of Education will announce today new proposed regulations which will eliminate the need for verification for the colleges for the 2 academic years coming up.

It means that students only have to sign the statement of the application as they do now on all of the other eligibility requirements. So, Mr. Chairman, I am hopeful that this committee, after hearing the testimony of the Education Department and the Selec-

tive Service Commission, will not take action on your bill to either delay or repeal.

I would like to enter my statement for the record.

Mr. Chairman, I thank you for your consideration and I would be glad to answer any questions of the committee.

[Prepared statement of Hon. Gerald Solomon follows:]

STATEMENT OF HON. GERALD SOLOMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, thank you for allowing me the opportunity to testify before you today on an issue that is very important to all of us in this room. Mr. Chairman, although we don't always agree on issues—I do respect the fine work you have done for the education community in this country.

Last year the House and the Senate overwhelmingly approved my amendment to deny Federal student assistance to young men who fail to register with the selective service. The President and the Congress support a continuation of the peacetime registration program. In approving the program, congress recognized that the peacetime registration program contributes up to two months to our national readiness posture in the unfortunate event that America would have to mobilize for war. The peacetime registration program also signals to our NATO Allies and our adversaries we are serious about defending our commitments at home and abroad. If I may I would like to quote from the recent Washington Post editorial which strongly endorsed this action. "It is hardly surprising that Congress, having decided that registration is an important enough responsibility to warrant criminal penalties should seek to limit Federal subsidies to those who evade the law. Higher education is still a scarce commodity. Why offer aid to a youth who is not willing to accept the minimum requirements of citizenship?"

Mr. Chairman, I share much of your concern over the possible impact of the solomon amendment on the higher education community. I recently met with representatives from the national association of financial aid administrators and representatives from the higher education assistance foundation. After listening to their concerns I called a meeting in my office with selective service director Turnage and education undersecretary Jones and requested that they address the concerns by restructuring the regulations.

Today, the Department of Education will announce a modified proposal which is responsive to the concerns expressed by the higher education community. Their proposal eliminates the need to delay or repeal the implementation of the statute. For the 1983-1984 and 1984-1985 award years, a signed statement of registration compliance will be considered sufficient to meet the requirements of the amendment. Under this new approach, the institutions may disburse funds under title IV of the higher education act and certify a GSL loan application after receiving a signed statement from the student. Students will not need the compliance letter from selective service in order to receive assistance. These new provisions will avoid the bulge resulting from the implementation of the verification requirements in the coming academic year. This new approach will substantially reduce the administrative burden that colleges believe was inherent in the proposed rule.

Mr. Chairman, the major complaint that colleges have had was that the young men would have inadverently lost their compliance letters . . . and that the colleges would have to go back to the files once they received a new letter. Now that difficulty will no longer exist.

These new steps by the Department of Education will insure that colleges and universities can deliver financial assistance in a smooth and effective manner. In a recent letter I received, both the national association of student financial aid administrators and the higher education foundation stated that they support these administrative steps because they will substantially reduce the problems in the delivery of student financial aid for the fall of 1983. Mr. Chairman, the selective service working with the Department of Education has succeeded in making the Solomon amendment workable!

The Solomon amendment has had . . . and continues to have a very positive impact on the registration process.——Mr. Chairman, registration is important to our national defense. Registration is vital to our Nation's ability to mobilize in the event of an emergency.

Mr. Chairman, in light of the national security issues involved, as well as the tremendous efforts put forth by the administration to resolve the difficulties you have

raised about the amendment . . . I am requesting that you table your bill to delay implementation of the amendment.

Thank you for your time . . . and I do hope you will give serious consideration to my request.

WILLIAMS & JENSEN,
Washington, D.C., March 15, 1983.

Hon. GERALD B. H. SOLOMON,
Cannon House Office Building,
Washington, D.C.

DEAR GERRY. Thanks again for taking time to meet with Mr. Philip R. Rever, Vice President of our client, the Higher Education Assistance Foundation, and Mr. Dallas Martin, Executive Director of the National Association of Student Financial Aid Administrators.

We greatly appreciate your help in urging that Selective Service allow a period of 120 days for registration, that a procedure be adopted whereby the Postal Service will provide an immediate receipt of Selective Service registration valid for student aid purposes, and that a procedure be adopted for "reregistering," or "revalidating" registration, for those financial aid applicants who may no longer possess evidence that they have registered. Mr. Rever and Mr. Martin have authorized me to state on behalf of both HEAF and NASFAA that they support these administrative steps because they will substantially reduce the problems in the delivery of student financial aid for the fall of 1983.

Sincerely,

PAUL ARNESON.

Mr. SIMON. Thank you.

Incidentally, I have assured some members of the committee that we are going to try and move fairly rapidly because the Select Education Subcommittee has a markup on the Rehabilitation Act.

First of all, I would like to assure our colleague as I think you know, I was for registration when the Carter administration was opposed to it, I supported it when they supported it, I was for registration when candidate Reagan was opposed to it, I was for it when President Reagan supported it. [Laughter.]

But the question is, we have to have something workable and you and I are in agreement on that. I understand that the new regulations that the Department is coming up with today is an appreciable improvement over the old regulation. But we are in a situation where we are getting to right up to the gun as to registering students and getting them aid.

Mr. COLEMAN. Mr. Chairman, I have read Mr. Solomon's statement here since I wasn't present, and I think that I understand what he was saying. I just want to congratulate the gentleman for showing the willingness to try to work this problem out, to make it workable. I think it shows a desire on his part to go the extra mile, if you will, to make sure that some of these problems that have come up under his amendment can be worked out and I just congratulate him for being a catalyst in trying to work things out.

I think we can work this out and I hope that we can, notwithstanding the chairman's desire to move forward expeditiously as he said this morning.

But I thank you, Jerry, for your interest.

Mr. SIMON. Let me say, whether we approve a delay or not, I want to work with the gentleman from New York in having something that is solid. I want to work with the Department as well.

Mr. Harrison.

Mr. HARRISON. Thank you, Mr. Chairman.

Let me just say, that as the chairman knows, I support the Solomon amendment. I was greatly troubled by the regulations not only because it seemed to me that there might be difficulty with some young men losing their letters, but also because of the burden that it seemed to impose on the colleges and universities. I think rather than get into a discussion with the gentleman from New York, I will save my questions until the Under Secretary comes to testify.

Thank you.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Mr. Chairman, I have no questions at this time, but I will be interested in the proceedings from this point on to see whether we can avoid delay of implementation. Thank you very much.

Mr. SIMON. Mr. Solomon.

Mr. SOLOMON. Mr. Chairman, I would like to say in regard to Mr. Coleman's statement that when we reviewed the initial proposals by the Department of Education and the Selective Service Commission, I went so far in the very beginning to tell them that if we could not come up with a workable agreement that would be satisfactory to the colleges and universities that would take the financial burden and the administrative burden off their backs and put it back on the Government's back where it belongs—carrying out the philosophy that I don't ever like to see the private sector saddled with additional financial or administrative burdens because of the laws we pass—I told them that I would become a supporter of the Simon amendment, the Simon bill, to delay.

But they have been more than reasonable, they have worked with all of us and I have been completely satisfied. They went even further than I had recommended. Again, I would just hope that you could take my testimony into consideration today.

Mr. SIMON. We thank you very much.

I am going to impose on the rest of our witnesses and on the Members a 5-minute rule here. Our next witness is Gary Jones, the Under Secretary of Education. We are pleased to have you with us here.

STATEMENT OF GARY L. JONES, UNDER SECRETARY, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY JAMES MOORE, DIRECTOR, STUDENT FINANCIAL ASSISTANCE PROGRAM, AND HAROLD JENKINS, ASSISTANT GENERAL COUNSEL FOR POSTSECONDARY EDUCATION

Mr. JONES. Thank you, Mr. Chairman. I have with me today James Moore, Director, Student Financial Assistance Program of the Department and a familiar person to most of you, not all of you, and Mr. Harold Jenkins, Assistant General Counsel for Postsecondary Education in the Office of General Counsel.

As stated previously by Dr. Edward Elmendorf, Assistant Secretary for Postsecondary Education, the Department of Education does not believe that a postponement of the implementation date is necessary or warranted. We continue to believe that a final rule implementing the Solomon amendment can be published in early May and be in effect before July of this year.

During the public comment period we received approximately 1,500 comments and about half were from individual students. Less than 10 percent of the 8,000 colleges and schools submitted comments and approximately 70 higher education associations responded.

Although the tenor of the comments ranged widely, both institutions and higher education associations expressed reservations about proposed methods of implementing the Solomon amendment.

A major concern focused on the administrative burden imposed upon institutions during the first year. After careful review of this concern we have developed a modified proposal which we believe is responsive to this and other concerns of the higher education community as well as the concerns expressed in your letter of February 28 to Secretary Bell.

We believe these changes obviate the need to postpone the amendment's implementation. The Department of Education, in agreement with the Selective Service System, plans to publish a final rule with the following provisions to implement the Solomon amendment:

First of all, for the 1983-84 and the 1984-85 award years, the current statement of educational purpose would be expanded to include items concerning an individual's compliance with the registration requirements in the Military Selective Service Act.

A student's response to these items would be considered to meet the requirements of the amendment. The institution may disburse funds under title IV of the Higher Education Act and certify a GSL or plus-loan application after receiving the new signed statement of education purpose registration compliance form from the student.

The signed statement would be placed in the student's file and be subject as any other title IV eligibility data, to the biennial audit procedures and the periodic onsite review of the administration of the student financial assistance programs.

This audit review would include the Department of Education's verification of the registration information in accordance with the procedures prescribed by the Secretary.

Beginning January 1, 1985, and I note that we suggest beginning this at the calendar year when students begin filling out student financial aid applications as opposed to the award year which begins on July 1—but beginning in January 1985 for the 1985-86 award year only new title IV student aid recipients will be required both to sign a statement of registration compliance and provide the registration acknowledgement letter or other documentation from the Selective Service as proof of their compliance with section 3 of the Military Selective Service Act.

This signed statement as well as the registration acknowledgement letter would be placed in the student's file.

