

**PAYING FOR COLLEGE: HIGHER EDUCATION  
AND THE AMERICAN TAXPAYER**

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**FIELD HEARING**

BEFORE THE  
COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION

September 1, 2006, in Greeley, Colorado

**Serial No. 109-56**

Printed for the use of the Committee on Education and the Workforce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>  
or  
Committee address: <http://edworkforce.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

29-629 PDF

WASHINGTON : 2006

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## **PAYING FOR COLLEGE: HIGHER EDUCATION AND THE AMERICAN TAXPAYER**

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**Friday, September 1, 2006**  
**U.S. House of Representatives**  
**Committee on Education and the Workforce**  
**Greeley, CO**

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The committee met, pursuant to call, at 9 a.m., in Panorama Room, University Center, University of Northern Colorado, 2045 10th Avenue, Greeley, Colorado, Hon. Howard P. "Buck" McKeon (chairman of the committee) presiding.

Present: Representatives McKeon, Musgrave.

Staff Present: Amy Raaf, Professional Staff Member; Lindsey Mask, Press Secretary; James Bergeron, Director of Member Services and Coalition Outreach.

Chairman MCKEON. The Committee on Education and the Workforce will come to order.

Thank you. We are holding this field hearing today to hear testimony on paying for college, higher education and the American taxpayer. With that, I ask unanimous consent for the hearing record to remain open 14 days to allow member statements and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

Thank you all for joining us here today at this morning's hearing. I especially want to thank our witnesses for agreeing to testify, as well as my Education and WorkForce Committee colleague, a strong member of the committee, Congresswoman Musgrave, who is hosting us here today, and I really appreciate the invitation to come to this beautiful part of the country. You are blessed to live here.

Ms. MUSGRAVE. I believe that; yes.

Chairman MCKEON. The topic of today's hearing is rather self-explanatory. Paying for college, higher education and the American taxpayer.

This title reminds us of the very real stake our Nation's working and taxpaying families have in U.S. colleges and universities.

Institutions like the University of Northern Colorado are on the front lines in keeping America competitive with our global counterparts, and to do that, taxpayers at both the state and Federal levels have been asked to contribute to programs aimed at expanding college access.

At the Federal level, our commitment to student aid is great and grows with each passing year. Last year, some \$90 billion in Federal dollars funded student aid programs, from loans and grants to work-study programs and education tax benefits.

That is nearly triple what it was just a decade ago. Support for higher education has been a priority of our Nation for some time. More than four decades ago, when the Higher Education Act was enacted, the purpose of this hefty investment was clear—to expand college access. The goals remain the same today.

However, faced with an increasingly competitive global economy in which postsecondary education is more necessary than ever, ensuring that Federal dollars are spent effectively and efficiently is a bottom-line issue for students, parents, and taxpayers alike. And that is really what today's hearing is all about—examining our record on efficiency and effectively utilizing taxpayer resources to fulfill our priority of expanding access to college.

The congressional record on college access is one of which I am proud. As I noted, over the past 10 years, Federal student aid benefits have nearly tripled, and in just this year alone, we have taken unprecedented steps to reaffirm our commitment to college students and their families.

For example, we reduced excessive Federal subsidies for the student loan industry, maintained current law written by Republicans and Democrats alike, in 2002 and 2003, to establish a low fixed rate for student loans, which will provide millions of students greater financial security in the years to come.

Increased loan limits for students, so they can borrow more during their initial and most critical years in college. Provided additional grant money so more high-achieving, low- and middle-income high school students can attend college, and established a new scholarship program for high-achieving college students studying math, science, and critical foreign languages in college.

All of those new student benefits are the law of the land right now. Earlier this year, the House also voted to make Pell grant funding available year around, to empower parents and students through “sunshine” and transparency in college costs and accreditation, and strengthen minority-serving institutions across the country.

In short, on matters related to higher education, this has been a busy and a productive year. Each and every one of these new benefits we voted to establish this year fulfills our priority to expand college access, and, indeed, they represent an efficient and effective use of taxpayer resources.

I will be eager to discuss these benefits with our witnesses later this morning.

Unfortunately, some in Washington, and frankly, in many state capitals across the Nation as well, have championed policies that I believe reflect nothing less than misplaced priorities when it comes to college access.