Now, essentially, Mr. Chairman, these provisions will avoid the bulge resulting from the implementation of the verification requirements on all male students in the coming academic year.

The concerns we have all had over implementing the proposed rule during the first year have led both agencies to develop these alternate provisions.

We are confident that these provisions will meet with the approval of the higher education community and the Congress. As

with our proposed rule published on January 27, 1983, we believe that the final rule with these alternate provisions that I have shared with you today places the burden of compliance on the student applicants and not on the colleges and schools.

We are hopeful that the subcommittee will agree with us that these modified provisions address the concerns of the subcommittee and the higher education community.

Given that, it does not seem desirable to entertain a postponement of the implementation date of the Solomon amendment which the Congress so strongly supported.

I thank you for this opportunity, Mr. Chairman, to express our continued support of the amendment and to share with you our new, proposed regulations and to assure you also that we will continue to work with the Congress and the education community to best effectuate the Solomon amendment.

[Prepared statement of Dr. Gary L. Jones follows:]

PREPARED STATEMENT OF DR. GARY L. JONES, UNDER SECRETARY, U.S. DEPARTMENT OF EDUCATION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify again before this subcommittee on the joint efforts of the Department of Education and the Selective Service System to implement the so-called Solomon Amendment to the Military Selective Service Act passed by the Congress in the Fall of 1982 as part of the Fiscal Year 1983 Defense Authorization Act (Public Law 97-252).

I understand that today's hearing is on the several proposals being made to delay the implementation date of the Solomon Amendment. As I stated in my testimony of February 23, 1983, the Department of Education does not believe that a postponement of the implementation date is necessary or warranted. We continue to believe that a final rule implementing the Solomon Amendment can be published in early May, 1983 and be in effect before July 1, 1983.

Since the end of the public comment period on February 28, 1983, the Department and the Selective Service System have been reviewing the comments received. Of the approximately 1,500 comments on record, about half were from individual students. Less than 10 percent of the 8,000 colleges and schools submitted comments and approximately 70 higher education associations responded during the comment period.

Although the tenor of the comments ranged widely, both institutions and higher education associations expressed reservations about the proposed methods of implementing the Solomon Amendment. A major concern focused on the administrative burden on institutions during the first year. Under our proposed rule, students who apply for student assistance under title IV of the Higher Education Act would have been required to indicate whether they had complied with the Selective Service registration requirements. In addition, male students would have been required to provide verification of their registration compliance.

After careful review of this concern, we have developed a modified proposal which we believe is responsive to this and other concerns of the higher education community and which obviates the need to postpone the Amendment's implementation.

The Department of Education, in agreement with the Selective Service System, plans to publish a final rule with the following provisions to implement the Solomon Amendment:

For the 1983-84 and 1984-85 award years, the current Statement of Educational Purpose would be expanded to include items concerning an individual's compliance with the registration requirements and the Military Selective Service Act. A student's response to these items would be considered sufficient to meet the requirements of the Amendment. The institution may disburse funds under title IV of the Higher Education Act and certify a GSL or PLUS loan application after receiving the new signed Statement of Educational Purpose/Registration Compliance form from the student. The signed Statement would be placed in the student's file and be subject, as any other title IV eligibility data, to the biennial audit procedures and the periodic on-site review of the administation of the student financial assistance programs. This audit review would include the Department of Education's verifica-

tion of the registration information in accordance with procedure prescribed by the Secretary.

Beginning January 1, 1985, for the 1985-86 award year, only new title IV student aid recipients will be required to both, sign a Statement of Registration Compliance, and provide the Registration Acknowledgement Letter or other documentation from the Selective Service as proof of their compliance with Section 3 of the Military Selective Service Act. The signed Statement as well as the Registration Acknowledgement Letter would be placed in the student's file.

Essentially these provisions will avoid the "bulge" resulting from the implementation of the verfication requirements on all male students in the coming academic year. These provisions will reduce substantially the administrative burden that colleges and schools believed was inherent in our proposed rule.

The concerns we have all had over implementing the proposed rule during the first year have led both of our agencies to develop these alternate provisions. We are confident that these provisions will meet with the approval of the higher education community and the Congress.

As with our proposed rule published on January 27, 1983, we believe that the final rule, with these alternate provisions that I have shared with you today, places the burden of compliance on the student applicant and not on the colleges and schools. We are hopeful that the Subcommittee will agree with us.

Mr. JONES. Mr. Chairman, this concludes my statement. I will be happy to respond to any questions the Subcommittee may have.

Mr. SIMON. First of all, the changes are clearly desirable changes. The difficulty is, No. 1, we are reluctant to sign blank checks, and we will want to see the regulation itself. When will the regulation be available not only to the subcommittee but to the universities around the Nation?

Mr. JONES. Well, I would presume that we could get it up here by the close of business Monday.

Mr. SIMON. OK.

Mr. Coleman?

Mr. COLEMAN. Thank you, Mr. Chairman. If I understand this correctly, what percentage of the students are we talking about, first of all who are going to be faced with a problem? I think the general said that 98 percent are complying. Are we holding this whole operation up for 2 percent? Is that right?

Mr. JONES. That would be the case if the amendment was modified.

Mr. COLEMAN. You understand the Federal court has an injunction or a temporary restraining order against the implementation of this amendment. What is your response to the suggestion that some banks will be reluctant to lend moneys under these various loan programs because of this judicial situation that has developed? Do you think that is a good argument as to why this ought to be postponed?

If not, why not?

Mr. JONES. I don't believe that it's necessarily a good argument as to why it might be postponed. I think that the Federal Government guarantees these loans and the banks shouldn't be that concerned by default.

Mr. COLEMAN. Well, what about a contempt of court citation that might fall? Is that a valid complaint?

Mr. JONES. Let me seek the advice of my Office of General Counsel here.

Mr. JENKINS. The banks are not parties to the litigation.

Mr. COLEMAN. My question is, what about the institutions, are they going to be cited for contempt?

Mr. JENKINS. The institutions, again, are not parties to the litigation.

Mr. COLEMAN. Well, is it your opinion that they would not be cited for contempt?

Mr. JENKINS. Ultimately, each institution would have to decide that for itself. However, since the institutions are not parties to the litigation, it is not likely that they would be cited for contempt.

Mr. COLEMAN. Well, do you feel that there is an attempt to dissolve the restraining order, is that a possibility once these regulations are published?

What are you doing to get this judge straightened out?

Mr. JONES. Well, we are working with the Department of Justice.

Mr. COLEMAN. Can I be any more blunt than that? [Laughter.]

Mr. SIMON. Well, perhaps you could say, what are you doing to get the Constitution straightened out? [Laughter.]

Mr. COLEMAN. That's right.

Mr. JONES. We are working with the Department of Justice on a daily basis, Congressman, and doing all that we can and they are doing all that they can to resolve the administration's official position as to how we are going to act on or react to the court's decision in Minnesota.

We expect a position to be coming from the administration any day now.

Mr. COLEMAN. Under your proposed regulations, who is responsible for recapturing loans that might be given out to students who have, in fact, not complied with the registration?

Mr. JONES. Well, let me walk through it a little bit. What we are suggesting is simply to place upon the student the obligation to check an additional box on the student financial aid compliance form, and as they do that, it is simply placed in their file, the institution recognizes that they are in compliance with the law and they provide the funds to the students. It is that simple.

We simply will begin then to audit these applications with the new statement on it. Currently, institutions have to comply with the fact that all funds they receive under title IV are going for educational purposes and things of this nature. We are simply saying this is another thing that will be audited. We are contemplating that the same rules would apply for this added feature as to the current features.

Mr. COLEMAN. Well, are they going to have to run and track down the students and have them pay it back? That is my question. You didn't answer that.

Mr. JONES. Well, I think what you will find is that the student financial aid auditors will, on a random basis, select names of students, call the Selective Service System and find out if, in fact, they have complied. If they have complied there is no problem. If they haven't, we will set in motion a due process procedure which will provide the students with ample opportunity to prove that they have, in fact, complied, but the records may not show it.

Mr. COLEMAN. Well, who goes after the money if they haven't complied?

Mr. JONES. That would be up to the Department of Education and to the Department of Justice, depending upon the status of the dollars and how far along through the due process portion we went.

Mr. COLEMAN. Is that spelled out in your new regulations?

Mr. JONES. That will be spelled out in the new regulations.

Mr. COLEMAN. Will the school be forced to repay any of the loans that get out to the wrong hands, to people who haven't complied.

Mr. JONES. We don't contemplate that the institution would be obligated to do that since it was the student who indicated in his application of compliance that he is in compliance. Therefore, the institution is not liable.

Mr. COLEMAN. You mentioned that only new title IV student aid recipients would be required to have both the signed statement and registration—how many are you talking about and why?

Mr. JONES. Well, first of all, we would like to see whether this proposed rule that we have discussed here this morning is effective, and if it is effective, then we need to evaluate it, as to why it is and as to whether it would be necessary to continue on as of January 1, 1985, with this additional requirement.

We simply feel that the additional requirement would not be a burden upon institutions at that time since the major influx of students would have been complying with it under the revised procedure. Essentially you have incoming students who must comply with the additional requirements that we would suggest become effective in January of 1985.

Mr. COLEMAN. Mr. Chairman I am not sure that it's clear, just because one Federal judge made an interpretation here, what the fifth amendment is. I think it's generally accepted in the course of providing public assistance that a person has to sign their name and swear to the authenticity of the information on eligibility requirements for a number of programs, and that has never been interpreted as being a violation of self-incrimination, of the fifth amendment.

So I don't think that just because a judge somewhere found a decision that we who were trying to work this problem out are throwing the Constitution out the door. I think this judge though, a judge, holding up the entire country, holding up thousands of students and the entire process, that is a very practical issue that we have to face and confront.

Frankly, I hope that the lawyers, Justice and the Department recognize that that is the initial problem, not what anybody else does but that judge, and they have got to have their judicial plans drawn within the frame of the Constitution. They have to go out there and repetition that court and get that injunction or anything that happens, even if you were to support it, wouldn't have any effect until that judge finally dissolves that injunction and makes a final decision.

Mr. SIMON. The Chair, since I didn't use my 5 minutes, can just add one other note, and that is, the fact that there is a Government guarantee on loans does not mean that the banks are eager to participate. Our experience has been that we have had guaranteed loans, but when there is a cloud over them the banks, they just stay away.

That has been historically one of the problems that we have had.

Mr. Harrison.

Mr. HARRISON. Thank you, Mr. Chairman.

Mr. Jones, thank you for coming up this morning. I have been concerned about the regulations and from what I can see, you have made considerable progress in what I think is the right direction. I want to thank you for it.

I really have two questions. One is to pursue something that Mr. Coleman has been discussing with you. I understood you to say in answer to a question by Mr. Coleman, that when the institutions received the affidavit of compliance from the student, and I think this is a quotation, "the institutions can then understand that they are in compliance" and I want to make sure this is accurate, that as soon as the institution receives the affidavit from the student, that that is the extent of their obligation, at least for the first 2 years under the new rule that you have proposed.

Mr. JONES. That is correct.

Mr. HARRISON. My other question is, if this new rule is good enough for 2 years, and I have said before that I think it is good enough, period, why isn't it good enough to continue with after 2 years? Why do we have to go back to this convoluted business of filing letters and tracking students?

Mr. JONES. A twofold answer, Mr. Congressman. No. 1, we have been listening very carefully to comments by Members of Congress and also by members of the community as to the tremendous burden they would have during the first year and we were looking for some better way to accommodate the interests of the entire national community. We feel we have done that.

Second, we are not sure this is the best approach. We would like to evaluate it through a 2-year period to see if it is. If it does work well, and if there is a tremendous degree of honesty and compliance with the affidavits, then it may well not be necessary to promulgate any additional regulations.

Mr. HARRISON. I appreciate that, but I wonder if that is the case, if what you are saying is, "Let's look at the 2-year rule and see if it works well enough so that nothing else is necessary," then why in the rules that we are promulgating now do we anticipate what we will do to by regulation 2 years down the road?

Why don't we just leave that out and go the simple road?

Mr. JONES. No. 1, it takes a long time for institutions to plan and for students to adjust. In many cases we are talking about—I think Mr. Martin will identify in his testimony as some 18 months leeway, by the time the application forms are printed and distributed around the Nation and the whole works. I can assure you that this Department has received a tremendous amount of comments from the chairman of this subcommittee and other people that we have not planned properly, and that what we are simply attempting to do is to provide a long-range plan so that everyone knows what the ground rules are now as to where we should be 3 years from now.

If the current proposal would be very effective, then we certainly could pull back. But it would certainly be a lot easier to pull back after you have planned than to have to plan for something new when you are not prepared to do so.

Mr. HARRISON. I have one more question, Mr. Chairman.

It seems to me that one of the statements made by President Reagan during his campaign and after the election, with which a

lot of the country agreed, is that we want to do away with unnecesssary paperwork, we want to make Government regulations as simple as possible.

Here, you have a regulation which says, "The student signs an affidavit of compliance. We can cross check to see if he is lying, and if he is, we prosecute him for perjury. That is what we have a Department of Justice for." That seems like a nice, simple solution.

But then you say, "But 2 years down the road, we are going to make it more complicated. We are going to get into all of these other things because maybe the simple plan won't work."

I just don't understand why we have to forecast complications when we all agree this morning that, at least, for 2 years, the wise and simple policy will be adequate.

Mr. JONES. I hear what you are saying, Mr. Congressman, and we will take that under advisement as we go back to the Department.

Mr. HARRISON. Thank you very much, sir.

Thank you, Mr. Chairman.

Mr. SIMON. Mr. Petri.

Mr. PETRI. Thank you. I just have a comment and then a couple of quick questions. Some people were suggesting earlier, and I have never really heard a reason why it wouldn't work, to just require a student when taking out a loan to sign a kind of double postcard with the name of his school and mail that back to the Selective Service and count it as registration if he hasn't already registered and put one in his file and let Selective Service have the administrative burden—they would probably want to know his new address anyway—and let it go at that.

Do you think it would be too much of a burden on Selective Service for them to get all of these cards from around the country? You would think if they had the name of the school and they weren't getting any cards from some school, they could audit that school and its files very simply and otherwise they could tell almost statistically whether they were having substantial compliance or not. It would be a self-auditing mechanism practically.

Mr. JONES. First of all, Mr. Congressman, I think that under our new approach the postcard registration is not necessary. We are simply asking students to attest to the fact right on the application report form that they have complied and we are taking their word on that until an audit occurs on the campus.

Second, we have been sensitive to the fact that, in fact, there could be a tremendous amount of graft that could occur through the postcard registration. We have looked at it very carefully but we simply have found no way we could be comfortable in assuring ourselves and the Government under this administration or future administrations that, in fact, students are, or did send in their registration on the postcard.

We don't think that is necessary, as I suggested earlier, simply because of the new approach, which is the most simplified approach I think can be devised.

Mr. PETRI. I don't want to belabor the point, but if they had the name of the institution the student was attending on that card, I think the chances of graft would be minimized in that, if they got no cards from some institution, they would think there was a prob-

lem. If there were 1,000 students at that institution and 500 were men and they got 485 cards or whatever, or 250 cards—they figure maybe there are about 250 people taking out a student loan at that institution or something of that sort it would be within the regular parameters. What I am saying is, these things have to be done on a rule of thumb and they would audit those where there looked to be something a little irregular. It would be sort of a natural thing.

One other comment and that is that that judge didn't enjoin the issuing of student loans, he just enjoined the implementation of the Solomon amendment, as I understand it, so I can't imagine that banks or schools or anyone else would feel worried about issuing loans.

As a former law clerk to a Federal judge, I know that he would like to have an opportunity to keep the situation as it is while giving people a chance to make their case and it really is no judgment one way or another on the Solomon amendment or anything else, it's just trying to freeze the situation as best they can as it is right now to allow the parties, without prejudice, to go over what issues may be involved. He is not trying to stop loans, as I understand it.

Now, what would happen under your proposed regulations, if a student was not registered, but he did check the box that he had registered and he got a loan, and then in an audit you discovered that. What would happen?

Mr. JONES. First of all, we expect the student financial aid officers to take random samples, check with Selective Service. If someone is found not in compliance, the first thing we are going to do is provide the student with an opportunity to prove that, in fact, he did register, but for some reason or another it does not show on the records of the Selective Service Administration in Chicago.

Second, we will give him ample opportunity to register and we will also check with—which we are doing now and we don't have a precise answer for you—but we will have to check with legal counsel at the Department of Justice as to what the ramifications are if a student comes into compliance 8 months to a year after he has received the money as opposed to before he received it.

That is a question which is of great concern to us, but we think it certainly can be worked out in compliance with normal law.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Your former regulations require that women also register and sign compliance forms. In your new regulations will that be a continued requirement?

Mr. JONES. That has puzzled many people, Mr. Congressman, as to why we advocated that and it was really to save every one time and money, to be very candid. If we did not have the females indicate that they did not have to comply with the law because they were, in fact, female, we would have had to have two application forms—one for men and one for women—and that would have created, I think, an extra burden not only on institutions, but upon the private sector banks, upon the Federal Government and what not.

It is my understanding that we have some 40 million applications in this Nation at the State and institutional and Federal

level, and if you need to begin to provide different applications based upon sex, I think we are only going to quantify our problems.

Mr. PACKARD. It would appear that just an additional box saying, "Not applicable," or something to that effect would be just as effective.

Mr. JONES. That's true but we don't always know the gender of an individual by his name.

Mr. PACKARD. If a woman doesn't fill that portion in, what would you do? If, by choice, they choose not fill that portion in that would relate to registration?

Mr. JONES. Well, my understanding would be that the institution would simply get in touch with that individual student on their campus and ask him to check that box before he receives his funds.

Mr. PACKARD. I have no further questions.

Mr. SIMON. Mr. Gunderson.

Mr. GUNDERSON. No questions, Mr. Chairman.

Mr. SIMON. Thank you very, very much.

Mr. JONES. Thank you, Mr. Chairman.

Mr. SIMON. Our next witnesses, we will ask all three to come forward: Dallas Martin, Jack Peltason, and Phil Rever. I don't know if you were here when we mentioned that we are under a 5-minute rule. We have a 10 a.m. meeting of another subcommittee that we are trying to get to. Brevity will be appreciated.

Dallas Martin, executive director, National Association of Student Financial Aid Administrators.

STATEMENT OF DALLAS MARTIN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

Mr. MARTIN. Thank you, Mr. Chairman. In the interest of time, let me just very quickly summarize what our primary concern is this morning.

Let me say, first of all, that we appreciate the opportunity to be here and we are delighted to hear that the Department of Education has moved forward to make major changes in the regulations.

I would just say that I wholeheartedly support what Mr. Harrison said, and that is, if we can live with the simple approach for the first 2 years, I would like to see it continued rather than having another plan. But certainly it is a major improvement from where we were.

The primary issue facing colleges and universities today, however, is not due to the fact that we haven't had excellent cooperation from people in terms of trying to revise the regulations, thanks to your role and many other people's efforts.

Our concern is exactly where do institutions stand today as a result of the preliminary injunction that was issued in Minnesota. We have been advised by counsel that we are bound by that and that schools are not allowed to proceed under the current court order until that is resolved.

As a result, we have many schools across the country that are currently faced with the dilemma of whether or not to go ahead and require students at this time as a part of their application for financial assistance to secure that signature. It is our understand-

ing that that can be done voluntarily. We cannot mandate those students to do that and any action on the part of an institution that does so could bring them into litigation and they could be taken to court for contempt.

What we need is some clarification on exactly how to proceed at this point because the delivery system and the applications are going forward. For that reason and the importance of the whole timing and delivery system right now, we think that a postponement might be helpful to resolve our processing problems until the issue is resolved in the courts. If, in fact, this particular procedure is held to be constitutional and it goes forward then we will be more than happy to comply with collecting those statements of registration.