Our first panel of witnesses will testify on what I believe to be one of these policies.

This summer, there has been a great deal of attention focused on the illegal immigration crisis our Nation currently faces. Much has been written about the House and Senate-passed bills to respond

to the growing problem, and it is certainly not my intent to rehash every aspect of that debate at this hearing.

However, since the hearing has been called to examine the use of taxpayer resources to expand college access, I believe one specific element of the debate does warrant closer attention.

Buried deep within the Senate-passed immigration bill, commonly referred to as the Reid-Kennedy bill, is a provision to repeal a 1996 Federal law that prohibits states from offering in-state tuition rates to illegal immigrants, unless that state also offers the same benefit to all U.S. citizens.

In essence, the Reid-Kennedy bill would provide a benefit meant for taxpayers, in-state tuition rates to illegal immigrants who, by definition, don't pay taxes.

Understandably, the inclusion of this controversial repeal in the Reid-Kennedy bill has raised eyebrows among many Members of Congress, this one included.

As we convene today to discuss the efficient and effective use of taxpayer resources to expand college access, I can't help but think that providing benefits for illegal immigrants, that aren't provided for all law-abiding American citizens, is neither efficient nor effective.

Before us today are two panels of witnesses. The first will address the Senate's proposed expansion of in-state tuition for illegal immigrants, and the second will examine congressional efforts to expand college access for U.S. students.

I thank both panels for joining us today and I am eager to hear their testimony on the matters before us.

[The prepared statement of Mr. McKeon follows:]

**Prepared Statement of Hon. Howard P. "Buck" McKeon, Chairman,  
Committee on Education and the Workforce**

Thank you all for joining us at this morning's hearing. I especially want to thank our witnesses for agreeing to testify, as well as my Education & the Workforce Committee colleague, Congresswoman Musgrave, for hosting me here in her district. It's a pleasure to be in Colorado.

The topic of today's hearing is rather self-explanatory—"Paying for College: Higher Education and the American Taxpayer." This title reminds us of the very real stake our nation's working—and tax paying—families have in U.S. colleges and universities. Institutions like the University of Northern Colorado are on the frontlines in keeping America competitive with our global counterparts. And to do that, taxpayers at both the state and federal levels have been asked to contribute to programs aimed at expanding college access.

At the federal level, our commitment to student aid is great—and grows with each passing year. Last year, some \$90 BILLION in federal dollars funded student aid programs—from loans and grants to work-study programs and education tax benefits. That's nearly TRIPLE what it was just a decade ago.

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- Reduced out of control federal subsidies for the student loan industry;
- Maintained current law written by Republicans and Democrats alike in 2002 and 2003 to establish a low, fixed-rate for student loans, which will provide millions of students greater financial certainty in the years to come;
- Increased loan limits for students so they can borrow more during their initial—and most critical—years in college;
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Understandably, the inclusion of this controversial repeal in the Reid-Kennedy bill has raised eyebrows among many Members of Congress—this one included. As we convene today to discuss the efficient and effective use of taxpayer resources to expand college access, I can’t help but think that providing benefits for illegal immigrants that aren’t provided for all law-abiding American citizens is neither efficient nor effective.

Before us today are two panels of witnesses. The first will address the Senate’s proposed expansion of in-state tuition for illegal immigrants, and the second will examine congressional efforts to expand college access for U.S. students. I thank both panels for joining us today, and I am eager to hear their testimony on the matters before us. And with that, I yield to my Committee colleague and my host here in Colorado, Congresswoman Musgrave.

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Chairman MCKEON.

With that, and without objection, I yield to my good friend, committee colleague, and my host here in Colorado, Congresswoman Musgrave.

Ms. MUSGRAVE. Thank you, Mr. Chairman. It is wonderful to have you in Colorado, to show off our beautiful state, and to be here at the University of Northern Colorado. And I would also like to thank the witnesses. I appreciate you being here and the work that you have done, and the information that you will give us today, I am sure will be very valuable.

Today, the Federal Government is investing tens of billions of dollars annually in direct aid to students and additional hundreds of millions of dollars are provided to colleges and universities.

As a member of the House Education and Workforce Committee, I am proud to have worked on behalf of legislation that will improve student loan programs.