But we think there is a real doubt about whether or not we are allowed to do that at this time and it is causing a lot of confusion in the minds of institutions and students. Therefore, we need some very immediate clarification to proceed.

With that, I think I will stop and save the time for questions and allow one of my other colleagues to go forward.

[Prepared statement of Dallas Martin follows:]

PREPARED STATEMENT OF DALLAS MARTIN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

Dear Mr. Chairman and the members of the Subcommittee, I appreciate the opportunity to appear before you today on behalf of the more than 2,800 postsecondary educational institutions that belong to NASFAA. I wish to share with you the dilemma faced by these schools in trying to implement Section 1113 of the Defense Authorization Act of 1982, Public Law 97-252 by July 1, 1983 and to request your assistance in securing a reasonable solution to this problem.

As you know, this Nation's total system of postsecondary financial aid is composed of multiple aid sources that are provided by Federal, State, institutional, and private agencies. The process that is followed to eventually bring all of these aid sources together into a workable package for the individual student, requires careful consideration and assured cooperation among the many parties who are involved, or the whole system will become inefficient and the needs of students and the objectives of the programs will be thwarted. For this reason, organizations involved in the delivery of student aid including the Department of Education, the State Scholarship and Loan Agencies, the National Need Analysis Services, the National Student Aid Coalition, the Office of Student Financial Assistance Training Program, NASFAA and many others, spend a great deal of time each year developing and coordinating the annual delivery schedule, in designing the application forms, and in preparing and disseminating financial aid information.

This coordinated process actually begins 18 months in advance of each operating year which begins on July 1st and extends until June 30th of the following year. This lead time is absolutely essential if the student aid delivery system is to operate efficiently and is to provide accurate information to students, parents, donors, lenders, and institutions so they can proceed in an orderly manner. As a result, decisions must be made early so that when student/parent workshops are held in the fall, clear and accurate information can be disseminated. This information, in turn, enables students to begin completing their applications after January 1st and to submit them to the schools and processors in a timely fashion. The data from these applications is then reviewed and analyzed by the various parties and the results forwarded to the schools. The schools in turn prepare financial aid packages for each eligible student and then forward notifications to each student of the type and amount of aid he can expect to receive. Given the wide diversity of educational institutions and donors, students and parents often find that they must comply with different deadlines and application dates. However, most donors and schools try to obtain all needed and relevant data from the applications between the periods of January through March of each year, so that awards can be made to students in April and May. It is also important to note that a surprising number of students, particularly upperclassman, graduate students, and individuals enrolled in private

business-trade and technical colleges actually begin or attend school during the summer, with disbursements being made to them immediately after July 1st when the new award year begins. Therefore, everyone involved must have completed their application, made their awards and be ready to make disbursements by this date. Any delay that impacts upon this process negatively affects students, parents, and institutions.

I remind you of these schedules and their importance because current events surrounding the implementation of the selective service registration compliance requirements included in the Defense Authorization Act of 1982 and a student's eligibility for Title IV student assistance funds have reached a critical mass. If these problems are not immediately resolved, they could substantially delay the student aid awards to thousands of young men after July 1, 1983 who have registered with the selective service.

The members of this subcommittee will recall that our President, Lola Finch, Director of Financial Aid at Washington State University, testified before you on February 24, 1983 to express our concerns over the notice of proposed rulemaking on this subject that had been issued by the Education Department on January 27th. At that time we voiced our belief that the proposed rules were overly complex, timeconsuming, and imposed unnecessary administrative burdens upon students and institutions. Further, we advanced a number of suggestions that we believed would help to make the whole process more cost effective and workable. Since then we have discussed this matter with officials at the Department of Education, and with various members of Congress, including Congressman Gerald B. Solomon, one of the original sponsors of the amendment, in the hope of being able to develop a better alternative and to revise the proposed regulations. All of these individuals have been responsive to our concerns and have been trying to develop a more reasonable set of procedures. However, on March 9, 1983 another factor was introduced when Federal Judge Donald D. Alsop, of the U.S. District court of Minnesota issued a preliminary injunction that enjoined the Selective Service and the Department of Education and all others from enforcing the provisions of Section 1113 of the Defense Authorizations Act of 1982 until further order of the court. This action, it appears, will not prevent the Department of Education from proceeding to promulgate final regulations on the matter. It does, according to our legal counsel, prohibit institutions from requiring students to complete the Selective Service registration compliance forms, until the injunction is lifted or the merits of the case are resolved.

Consequently, schools across the country are in a real quandary over how to proceed. While some of the schools have not yet started collecting the selective service compliance statements, many of them have followed the advice provided earlier by the Department of Education and have folded the selective service compliance question into their required statements of educational purpose. It should also be noted that the Department of Education's Pell Grant Processor is currently printing the same revised combination statement on the back of each Student Aid Report (SAR) that it is currently processing for the 1983-84 award year. This leaves everyone in a dilemma. By law, schools must obtain from a student a signed statement of educational purpose, however, because of the preliminary injunction they can not mandate the signing of the provisions in the statement dealing with selective service registration compliance. Therefore, schools have no choice but to immediately separate the two statements or to allow students at their option to cross out these provisions that relate to the registration compliance before signing the revised combination statement.

Now if we believed that there was any possibility that the whole matter would be settled in the courts in the next few days, we would just inform everyone to wait for a week before proceeding. Unfortunately, the pending litigation and the likelihood of subsequent appeals will take considerably longer, and in the meantime institutions must proceed with their normal processing schedules and award notifications. As a result, we do not see any way that schools can proceed to implement the selective service registration compliance provisions before making their 1983-84 awards.

Further, if the selective service provisions that are linked to Title IV student aid eligibility are subsequently determined to be constitutional and the enforcement provisions are enacted after the start of the financial aid award year on July 1, 1983 then most schools will be unable to insure complete compliance with the regulations until next year. Additionally, those schools that attempt to go back and implement the provisions for students who have already been given awards for 1983-84, will find the process of doing so to be extremely costly and disruptive to their normal operations.

Given this overall state of affairs, these facts remain: (1) selective service has by its own estimates testified previously that at least 90 percent of all aid recipients

have registered; (2) the Department of Education is still trying to get through the more than 1300 responses they have received to their NPRM; (3) final regulations will not be available for distribution to the schools until at least May; (4) schools must in the interim continue to process aid applications for 1983-84 despite the pending suit and unfinished regulations to properly serve students; (5) there is a strong likelihood that the legal challenges will not be resolved by the courts until after July 1, 1983; (6) institutions would find it disruptive and extremely costly to implement the procedures, if allowed to stand, in mid-year; and (7) many innocent students could be adversely affected if there is not an immediate resolution. We would therefore request that the effective date of the amendment be postponed until July 1, 1984 or until the start of the next award year if the court suit and an injunction are still unresolved. We believe that failure to take such action at this time will only make a complicated issue much more sensitive in the future. Meanwhile, we pledge our support to continue to work towards a reasonable and fair resolution to this issue.

Thank you for providing us with the opportunity to comment on this subject.

NEW YORK STATE FINANCIAL AID ADMINISTRATORS ASSOCIATION,
Syracuse, N.Y., March 2, 1983.

Hon. PAUL SIMON,
U.S. Congress,
Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN SIMON: This letter concerns the recently published Notice of Proposed Rulemaking concerning Selective Service registration for federal student financial aid eligibility. On behalf of this Association, I wish to commend you for your efforts to seek amendments to lessen the administrative burden of these proposals on students and schools.

There are many different ways in which this legislation can be implemented that do not create excessive burdens. I have enclosed with this letter a copy of this Association's comments, to the Department of Education, which outline some of the ways this can be done. The National Association of Student Financial Aid Administrators has submitted testimony and comments recommending other ways, specifically a two part registration form, one copy of which would be stamped by the Post Office and returned to the student as proof of registration. Other methods, such as providing lists of Title IV recipients to the Department of Education for Selective Service registration verification at the time of each school's required biannual audit, have also been proposed. All of these methods have their individual merit. Most important, however, is that each is far simpler to implement.

Financial aid has become a complex, paperwork intensive process that is confusing to the students who benefit from it and frustrating to school officials who must administer it. We sincerely hope that you and your colleagues will take this opportunity to inject a measure of sanity into that process.

Thank you for your consideration of these comments.

Sincerely,

IRVIN W. BODOFSKY, *President.*

UNIVERSITY OF WISCONSIN,
STUDENT FINANCIAL AIDS,
Superior, Wis., March 2, 1983.

Hon. PAUL SIMON,
Chairman, House Subcommittee on Post Secondary Education,
Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN SIMON: Last fall, you indicated a willingness to listen to comments from the financial aid community concerning financial aid regulations and concerns. In the past, I have tried to conscienciously respond to NPRM's distributed by the U.S. Department of Education. My comments were always intended to represent the best interests of not only the students at my respective college, but also the needs of college students across the country.

This morning, I read with great chagrin the article "House Will Consider Changes in Rules Tying Student Aid to Draft" in the March 2, 1983 Chronicle of Higher Education. I take exception to Mr. Elmendorf's assertion that he has received less than fourteen letters from the academic community critical of the proposed rules.

Although I am active within my state, regional and national professional aid associations, I neither hold an elective office nor do I work at a large prestigious university.

I am Director of Financial Aid at a small midwestern liberal arts college. I did not retain a copy of my three page letter to Ms. Foley, but I don't believe I am one of only fourteen aid officers across the country who opposed the NPRM. I sincerely believe that within our state alone, there were more than fourteen aid officers who objected to the NPRM.

I believe Mr. Elmendorf and the Department of Education are trying to mislead Congress by holding or ignoring the financial aid community's response to the NPRM. I am very upset and concerned that the Department releases only information that they feel justifies their actions.

I understand that there were numerous presentors during your public comment sessions who spoke against the NPRM. I believe their response better reflects the aid associations and academic community's reaction to the NPRM than does Mr. Elmadorf's summation.

Your actions and reputation are respected throughout the aid community. Your interest in the concerns of students is very important to current and prospective students continuing their post high school education.

Thank you for your consideration of my comments and your continued support of assisting financially needy students.

Sincerely,

ROBERT WATSON,
Director of Financial Aids.