I have supported two key pieces of legislation that were passed by Congress this year alone, the Deficit Reduction Act, and the College Access and Opportunity Act to reauthorize higher education programs.

The Deficit Reduction Act that was enacted in February of 2006 reauthorized mandatory spending programs under the Higher Education Act, and it established key benefits for college students and it saved American taxpayers billions by making college access programs operate more efficiently and effectively.

Despite claims by critics that this bill cut or raided student aid, nothing could be further from the truth. Student aid increased under this resolution. Not a single student in America will receive less financial aid under this resolution.

I also voted for \$12.1 billion in new student benefits in this bill. Students will have more student aid available to them because of increased loan limits, reduced origination fees, and also reduced inefficiencies in a program.

Within months of passing these provisions, the House backed the College Access and Opportunity Act to reauthorize remaining higher education programs. The College Access and Opportunity Act will restore the Higher Education Act to its original mission to provide access to college for low- and middle-income students. This bill will increase Pell grants, student aid, and college access. It would reduce red-tape for students and graduates, and removes barriers for non-traditional students, and increases transparency in college costs and accreditation.

We are here today to look at how this legislation will impact students in Colorado and across the Nation. As Congress acts to improve these programs, it is also important that we continue to assess the cost to the program.

I am proud that the Budget Deficit Act took steps to protect American taxpayers and increase the efficiency of these programs. As I understand, one of the largest costs to the student aid program is defaulted student loans.

Last year alone, defaulted loans accounted for \$25 billion, or 6 percent of student aid that was left unpaid.

Additionally, the Federal Government must also invest money to track down funds that students have failed to pay.

Last year, approximately \$5.8 billion was recovered through default college activities.

The Federal Government paid private collection agencies \$252 million to perform these collection services. These are funds that could be used for current students.

I am also appreciative that our panelists are here to discuss in-state tuition for illegal immigrants. There is currently a proposal before Congress to repeal Federal law that prohibits any state from offering in-state tuition rates to illegal aliens, unless the state also offers in-state tuition to all U.S. citizens.

I oppose any proposal that would allow in-state tuition for illegal aliens, and I encourage the respectfulness of Federal immigration

law. Such policy is unfair to legal aliens and out-of-state U.S. citizens who pay the full cost of tuition.

Taxpayers should not have to finance education for illegal aliens. Offering these incentives simply reward people for breaking the law. I think it is important that we put this information on the record and I am glad to have the witnesses here today to share their insight with us, and Mr. Chairman, I am proud of your record of investment in student aid, and the good work that you do in chairing the Education and Workforce Committee, and I am looking forward to hearing from our witnesses. Thank you, Mr. Chairman.

Chairman MCKEON. Thank you very much.

As noted, we have two distinguished panels of witnesses today and we will begin by welcoming the first panel.

First, we will hear from Professor Kris Kobach, currently teaching courses in constitutional law, American legal history, constitutional theory, jurisprudence and legislation.

Prior to joining the law school, Professor Kobach served as counsel on immigration-related issues to then-Attorney General John Ashcroft.

Professor Kobach serves as lead counsel in *Day v. Sebelius*, the case challenging the state law permitting illegal aliens to receive in-state tuition in Kansas, and serves as co-counsel to the similar lawsuit that was filed in California in 2005.

He received his bachelor of arts degree from Harvard University, his doctorate from Oxford University and his J.D. from Yale Law School.

Then we will hear from Colorado State Representative Cory Gardner, who was appointed to the Colorado legislature in June 2005 to fill an open seat. The 63rd District of Colorado is made up of Adams, Cheyenne, Crowley, Kiowah, Kit Carson, Lincoln, Morgan, Washington and Yuma Counties.

Prior to joining the state legislature, Representative Gardner served as U.S. Senator Allard's legislative director and general counsel, where he had oversight of the senator's policy and appropriations operation.

Representative Gardner graduated summa cum laude from Colorado State University and received a J.D. from the University of Colorado.

And finally on this panel we will hear from Mr. Jared Polis who was elected to the Colorado Board of Education in 2000 and currently serves as the vice chairman. Mr. Polis founded two charter schools and has helped to start several companies, including a company that developed a chain of movie theaters that screened first-run films dubbed or subtitled in Spanish in 2001.

In 2001, Mr. Polis created a program that distributes computers to low-income students through schools and nonprofit companies. He received a bachelor of arts degree in political science from Princeton University.

I would like to remind the witnesses that we have a 5-minute time on your testimony, and Amy has a little buzzer here that goes off when the 5 minutes are up. I think we will probably all be able to know when that time has arrived, and your full testimony will be included in the record.

Professor Kobach.

**STATEMENT OF KRIS KOBACH, PROFESSOR OF LAW,  
UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW**

Mr. KOBACH. Mr. Chairman, Congresswoman Musgrave, thanks for inviting me here. I just want to begin my testimony in 1996, when the story really starts. Several states had considered providing in-state tuition access to illegal aliens, and Congress, foreseeing this possibility, passed the legislation that you are aware of, that says no state can do this unless they give in-state tuition to all U.S. citizens.

The proponents of this bill in Congress reasoned that no state would want to do that because out-of-state tuition is a significant source of revenue. What they did not foresee was that some states might simply disobey Federal law entirely. And that is what has happened.

In 1999, Representative Marco Firebaugh, in the California assembly, proposed a bill that would do exactly that, giving state tuition to illegal aliens. Governor Gray Davis vetoed that bill in the year 2000, saying in his veto message that Federal law prohibits us from doing it.

The same representative repropose his bill the following year and faced with a slightly different political environment, Gray Davis decided not to veto it in 2002. In the meanwhile, Texas had also passed a similar law. Today, eight more states have followed Texas and California's example of disobeying Federal law. Included in those states are some states very close by here. Kansas, Nebraska, Oklahoma, New Mexico, and others.

So there are many questions involved here, some are policy questions, some are legal questions, but let us look at the scope of the problem.

In small states like Kansas, the number of illegal aliens attending public universities with taxpayer-subsidized education is 221 last fiscal year. But in the bigger states, like Texas, the number is 5935 illegal aliens receiving subsidized college education, and in California, with its massive community college system, the number is approximately 30,000 illegal aliens taking advantage of this benefit.

Now the policy reasons why this is a bad idea I think are obvious. The first and foremost reason is that it discriminates against U.S. citizens.

U.S. citizens from out of state are not lawful residents in, say, Kansas. Neither are illegal aliens. Their lawful residence is in another country. Yet these laws give the benefit of access to resident tuition to one set of people whose lawful residence is out of state but not to another, and, indeed, they discriminate against the U.S. citizens and in favor of illegal aliens. That is a slap in the face, I believe, to Americans who have played by the rules and follow our laws, and it is also a significant financial difference in treatment.

As this committee certainly knows, the cost of a public education at a state school is now about \$67,000 over 4 years. That is an increase of 41 percent over the last decade, and I believe that in an era of scarce resources, U.S. citizens should be first in line to re-

ceive taxpayer subsidies, certainly over aliens, and most certainly over illegal aliens.

The size of the taxpayer burden also varies from state to state but it can be very significant. For example, in Texas, approximately 40- to \$50 million of taxpayer money are spent subsidizing the education of illegal aliens at college level.

The third reason, aside from taxpayer burden, and the unfairness of it, why this is bad policy, is that in all 10 states, the state statutes include a clause that says if you are legally in the United States, if you possess a valid student visa, you have to pay out-of-state tuition. Let me repeat that. Legal aliens pay out-of-state tuition in all 10 states. Only illegal aliens get access to in-state tuition. That is a horrible and perverse incentive.

It rewards those aliens who violate the law and penalizes those aliens who actually follow our rules and get the appropriate student visa to attend college here.

That is why, in July 2004, I became lead counsel in a suit in Kansas challenging this policy. I am also co-counsel in a similar suit in California. In neither case has the court ruled on the merits of the question. In the Kansas case, the District Court ruled on standing issues and the private right-of-action issues, and that is now before the 10th Circuit, here, in Denver. So we have yet to have a court rule on the merits of these challenges.

But just when it looked like U.S. citizens would be able to vindicate their rights in court, the Senate steps in with Senate Bill 2611, which retroactively repeals the 1996 Federal law, not only repeals it but retroactively repeals it. In other words, not only giving an amnesty, in many forms, to various illegal aliens, but giving an amnesty to state legislatures who have violated Federal law, absolving them of any financial liability, absolving them of any violation of Federal law.