HAVERFORD COLLEGE,
Haverford, Pa., March 14, 1983.

Hon. PAUL SIMON,
Chairman, Subcommittee on Postsecondary Education, House Committee on Education and Labor, U.S. House of Representatives, Cannon Building, Washington, D.C.

DEAR MR. SIMON: We are writing to you on behalf of Haverford College, a private coeducational institution of higher education, in connection with your Subcommittee's hearings on regulations that the Department of Education has proposed under section 1113 of Public Law 97-252. We welcome this opportunity to share with members of the Subcommittee some of our observations concerning the burdens imposed by these regulations.

Many of Haverford's students receive assistance under Title IV of the Higher Education Act of 1965. Haverford is therefore vitally interested in the regulations that the Secretary of Education is proposing and is deeply concerned about their political impact on the academic environment. These regulations would require students applying for Title IV assistance to file statements of "compliance" with federal draft registration laws and require the institutions they plan to attend to obtain "verification" of such compliance.

The United States Supreme Court long ago recognized "[t]he essentiality of freedom in the community of American universities," and it has accorded that freedom constitutional protection under the First Amendment. *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250, (1954). The academic freedom which a private college or university such as Haverford enjoys under the First Amendment includes, among other things, the right to choose whom it wishes to admit as students, the right to select for itself the faculty and administration who will carry on the college's educational program, the right to determine what shall be taught, and the right to maintain an academic environment free of outside influences that would fetter the open exchange of beliefs and ideas.

Haverford College believes that section 1113 violates this concept of academic freedom. The legislation is an unfortunate mixing of two widely disparate legislative goals which raises serious ethical, legal and constitutional problems. From news reports, we understand that a District Court in Minnesota issued a preliminary injunction against implementation of section 1113 on these grounds.

However, the proposed regulations, by imposing upon the college a legal duty to obtain from its students "verification" of their draft registration compliance, go beyond the statute and force upon the college a duty which is antithetical to an open academic environment. The college would be forced to become a participant in gathering, on the government's behalf, evidence concerning potential criminal acts of its students, and transmitting that evidence to those who may use it for law en-

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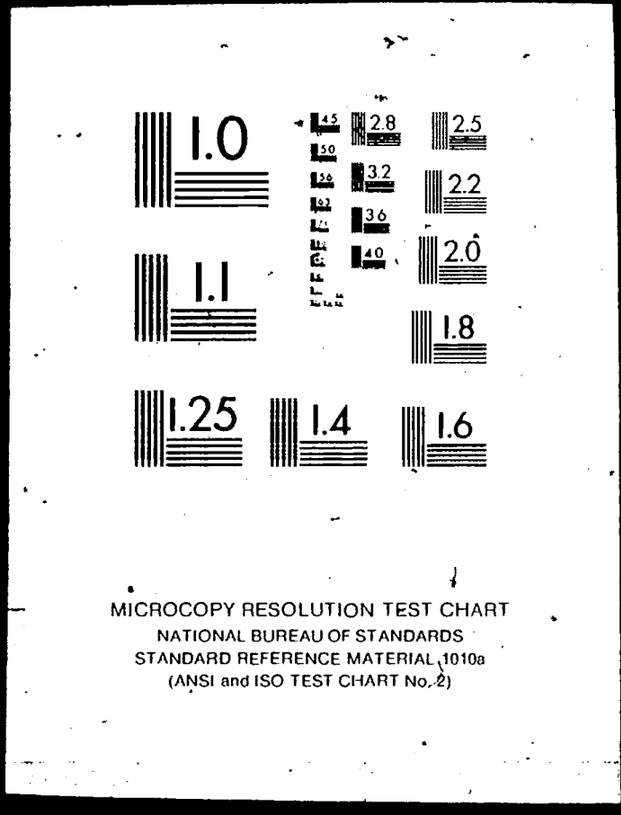
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STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

forcement purposes. Compelling a college to assume such a "detective" or "big brother" role is completely alien to its academic freedom. It may seriously impair the college's ability to maintain the open avenues of communications among faculty, administration and students that are essential to a successful educational program. It may also drive away from the college those faculty, students and administrators who, for reasons of conscience, object to involvement in the process of military conscription.

Such interference with the college's rights is both unwise and unnecessary. The legislation does not require such intrusive regulations. Neither the statute nor practical considerations requires colleges to have any direct involvement in the government's efforts to enforce the draft registration law. Therefore, to protect the integrity and independence of the educational process and of the First Amendment rights of colleges, the Secretary of Education should promulgated regulations which do not impose any affirmative duties on colleges or otherwise impinge on academic freedom protected by the First Amendment. We urge the Subcommittee to take whatever initiatives it can to see that the regulations ultimately promulgated by the Secretary avoid the unnecessary burdens on academic freedom that will result from those which are presently under consideration.

Sincerely,

ROBERT STEVENS,
President.
JOHN B. JONES, Jr.,
Chairman, Board of Managers.

THE UNIVERSITY OF CHICAGO,
Chicago, Ill., March 4, 1983.

Hon. PAUL SIMON,
U.S. House of Representatives,
Cannon House Office Building, Washington, D.C.

DEAR PAUL: I want to express our thanks for your leadership on the question of linkage of student aid to draft registration. The hearings you held were most helpful in bringing public attention to this important issue.

I am enclosing a copy of the comments that the University of Chicago filed with the Department of Education on these regulations. I think it is important to point out certain differences between our comments and those we know you have received from others, including the American Council on Education. Particularly noteworthy, I feel, is our difference in views about whether requiring institutions to forward copies of students' statements of compliance, or lists of students who have filed such statements, constitutes in and of itself inappropriate involvement of institutions of higher education in the enforcement of Selective Service laws. We feel strongly that it does, and we offer an alternative means of verification.

We suggest that the new precondition for the receipt of Title IV student assistance, draft registration, be verified in the same manner as the four previously existing preconditions—namely, through an audit conducted by the Department of Education. We believe that an audit should be sufficient in a situation where we are looking for only a handful of students—those who would dare to risk incurring not only the significant criminal penalties already applicable to individuals who fail to register but also the criminal penalties applicable to false representations on student aid applications.

While the "list solution" suggested by ACE and others does tend to curb the administrative burden on institutions, we feel it puts at further risk some important principles of institutional autonomy.

As our comments to the Department of Education indicate, we have opposed and continue to oppose the legislation itself on the same principles. However, given that it is now the law of the land, we look to deliberative policymakers like yourself to help minimize its threat to basic concepts about what a university should be and do and what it should not.

Again, I appreciate your leadership and hope that our comments will be helpful to you and your colleagues as you grapple with this issue.

With all best wishes,

Sincerely,

ARTHUR M. SUSSMAN.

THE COLLEGE OF WOOSTER,
Wooster, Ohio, March 4, 1983.

Hon. PAUL SIMON,
U.S. House of Representatives,
Cannon House Office Building, Washington, D.C.

DEAR MR. SIMON: It is my understanding that in the coming weeks you will recommend revisions in the proposed implementation of the new law linking registration with the Selective Service and the processing of applications for student aid. As you prepare your recommendations, I would appreciate your considering the following points:

1. The procedure for enforcing the law proposed by the Education Department affects only those students applying for financial aid. This policy seems to me unsound, both from the point of view of the Department of Defense, which must certainly desire an enforcement procedure applicable to all those eligible for the draft, and from the standpoint of colleges and universities which, in my judgment, ought not to be making the sorts of distinctions among students required by the new law.

2. While the Congress has expressed a concern that the regulations should not be unduly burdensome to colleges and universities, we believe that a significant increase in time and expense will be required to handle the additional correspondence, telephone calls and tracking systems resulting from implementing the proposed procedures.

3. Finally, the enforcement procedure will delay the processing and awarding of aid to some students, thereby further discouraging them from using the federal aid available to them. The uncertainty surrounding student aid has already been a major problem for independent colleges, and the new law compounds the problem.

For these reasons, I believe that the linking of registration and financial aid is bad public policy and should be repealed.

Sincerely yours,

HENRY COPELAND.

IOWA ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS,

March 3, 1983.

Hon. PAUL SIMON,
U.S. House of Representatives.
Cannon Office Building.
Washington, D.C.

DEAR CONGRESSMAN SIMON: I read with much interest the article that appeared in the March 2, 1983 issue of the Chronicle of Higher Education which reported that you were considering introducing legislation that would postpone enforcement of the Selective Service requirements as they relate to student financial aid. As President of the Iowa Association of Student Financial Aid Administrators, I would very much support your proposed legislation.

The article also went on to say that the Department of Education had received very few letters commenting on the proposed rules. I think it only appropriate to point out that the proposed rules were issued on January 21, they were not received by financial aid offices until 10 days later and the comment period ended on February 28th. The normal comment period on proposed regulations as you well know is 45 days. Because of the timing factor the department reduced the comment period to 30 days. I think that Dr. Elmendorf's comments about the lack of responses was not appropriate for that time. I am sure by February 28, a good number of comments should have been received by the department.

I am attaching for your informaiton a copy of the letter sent by our association to the department on the proposed regulations.

We very much appreciate your support on this issue. If you should be in need of further information on how these proposed regulations effect colleges, please do not hesitate to contact me.

Sincerely,

FAYE M. SCHEIL, *President.*

SAINT MARY'S COLLEGE,
Winona, Minn., March 2, 1983.

Hon. PAUL SIMON,
U.S. House of Representatives,
Cannon-House Office Building, Washington, D.C.

DEAR MR. SIMON: When the federal government enacted the Higher Education Act in 1965, its intent was to establish a partnership between government and higher education for the benefit of college students throughout the country. Colleges paid a small price in increased paperwork for this expansion of educational opportunity and student choice.

The Education Amendments of 1972 changed the nature of the partnership. The Government Accounting Office was directed to evaluate federal education programs and to introduce federal cost accounting procedures. Since that time, the Department of Education has intruded several times into processes for evaluating colleges and determining their right to receive and dispurse federal funds. Such intervention created a natural, though dangerous, sequence of having the federal government follow its funds into the nation's colleges and universities.

Now the next step has been taken. The federal government has determined to change the partnership of 1965 into a coercive program relying on student aid funds as a basis for using colleges and universities for the government's own purposes. The amendment to the Military Selective Service Act of 1982 uses the colleges to monitor whether young people have registered for the draft. Instead of the federal government's monitoring the effects of its own legislation, colleges must now do that for the government. The regulations proposed by the Department of Education would require colleges to do for the government what the Selective Service Administration had to do for itself when the prior draft existed. This is patently unfair and dangerous to the freedom of higher education in this country. Which government bureaucracy will be next? Will the IRS, perhaps, demand the colleges monitor for its benefit which of our students pay taxes?

On January 22, 1983 the Saint Mary's College Board of Trustees declared:

Resolved: That the Board of Trustees of Saint Mary's College be opposed to any government regulation that requires the college to police compliance by its students with the draft regulation act.

We urge your support in removing these onerous and potentially dangerous regualtions that will rob colleges and universities of their freedom and make them minions of any government bureaucracy that may view them as convenient enforcers to do their agency's work.

Sincerely,

PETER CLIFFORD, F.S.C., *President.*

Mr. SIMON. Mr. Peltason.

Jack Peltason, president of the American Council on Education.

STATEMENT OF J. W. PELTASON, PRESIDENT, AMERICAN COUNCIL ON EDUCATION

Mr. PELTASON. Mr. Chairman, I will also be brief. Again we thank you for your help. I applaud the Department's proposed new regulations and we look forward to looking at those very carefully.

As Mr. Harrison said, we don't understand why it works for the first 2 years and not for the third year. In fact, I think the retention of the third year adds to the confusion because we have felt very strongly at our institution that if we had to go beyond certification then it creates problems and apprehensions and further challenges.

If we can get the regulations cleared up, get the court case cleared up, we've come a long way toward meeting our objections.

I would point out to you that as you emphasized, and I would like to reemphasize it, we are now in the process of handling millions of student financial aid applications.

That is now going on with considerable confusion out there as to what the regulations will require, what the court regulations will

require. Some institutions are doing one thing and some another and some doing nothing.

I would think that a reasonable delay until we get all of this straightened would be in the national interest because we are already in the middle of the year the regulations come out. We are in the middle of a court case and it could be June of this year before this situation finally gets clarified. I would request that you proceed with your postponement amendment.

[Prepared statement of Dr. J. W. Peltason follows:]

PREPARED STATEMENT OF DR. J. W. PELTASON, PRESIDENT, AMERICAN COUNCIL ON EDUCATION

Mr. Chairman and members of the subcommittee, my name is J. W. Peltason, and I am President of the American Council on Education. I am appearing today on behalf of the Council, an organization representing over 1,500 colleges and universities and associations in higher education, and its Ad Hoc Committee on Draft Registration, which consists of college and university presidents, counsels, admissions officers, and student financial aid officers.

The higher education community opposed the recently enacted amendment to the Military Selective Service Act included in the Department of Defense Authorization Act of 1983 (the so-called "Solomon Amendment"). The amendment provides that any student who must register with the Selective Service System and fails to do so is ineligible for student financial assistance provided under Title IV of the Higher Education Act of 1965. This amendment causes schools to be unduly entangled in the administration, policing, and enforcement of draft registration and Federal criminal laws.

I appear before you today to urge the enactment of legislation to postpone the effective date of the Solomon Amendment for at least one year.

As we stated in our testimony before this Subcommittee on February 24, 1983, we believe that the rules implementing this amendment proposed by the Department of Education exceed the Department's statutory authority. As spelled out in detail by the testimony presented, these proposed rules have inherent technical difficulties and will impose on instutitions an excessive amount of paperwork.

The proposed regulations go far beyond the law by requiring schools to verify, before any financial aid is disbursed or loan eligibility is certified, that students have actually complied with their registration responsibilities. In imposing the pre-award verification obligation, the Department of Education has acquiesced in a Selective Service interpretation of the new law which requires such a program of pre-disbursement verification. But this interpretation rests on a supposed Congressional intent which is evident neither from the statute itself nor from its legislative history.

To prohibit the awarding of student aid in advance of verification, without considering other means of verification, including methods that the Congress clearly contemplated, flies in the face of Congressional intent. The proposed verification procedure, which requires a student to furnish a copy of his Selective Service registration letter, places the verification burden on the school, contrary to the clear intent of the Congress. We fear there will be massive and widespread disbursement delays during the 1983-84 school year.

It is the position of the American Council on Education and its Ad Hoc Committee that the certification provision alone satisfies the statutory intent, and that verification can be conducted by the Department of Education and/or Selective Service through a review of the statements of compliance furnished by students to their schools.

The time between now and July 1, 1983, is too short to enable the Selective Service System to amend their procedures so that they or the Department of Education can conduct the verification process as mandated by Congress. In addition, institutions require more time to ensure that they can implement whatever additional paperwork procedures, if any, are imposed. "Fine tuning" the regulations will ensure that the implementation of this inappropriate legislation is accomplished with a minimum of difficulty.

Lastly and perhaps most importantly, on March 9, 1983, Federal Judge Donald D. Alsop of the U.S. District Court for the District of Minnesota in *John Doe, et al.* v. *Selective Service System and U.S. Department of Education* and *Bradley Boe, et al.* v. *Selective Service System and U.S. Department of Education* enjoined the government

and all others from enforcing the Solomon Amendment. The precise effect of this order is not entirely clear. Although the Education Department will probably go ahead and issue the rules required by the statute, this litigation will cast a consistent cloud on this entire issue until a final and binding determination is rendered.

The Minnesota Civil Liberties Union has moved for summary judgment and a permanent injunction. The hearing was scheduled for March 22nd. There is no way at present to predict how long it will be before a final ruling is issued.

The Justice Department attorneys handling these cases for the government have stated they will appeal any ruling issuing a permanent injunction. This appeal could go to the U.S. Court of Appeals for the Eighth Circuit. However, since a Federal law would have been found to be unconstitutional by a Federal district court, the government's appeal, if any, could go directly to the U.S. Supreme Court.

In any event, we may well have to comply with a preliminary or permanent injunction for some time. It is likely that a final determination on this matter will occur well after the effective date of July 1, 1983. Delay in the effective date will accord all parties greater certainty and ease in dealing with the final judicial decision.

We therefore request that the effective date of the legislation be amended so as to apply to loans, grants, or work assistance under Title IV of the Higher Education Act for periods of instruction beginning after June 30, 1984, which would better enable colleges and universities to prepare for its implementation. Additional time will be necessary in order to avoid massive confusion in the delivery of financial aid to all needy students.

We appreciate the opportunity to appear before you today and stand ready to answer any questions you may have concerning our statements. We reiterate our willingness to work with the members of the Subcommittee to make implementation of this law reasonable and workable.

Mr. SIMON. Mr. Rever.

STATEMENT OF PHILIP R. REVER, VICE PRESIDENT, HIGHER EDUCATION ASSISTANCE FOUNDATION

Mr. REVER. Mr. Simon, thank you very much. I have little to add as the final panelist's request for a delay.

Let me introduce to you our counsel who accompanies me this morning to respond to technical questions with regard to the proceeding of the court in Minnesota, and the applicability and scope of that court order in our judgment. In short, the Department's announced intention or changes in their regulations do address many of our problems. Unlike institutional representatives, as a representative of a multi-State guarantor of student loans, those regulations do seem to address our major concern which was the disbursement of loans to students under temporary verification procedures, for which we may eventually be held liable in terms of our default rates, which could cause a readjustment in our reinsurance agreements from the Federal Government.

Mr. Olsen, from the firm of Williams and Jensen, who is our counsel in Washington, D.C., has been in direct discussion with the attorneys for the plaintiffs in the district court in Minnesota and the Justice Department and can respond to the status of that court case in our judgment.

In short, our counsel's view is that indeed institutions may be subject to contempt of court actions or certainly litigation, were they to attempt to implement the proposed regulation and obtain students' statements of their compliance with registration requirements.

That doesn't mean that institutions, in fact, may not be willing to take that risk to make loans and other forms of aid available, but that risk could be a substantial risk, and I think Mr. Olsen can

assure you that the first attempt to do that will result in some kind of court action by the plaintiffs' attorneys in Minnesota.

If you have any questions with regard to the technical matters, I will refer you to Mr. Olsen.

[Prepared statement of Philip R. Rever follows:]

PREPARED STATEMENT OF PHILIP R. REVER, VICE-PRESIDENT, HIGHER EDUCATION ASSISTANCE FOUNDATION

Dear Mr. Chairman and members of the subcommittee, I am Philip R. Rever, Vice-President of the Higher Education Assistance Foundation (HEAF); a private, non-profit multi-state guarantor of loans made under the Guaranteed Student Loan Program. As a guarantor; HEAF and the lenders, institutions and students it serves will be affected by the Department of Education's January 28, 1983 proposed "Solomon Amendment" rule, H.R. 1622 and H.R. 2145. Consequently, I am pleased to offer HEAF's views of these topics for your consideration.

The Subcommittee may recall that on February 24, 1983 HEAF objected to the January 27, 1983 proposed regulations intended to implement the Solomon Amendment. The basis of HEAF's objections were the provisions for temporary verification of registration that (a) unnecessarily increased the risk of defaults on loans and (b) generated additional record keeping and revisions to lenders, guarantors and institutions information exchange systems. Neither of these undesirable and unnecessary consequences would occur if the Selective Service adopted several suggested changes in the registration system that were proposed in HEAF's February 24, 1983 statement and the attached letter to the Department of Education about this matter.

Since my appearance before this Subcommittee on February 24, 1983; I have been heartened by some developments and increasingly concerned about other developments. Let me report the encouraging and discouraging developments.

ENCOURAGING DEVELOPMENTS

Reactions of many members of Congress to our earlier recommendations have been overwhelmingly positive. For example, I am personally grateful for the extraordinary and thoughtful assistance of Representative Solomon in his efforts to ensure the timely availability of federal aid during the coming months. Mr. Solomon's efforts clearly reflect his commitment to the principles and values reflected in his amendment while recognizing the potential difficulties inherent in the Department's proposed rule to implement his amendment. His efforts to avoid these difficulties are greatly appreciated.