And so this provision, buried deeply, and more than 600 pages deeply into the Senate act, the DREAM Act provisions, is pernicious for that reason.

It is also bad law because it creates a separate amnesty that is very easy to obtain. One need only reside in the United States for 5 years, of course illegally reside in the United States, and have come into the United States before the age of sixteen.

Furthermore, once you get this amnesty, there's no pretense of a temporary status. You go immediately to a green card, a provisional green card, and then a final green card. And even stranger in this provision of the DREAM Act, the DREAM Act provisions of Senate Bill 2611, is a provision, section 624(f), that says as soon as you file an application, no matter how ridiculous the application is, no matter how obvious it is on the face of the application that you do not qualify, as soon as you file that application for the amnesty, all Federal law enforcement is prohibited from enforcing the law against you and deporting you.

This is an invitation for frivolous applications and it is an open license to remain inside the United States illegally. Thank you.

[The prepared statement of Mr. Kobach follows:]

**Prepared Statement of Kris W. Kobach, Professor of Law, University of Missouri—Kansas City School of Law; Senior Counsel, Immigration and Reform Law Institute**

Mr. Chairman and Members of the Committee, it is an honor to appear before you today to discuss the issue of states offering in-state tuition rates to illegal aliens in violation of federal law, and the impact that Senate Bill 2611 would have in this area. I come before you today in my capacity as a Professor of Constitutional Law and Immigration Law. I am also a practicing attorney who litigates regularly in the area of immigration and federal preemption on behalf of the Immigration and Reform Law Institute. More specifically, I am the lead counsel representing the plaintiff U.S. citizens in the case of *Day v. Bond*, a challenge to Kansas's provision of in-state tuition rates to illegal aliens; and I am co-counsel for the plaintiffs in the case of *Martinez v. Board of Regents*, a similar case in California. Between 2001 and 2003, I served as Counsel to the U.S. Attorney General at the Department of Justice. In that capacity, I was the Attorney General's chief adviser on immigration law. However, my testimony should not be taken to represent the past or present position of the U.S. Department of Justice. I offer my testimony solely in my private capacity.

As you know, buried deeply in S.B. 2611 are the so-called Development, Relief, and Education for Alien Minors (DREAM) Act provisions. Just before the Senate Judiciary Committee approved the first version of the bill on the evening of March 27, 2006, the DREAM Act was offered as an amendment. It passed on a voice vote and remained in the restyled "compromise" version of the bill that the Senate passed in May.

The DREAM Act repeals a 1996 federal law that prohibits any state from offering in-state tuition rates to illegal aliens, unless the state also offers in-state tuition rates to all U.S. citizens. On top of that, the DREAM Act offers a separate amnesty to illegal alien students. In my testimony, I will explain why these provisions are not only bad policy, they are also profoundly unfair to U.S. citizens and lawful alien visitors who are being discriminated against by a handful of states that provide preferential treatment to illegal aliens.

*The History of In-State Tuition Rates for Illegal Aliens*

To understand just what an insult the DREAM Act is to the concept of the rule of law, one needs to recall the events of the past ten years. In September 1996, Congress passed the landmark Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Open borders advocates in some states—most notably California—had already raised the possibility of making in-state tuition rates available to illegal aliens who attend public universities. To prevent such a development, IIRIRA's sponsors inserted a provision that prohibited any state from doing so, unless the state also provided the same discounted tuition to all U.S. citizens. It was written in plain language that any layman could understand:

"Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident." 8 U.S.C. §1623

Obviously, no state in the union would be interested in giving up the extra revenue derived from out-of-state students, Members of Congress reasoned, so this provision would ensure that illegal aliens would never be rewarded with a taxpayer-subsidized college education. What IIRIRA's proponents did not foresee was the willingness of some states to simply disobey federal law.

However, that is precisely what happened. In 1999, Members of the California legislature pushed ahead with their plan to have taxpayers subsidize the college education of illegal aliens. Assemblyman Marco Firebaugh sponsored a bill that would make illegal aliens who had resided in California for three years during high school eligible for in-state tuition at California community colleges and universities. The bill passed both houses of the California Legislature.