Similarly, this Subcommittee's efforts to avoid these difficulties are greatly appreciated. No doubt, the combined efforts of the education community, Mr. Solomon and members of this Subcommittee will minimize the potentially adverse effects of the Solomon Amendment on students in the Fall of 1983.

These efforts may result in one positive change in the Selective Service's registration system. According to the Selective Service's answers to some questions posed by Senator Sasser during an Appropriations hearing, the Selective Service may allow young men to register up to 120 days before their 18th birthday rather than the current 30 day limit, to allow additional time for the registrants to receive their proof of registration before submitting applications for assistance. Unfortunately, HEAF's other suggestions were rejected. Thus, the concerns HEAF has raised earlier remain.

DISCOURAGING EVENTS

Despite the Selective Service's single action and the assistance of this Subcommittee and Mr. Solomon, HEAF must now ask for at least a 12 month delay in the effective date of the Solomon Amendment. Our request is attributable to: (1) The Selective Service's apparently continuing resistance to providing registrants access to immediate "proof" of registration at Post Offices, and (2) two court cases resulting in a U.S. District Court's order enjoining the Selective Service and Department of Education from enforcing the Solomon Amendment.

Of the two events, the latter poses the greatest threat to the continuous availability of loans for students and parents. Even if the Selective Service were to adopt all our suggestions, the injunction and future legal developments appear to pose potentially deleterious effects on the flow of loans and other forms of aid to students.

These effects may occur if our counsel's views are correct.

Our counsel's views are:

(1) If the Preliminary Injunction is lifted, the law will become effective on July 1, 1983 or on the date the Preliminary Injunction is lifted, which ever occurs latest.

(2) Appeals and hearings on the case can occur at any time, but resolution before July 1, 1983 is very doubtful.

(3) It is beyond the Court's power to alter the law's effective date.

(4) The U.S. District Court's order prohibits the federal government and institutions from requiring that aid applicants sign the proposed "Statement of Registration Compliance."

(5) Institutions that ask aid applicants to voluntarily submit the proposed, required documents in order to be prepared to implement the law on its uncertain effective date, risk being cited for contempt of court or risk incurring litigation.

(6) The U.S. District Court's order allows the Department of Education to develop and publish final regulations.

HEAF's counsel also believes that the merits of the plaintiff's arguments are substantial and the Preliminary Injunction is most likely to be made permanent or not challenged. If our counsel's judgement proves correct, loans and other forms of aid will continue to flow smoothly to students and parents. However, if the Department of Education, Selective Service, financial aid officers, guarantors and lenders were to act on our counsel's beliefs and the Preliminary Injunction were lifted, even temporarily, disaster would ensue. Consequently, it is advisable that the Department of Education and Selective Service continue to develop and publish final regulations.

THE FUTURE WITHOUT A DELAY

It is reasonable to expect and, in fact, necessary that the Department of Education publish final regulations in the near future in case the injunction is lifted shortly. However, HEAF can only speculate about the substance and publication date of the regulations, the willingness of this Subcommittee and Congress to "approve" the final regulations, and future legal developments. Because of these uncertainties HEAF urges Congress to delay the effective date of the Solomon Amendment for at least a year. Unless a delay is enacted, the following is likely to occur:

(1) Congress may have to choose between "approving" unacceptable regulations or risk the consequences of not having "approved" final regulations if and when the injunction is lifted.

(2) Participants in the aid program such as institutions and guarantors may have to print and store millions of documents specifically related to the Solomon Amendment so institutions are prepared to quickly implement the final regulations if necessary.

(3) Modifications to information exchange systems among lenders, institutions and guarantors may have to be planned and made to accommodate new requirements and the law if the injunction is lifted.

Unless final regulations are "approved" by Congress and all required information collection documents and information exchange systems are in readiness, shortly after final regulations are "approved" by Congress, all parties risk disaster if the Preliminary Injunction is lifted and the law becomes effective shortly thereafter. Frankly, we believe some guarantors, lenders and institutions will be reluctant to incur the sizeable expense of preparing to comply with a law that may ultimately be judged unconstituional. Hence, it seems unlikely that the "student loan delivery system" which is composed of thousands of lenders, dozens of guarantors, thousands of institutions and millions of students, will be uniformly ready if the Preliminary Injunction is ever lifted.

Consequently, HEAF urges this Subcommittee and Congress to enact a delay in the law's effective date. Optimally such a delay would be contingent on a final court ruling and timed to coincide with the beginning of an award year. Alternatively, a year's delay would be preferable to seven months because the effective date would coincide with the beginning of an award year. In any case, a delay is desirable because it would allow future regulation developments and legal actions to occur thereby bringing some certainty to an uncertain future.

I would be pleased to answer any questions you may have regarding the statement and the impact of the law or the legislation you are considering today on HEAF and the lenders, institutions and students it serves.

HIGHER EDUCATION ASSISTANCE FOUNDATION,
Washington, D.C., February 25, 1983.

MS. ANDREA FOLEY,
Office of Student Financial Assistance,
U.S. Department of Education, Washington, D.C.

DEAR MS. FOLEY: I responding to the Department's invitation to comment on the January 27, 1983 proposed regulations for implementing the "Solomon Amendment" to Public Law 97-252. In this regard, I have enclosed my comments and statement delivered to the House Subcommittee on Postsecondary Education on February 24, 1983.

Let my call your attention to some suggestions on pages 7 and 8 of the enclosed statement. Were these suggestions adopted by the Selective Service, HEAF's concerns would be allayed and the following observations would be misdirected. In the absence of their adoption, the final regulations should:

(1) Clarify institutions' and lenders' responsibilities for loan collection and borrowers' repayment alternatives if they received loans under the temporary verification procedures but fail to verify their registration. Can the disbursement be repayed in installments (our recommendation)? Who makes the attempt to collect, the institutions or the lenders? If schools attempt to collect the loans, how long will they be given?

(2) Clearly define the relationship between the proposed 120 day "grace" period for verifying registration and the current regulation that requires institutions to return uncashed checks 30 days after the date of their receipt. Clearly, institutions should retain checks until the 120 days lapse even if the 30 day period lapses if disbursement is awaiting verification of registration.

(3) Clearly define the time at which loan interest benefits are forfeited if loans are disbursed to ineligible applicants. Are these benefits never awarded or do they end at the termination of the 120 day grace period?

(4) Address the problems raised by the proposed regulations which allows lenders who disburse directly to students and parents to choose between delaying disbursements until verification has been filed or disbursing.

The latter problem arises when lenders choose not to disburse directly to students or parents whose applications are certified under the temporary verification procedures. First, such lenders will have to know the conditions under which applications are certified which is easily done if applications ask institutions to report the condition. Secondly, lenders will have to inform institutions which loans they are holding because lenders are not identified on applications at the time institutions certify applications. Institutions learn lenders' identities when either they receive loan checks or notifications of loans disbursed to their students or their parents. Thus, institutions will be unable to simply inform lenders if temporarily eligible applicants fail to verify their registration within the 120 day limit unless the loans are disbursed. Since most loans are not disbursed until the term, quarter or instruction period begins, and applications are submitted much earlier, it is likely that the 120 day period will lapse for most students before institutions know which lenders to inform; that is, unless lenders identfy themselves to institutions shortly after they approve the loans.

Our comments are intended to help the Department of Education and the Selective Service to achieve their intention of minimizing the probability of serious disruptions in aid availability next Fall. HEAF commends the Department and Selective Service for its efforts to date while urging them to adopt its suggestions.

Sincerly,

PHILIP R. REVER,
Vice-President.

Mr. SIMON. Just so that I may clarify, what you are saying is, if there is not a delay along the lines of the one bill that is pending before us, that there is a considerable cloud over these student loans in the immediate future, is that correct?

Mr. REVER. Certainly, we think so. As a matter of fact, without a delay so that some certainty can be added to an uncertain situation, institutions may encounter very differing practices among institutions. Some institutions will certify applications and lenders will be asked to disperse loans to students. Other institutions will not certify those applications. Quite frankly, lenders, or the lenders

with whom I work, want some guidance either from the Congress or the courts to assure them that they are not making loans to ineligible applicants because then they will be asked to work with institutions to collect them, get them back into repayment and this may eventually affect our default rate.

So there is some uncertainty that can only be clarified by action of the Congress or future court decisions, and unfortunately, as you pointed out so succinctly before, we are approaching the time at which lenders are going to have to make decisions about whether or not they should, in fact; disburse loans to students under the new proposed regulations, given the court action that is before us now.

I discussed this with the chairman of my board yesterday, it is a weekly occurence that I receive a letter from a law student challenging my procedures, computation of APR-effective interest rates and the like under my loan program. I can assure you that if we attempt to enforce the regulation that my program in Washington, D.C., and I can assure you in many other places, will be subject to litigation from law students who are very critical of the way in which we conduct our business.

It is a matter that may lead to some clarification with regard to the scope of the U.S. district court's authority and we may want to encourage that for quite frankly the cost of encouraging that is detrimental to our enthusiasm.

Mr. Simon. Just one question and then I will defer to my colleagues.

I will ask each of you to respond, the recommendation—if you had a choice of moving ahead with the regulation that none of us has seen or a 7-month delay in the applicability of the law, which would you choose?

Mr. MARTIN. Mr. Simon, clearly I would like to have a postponement, but let me clarify something. The problem is that institutions right now are collecting forms from students and we are making awards for the subsequent award year. If, after this decision is resolved, if there is not a point after which we know that this goes into effect, we have, in essence, already made awards to students there is going to be a question as to whether or not that award we have made for the first half of the year, is in doubt if we haven't collected that statement.

The nice thing about having a definitive starting point with some leadtime for schools to know, once the court case is resolved and we have final regulations is that it gives schools some time then to say, "All right. Here are the procedures. Let's go forward. Let's collect the compliance statements from each individual student and we are OK from that point on."