California Governor Gray Davis vetoed the bill in January 2000, stating clearly in his veto message that it would violate federal law: "Undocumented aliens are ineligible to receive postsecondary education benefits based on state residence. \* \* \* IIRIRA would require that all out-of-state legal residents be eligible for this same benefit. Based on Fall 1998 enrollment figures \* \* \* this legislation could result in a revenue loss of over \$63.7 million to the state."

Undeterred, Representative Firebaugh introduced his bill again; and the California Legislature passed it again. In 2002, Governor Davis ignored his own veto

message of 2000 and signed Firebaugh's bill offering in-state tuition rates to illegal aliens.

Meanwhile, similar interests in Texas had succeeded in passing their own version of the same bill. Over the next four years, interest groups lobbying for illegal aliens introduced the same legislation in most of the other states. The majority of state legislatures rejected the idea. They were probably also aware that the Supremacy Clause of the U.S. Constitution prohibits state governments from violating federal law.

Unfortunately, eight more states followed the examples of California and Texas. Today, the ten states that offer in-state tuition to illegal aliens are: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington.

In relatively small states like Kansas, the number of illegal aliens receiving this taxpayer-subsidized tuition is in the hundreds. Last year in Kansas, 221 students who were unlawfully present in the United States received this benefit. However, in larger states where the benefit has been available for four years or more, the number is in the thousands. In Texas, approximately 5,935 illegal aliens were receiving in-state tuition benefits in 2005. And in California, with its massive system of universities and community colleges, approximately 30,000 illegal aliens are now receiving a taxpayer-subsidized higher education.

#### *Why Providing In-State Tuition to Illegal Aliens Is Bad Policy*

In all of the ten states that are violating federal law in this manner, the in-state tuition laws make for shockingly bad policy. There are many reasons that this is true, but three are particularly salient.

First, these laws discriminate against U.S. citizens. Neither an illegal alien nor a nonresident U.S. citizen is normally entitled to in-state tuition rates at a state's institutions of higher education. This is understandable, because in-state tuition eligibility is a valuable public benefit. It is a taxpayer-provided education subsidy that is worth well over \$10,000 a year at most public universities. States accordingly reserve in-state tuition benefits for their own residents. However, if a state makes this benefit available to illegal aliens (whose legal residence is in another country), the state is discriminating against U.S. citizens (whose legal residence is in another state).

This is a slap in the face to the law-abiding American citizen from out of state. For example, consider a student from Missouri who attends Kansas University. That Missouri resident has always played by the rules and obeyed the law. Yet Kansas University charges him triple what it charges an alien whose very presence in the country is a violation of federal law. This discriminatory treatment is particularly harmful in a time when the price of a four-year college education is beyond the reach of many U.S. citizens. The average price of a four-year college education at a public university is now \$67,000—an increase of 41% over the past decade. In an era of severely limited resources, U.S. citizens should be first in line to receive those resources; they should not stand behind aliens who are openly violating federal law.

Second, providing this subsidy for illegal aliens places a heavy burden on taxpayers. In contrast to out-of-state students who pay the full cost of their education, students eligible for in-state tuition receive a significant financial boost at taxpayer expense. When the number of illegal aliens taking advantage of this subsidy is significant, the costs become staggering. In Texas, for example, taxpayers pay an estimated 40 to 50 million dollars every year to subsidize the college education of illegal aliens. In California, the cost to taxpayers is much higher than that.

Third, these ten states are now encouraging aliens to violate federal immigration law. Indeed, under the terms of each of the state statutes, breaking federal law is a prerequisite that must be satisfied before the illegal aliens can receive the benefit. Each of the ten state statutes includes a provision that expressly denies in-state tuition to aliens lawfully attending college in the United States on an appropriate student visa (typically, an F, J, or M visa). An alien is eligible for in-state tuition only if he is breaking federal law by remaining in the United States.

Aliens are sent this message: "We encourage you to violate the law. If you actually obtain a valid visa to study here, we will penalize you by making you pay out-of-state tuition." This creates a perverse incentive structure in which the states directly reward illegal behavior and significantly undermine federal law.

Imagine if a state enacted a law that rewarded state residents for cheating on their federal income taxes—by giving state tax credits to those who break federal tax laws. That is the equivalent of what these ten states have done. It is a direct financial subsidy to those who violate federal law.

*Lawsuits to Protect the Rights of U.S. Citizens*

In July 2004, a group of U.S. citizen students from out-of-state filed suit in federal district court in Kansas to enjoin the state from providing in-state tuition rates to illegal aliens, on the grounds that Kansas is clearly violating federal law. Not only that, Kansas is violating the Equal Protection Clause of the U.S. Constitution by discriminating against them and in favor of illegal aliens. I am the attorney representing those U.S. citizens.

The district judge did not render any decision on the central questions of the Kansas case. Instead, he avoided the merits of the issue entirely by ruling that the U.S. citizen plaintiffs lacked a private right of action to bring their statutory challenge and lacked standing to bring their Equal Protection challenge. His holding is currently being appealed in the U.S. Court of Appeals for the Tenth Circuit.

Meanwhile, in December 2005, another group of U.S. citizen students filed a class-action suit in California state court. They too maintain that the state is violating federal law and the U.S. Constitution. Pursuant to a California civil rights statute, they are also seeking damages to compensate them for the extra tuition they have paid, over and above that charged to illegal aliens.

These U.S. citizens are simply suing to enforce their statutory right not to be treated less favorably than illegal aliens when it comes to tuition rates. Congress gave them this statutory right ten years ago. In neither case, has a judge ruled on the merits of the issue. However, just when it looks like U.S. citizens might vindicate their rights under federal law and hold the wayward states accountable, S.B. 2611 offers the offending states a pardon. As I will explain, the DREAM Act would not only take away the U.S. citizens' right to equal treatment, it would effectively close the courthouse door and deny them the ability to vindicate their rights in court.

*Senate Bill 2611*

The DREAM Act provisions, buried more than 600 pages into the Senate bill, grant an unusual reprieve to the offending states. The DREAM Act repeals the 1996 federal law that the ten states violated. In addition, Section 623 of the Senate bill states, "The repeal \* \* \* shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996." In other words, it is a retroactive repeal—as if the 1996 law never happened. In this way, the Senate bill expressly shields those states from liability for their past violations of federal law.

This is no accidental turn of phrase. This retroactive repeal was inserted as a direct response to the lawsuits challenging the states that violated the 1996 federal law. In the California case, the legal challenge is a class action lawsuit on behalf of all U.S. citizens whose federal statutory rights have been violated. Those U.S. citizens are suing to recover the extra tuition that they paid, over and above the tuition charged to illegal aliens. The DREAM Act provisions of the Senate Bill are specifically designed to take away this federal statutory right from U.S. citizens.

On top of this insult to the rule of law, the DREAM Act creates a massive independent amnesty in addition to the even larger amnesty that S.B. 2611 would confer. The amnesty presents a wide open path to citizenship for any alien who entered the country before the age of 16 and who has been in the country for at least five years. As with the rest of the Senate bill, the guiding notion is: the longer you have violated federal law, the better.

Beyond that, all the alien needs is a high school diploma or a GED earned in the United States. Alternatively, he need only persuade an institution of higher education in the United States—any community college, technical school, or college—to admit him.

The DREAM Act abandons any pretense of "temporary status" for the illegal aliens who apply. Instead, all amnesty recipients are awarded lawful permanent resident (green card) status. The only caveat is that alien's status is considered "conditional" for the first six years. In order to move on to the normal green card, the alien need only obtain any degree from an institution of higher education, complete two years toward a bachelor's degree, or show that doing so would present a hardship to himself or his family members. And of course, the alien may thereafter use his lawful permanent resident status to bring in family members and may seek citizenship.

Furthermore, the DREAM Act makes it absurdly easy for just about any illegal—even one who does not qualify for the amnesty—to evade the law. According to Section 624(f), once you file an application—any application, no matter how ridiculous—the federal government is prohibited from deporting him. Moreover, with few exceptions, federal officers are prohibited from either using information from the applica-

tion to deport the alien or sharing that information with another federal agency, under the threat of a fine of up to \$10,000.

Thus, an alien's admission that he has violated federal immigration law cannot be used against him—even if he never had any chance of qualifying for the DREAM Act amnesty in the first place. The DREAM Act also makes illegal aliens eligible for various federal student loans and work-study programs.