We don't want to get caught in midstream. That's one reason why we think a postponement until this issue is resolved in the courts would be fine. We understand that the Department is proceeding to promulgate regulations and will have those available, but we need some assurance that after that decision is finally resolved, then there is a period of time, a window that we can say, "All right, schools, 30 days from now or 6 months from now or whatever, you must proceed."

Ideally, we would rather do it at the beginning of an award year rather than in midstream, but it is very important that we have that gap to make certain that everybody is in compliance at that point.

Mr. SIMON. I understand the desire for the gap. The difficulty is we can't draft legislation that says, "60 days after the court finally adjudicates this case, it will go into effect."

Mr. MARTIN. I understand.

Mr. SIMON. I have discussed this with some of my colleagues on the Armed Services Committee and I think there is a chance—I don't want to make it sound like more than that—there is a chance that they would approve a 7-month delay. I think there is some support on both sides of the aisle on the Armed Services Committee for that kind of a delay. I think if we go beyond that, there is no chance.

Mr. Peltason.

Mr. PELTASON. We would prefer the Department to proceed with the publication of final regulations and I am particularly enthusiastic about that with regard to the new proposals. There is the possibility that the preliminary injunction could indeed be lifted at any moment. It depends upon the court's schedule. It depends on the Department of Justice's decision to appeal the preliminary injunction. They may go back to the original court and ask for a summary judgment hearing on the merits of the case and the like.

We are faced with the possibility now that the preliminary injunction could be lifted in the near future. Now the likelihood of that is very slim. But again, as Mr. Jones pointed out, we are talking about 40 million pieces of paper floating around this country that should or should not include a statement of registration compliance or may or may not be able to include a statement of registration compliance according to one's interpretation of the breadth of the court's order.

It is not likely that we will ever achieve any great certainty with regard to this case, with these particular lawsuits until, as I understand it, it gets to the Supreme Court. But at this stage, based on a preliminary injunction people are reticent to act without some time for clarification to occur into what is likely to be legal and not legal.

A 7-month delay is something that we would encourage. A 12-month delay would be preferable. Optimally, as I put in my prepared statement, we wish you could draft language that would implement the law after a nonappealable decision is issued, some 6 months or at the beginning of an award year. We understand that is not possible.

So certainly, we are in support of a delay primarily to allow the regulations to be developed in a timely and thoughtful manner and so Congress can review those in a timely and thoughtful manner and so the court has the opportunity for legal developments to occur to give us some additional guidance.

Mr. SIMON. Mr. Coleman.

Mr. COLEMAN. I am very sympathetic to your problems. If we lived in a ideal world, we would probably follow your suggestions. But my understanding is, and you have addressed this issue, the legal issue, that if a school and/or a lending institution were to cer-

tify a loan for somebody who hasn't checked the box because of the injunction, and it went through and ultimately that court decision was overturned, they are following the only law, which, in effect, is the judge's order not to enforce, I don't think anybody is going to go back and require them to reinforce our original law if a court order is out there saying that you are going to be in contempt. Now you can't be both ways on this.

I think some of things that you are conjuring up are possible, but very, very, very improbable and I think people would have a very good legal argument to stand on as to why they certified the loan and why the loan was made and why it should be considered a normal loan in the course of business.

So from that standpoint, I don't know that there is anything that needs to be done. Now, if we waited in Congress for every litigation to finally run its course for every law that we enact, we could be sitting around here for years, as you well know, if this goes to the Supreme Court, deciding whether or not we should implement this law, whether we should do what we are doing here, which is to wait for 7 months or 1 year or whatever. It would be absurd after a while.

Now, because of the administration of this particular law, there are obviously some problems, but they are not overwhelming problems. I would suggest that everybody follow what the latest law is and right now it is the judge in Minnesota. He is the law on this. There will be an appeal from that. A higher court will reverse or affirm his decision and if somebody litigates it to the Supreme Court, fine.

In the meantime, we could write deferrals, we could withdraw the deferrals, we could defer the deferrals. We could end up being just yanked like a yo-yo from the Federal courts. I would again suggest that I think these gentlemen have made some very good arguments, but at the same time, if we were to do this for every law that we passed, we would, in effect, spend all of our time looking over our shoulders instead of trying to go forward.

I think that, in the event that they go ahead and follow the judge's instructions and send it through—like Mr. Petri said, they don't want to stop the guaranteed student loan program, they are not going to stop the guaranteed student loan program. Nobody is going to be thrown in jail. No college loan officer is going to be thrown in jail and no bank is going to be told they have an unguaranteed loan because of this.

I throw that out if anybody has a comment.

Mr. PELTASON. One quick comment. I think the decision of that judge does complicate the matter, but I don't think that is the only reason why a delay is merited. These new, proposed regulations we have not seen as yet. We will get them on Monday. There is time to take a look at them. I think the Congress should look at them. I think that we want to study those and this takes us up to the 1st of April before we could have any clarification in getting those regulations out notifying all of the students and all of the institutions, and we are coming up against the deadline. I think that even without the case—the case, I think, only complicates it—some more time to have an orderly transition is needed so everybody knows what the law calls for, what the regulations are and all the finan-

cial aid officers can then proceed under one common understanding. This should cut down the arguments, the fears, the tension and the misunderstanding that is likely to happen over the implementation of a law about which people feel very strongly on both sides.

Mr. COLEMAN. What is the date that you are looking at when this has to be totally clarified?

Mr. PELTASON. I defer to my colleagues who have to administer these programs.

Mr. MARTIN. We are collecting applications right now from schools and a lot of the institutions will be making awards in April and May; I think, Mr. Coleman, we will proceed to make awards to students and I think the question is that we are going to have to tell our institutions, "Do not collect the Statements of Registration Compliance at this point."

Now, the problem was that many of us did exactly what the Department of Education did, we took our statement of educational purpose, on their advice and model, and we folded it together with the Registration Compliance. In fact, it is being printed on every form that is coming out of the Pell Grant processing right now.

We have a document; we must have from each student a signed statement of educational purpose. That is on the books and the statute now. On the other hand, we cannot collect the Selective Service Registration Compliance. We have got to go in now and separate those two issues, collect one at this time and wait until this injunction is lifted, then go back and collect the other.

All we want is the assurance that if we don't collect this one now, we proceed with everything else. When this is finally resolved, then we will go back within a reasonable time and collect the other and get into compliance with it.

Mr. COLEMAN. Thank you.

Mr. SIMON. Mr. Harrison.

Mr. HARRISON. Thank you, Mr. Chairman. I just have one observation and I would welcome responses from any of the witnesses. Those of us who believe that the district court is in error are put in a rather difficult position if when a court enjoins a law, we rush to delay its effective date so as to avoid the practical problems which follow from the injunction.

First of all, it is an institutional problem for the Congress that we are in a sense letting the court run us around. Second, from a philosophical standpoint, the courts are supposed to be very reluctant to declare laws of Congress unconstitutional, and it seems to me that we encourage them to use that power if we start descending the effective date of a law every time one district judge rules that an act of Congress violates a provision of the Constitution.

So while I appreciate your practical problems, I have trouble philosophically with delaying the effective date of a law because one district court has invalidated it and I don't even agree with him.

I say this as background for my previous comments, I think it may help in responding to them.

Mr. PELTASON. Well, I personally would hope that the Department of Justice would move quickly to seek a clarification of the situation. I agree with you. When an Act of Congress has been—

when it's constitutionality has been called into question, we need a quick resolution of that. We would all be better off if that takes place promptly.

We are not asking for a delay in the legal processing. We are just saying it does complicate and add confusion to the situation.

Mr. HARRISON. Have any of you considered intervening in the Minnesota suit for the purpose of attempting to bring about a final resolution?

Mr. PELTASON. The answer to that question is yes. We have not made any final decision—not that particular litigation, but we have considered whether or not, how could we get the legal part solved?

Mr. REVER. Mr. Harrison, may I ask Mr. Olsen to respond to the question about how things are proceeding in Minnesota because he visited with the plaintiffs' attorneys I think as recently as 24 hours ago.

Mr. OLSEN. That's right, Mr. Chairman, I talked to two of the attorneys who are handling the case for some of the student plaintiffs in Minnesota. Where that stands procedurally is that the plaintiffs have moved for summary judgment. They filed their papers last week.

There is no time period set by the court for the filing of the responsive papers by the Department of Justice. I understand that the Department of Justice has made the decision, at least as an interim step, not to appeal the preliminary injunction, but to proceed to attempt to get an adjudication on the merits.

I am advised by the plaintiffs' attorneys, however, that they have been told by the Department of Justice that if Judge Alsop does not move quickly enough in his court to resolve it on the merits, they may seek an appeal of the preliminary injunction.

Now with respect to the intervention question, I was told by the plaintiffs' attorneys that they are contemplating the possibility of going back to the judge and asking him to amend his order to require the Department of Education or the Selective Service System to issue some sort of press release or other notice to the institutions and lenders as to the impact of this injunction on them.

I think it's fair to say after my discussions with them that the exact scope of the injunction is a matter of great controversy between the plaintiffs and the Department of Justice, those who are actually sitting there before the judge.

The plaintiffs' attorneys also advised me that it is their position that the injunction should be interpreted fairly broadly; second, that they believe that the attempt by financial aid officers to secure a signature on the financial aid statement—I mean, secure a signature on the certification—would constitute a violation of the injunction, and third, that if that were done, they would seek to obtain in court show-cause orders to why that does not violate the court's order.

In light of all of that, and in the light of our reading of the literal language of the court's injunction, we have advised our clients that the prudent course of action is to refrain from taking any steps at all to enforce section 1113.

Mr. HARRISON. Thank you, Mr. Chairman. I have no further questions.

Mr. SIMON. Mr. Petri.
Mr. PETRI. No questions, Mr. Chairman.
Mr. SIMON. Mr. Andrews.
Mr. ANDREWS. I have no questions, Mr. Chairman.
Mr. SIMON. Mr. Owens.
Mr. OWENS. No, Mr. Chairman.
Mr. SIMON. We thank the witnesses very much.
The subcommittee is adjourned.
[Whereupon, at 10:15 a.m., on March 23, 1983, the subcommittee was adjourned.]