The DREAM Act is a remarkably bad piece of legislation on many levels. But the most fundamental issue that it raises is the relation of the states to the federal government. Ten states have created a twenty-first century version of the nullification movement—defying federal law simply because they don't like what the majority in Congress decided. In so doing, they have challenged the basic structure of our Republic. The DREAM Act would pardon this offense and, in so doing, would encourage states to defy federal law in the future.

One thing that we have learned in the struggle to enforce our nation's immigration laws is that states cannot be allowed to undermine the efforts of the federal government to enforce the law. The rule of law can be restored only if all levels of government are working in concert to uphold it.

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Chairman MCKEON. Thank you.  
Representative Gardner.

**STATEMENT OF HON. CORY GARDNER, COLORADO STATE  
REPRESENTATIVE**

Mr. GARDNER. Thank you, Mr. Chairman, Congresswoman Musgrave. Mr. Chairman, welcome to Colorado, the epicenter of the recent state immigration debate. Congresswoman Musgrave, I applaud you for your efforts to bring real solutions to a very complex problem.

Today's hearing focuses on an important question: Should taxpayer dollars be used to provide state benefits for illegal immigrants, including in-state tuition?

It is estimated that over 250,000 illegal aliens reside in Colorado. Between 1990 and 2000, the number of illegal aliens in the state increased by more than 100,000. Colorado now has the sixth highest percentage of illegal immigrants in the Nation.

Estimates on the cost of illegal immigrants in Colorado hover around \$1 billion per year. According to an analysis by the Joint Budget Committee, in 2003 and 2004, the Health Care Policy and Financing Agency paid on 8,542 delivery claims for non-citizens at a total cost of over \$30 million.

Over 40 percent of all births paid by Medicaid in Colorado were for non-citizens, both legal and undocumented immigrants.

Earlier this year, I held a town meeting and was joined by several Hispanic high school students. They are students in a district that has, over time, over the past 10 to 15 years, been transformed by immigration in the state, growing from a very small percentage of minority students to a minority population approaching 50 percent.

Because of Federal and state law, it is impossible to determine how many students in that district are legal versus illegal.

The students were bright, articulate, and eager to learn, and the one question they wanted to know more than anything was whether or not I supported in-state tuition for illegal immigrants, and my answer to them was no. And we cannot afford any other policy. We must stem the tide of illegal immigrants coming into this state.

We cannot give benefits to those who are here illegally, above and beyond the services and benefits that we are willing to offer to the lawful citizens of the United States.

Not only does this grant preferential treatment to those in the country illegally. It also disrespects those who enter or who are attempting to enter the United States through legal processes.

We cannot reward illegal activity, even if it is the result of decades of lax immigration enforcement. To do so is to create a system where the only expectation of the law is an expectation of little or no law enforcement.

Proponents of in-state tuition for illegal aliens believe that to deny in-state tuition lacks compassion. To the contrary, there is no compassion in turning a blind eye on illegal immigration, allowing people to enter this country illegally, and watching them earn poor wages, and then give them an incentive such as in-state tuition, just so we can entice them to stay.

Compassion is creating an immigration system that does not perpetuate poor conditions or education amnesty. It is a legal system that is efficient and secure. An efficient and secure legal system starts first with a secure border.

It is difficult to determine how many undocumented students would take advantage of an in-state tuition policy, and therefore to estimate the cost of providing such a benefit. The Urban Institute estimates that there are 25,000 undocumented children in the K through 12 age group in Colorado.

If in-state tuition were granted to illegal aliens, all students in the formula would presumably be eligible to receive the benefit as they progressed through the educational system. Taking our \$3,000 college opportunity fund voucher, the stipend alone, over the next 12 years, that's roughly \$75 million at today's rates.

In 2003, 2004, and 2005, legislation was introduced in the general assembly to change Colorado law, effectively granting in-state tuition to illegal immigrants and attempting to change the residency requirements to conform to the stipulations of Federal law. The legislation failed all 3 years.

In January of 2006, the Colorado attorney general issued a formal opinion addressing the Colorado statute on in-state tuition benefits and undocumented aliens. In that opinion, the attorney general confirmed that because current law bases in-state tuition benefits on the documentation of a student's residency classification, undocumented aliens may not receive in-state tuition at Colorado institutions of higher education.

In July of 2006, Governor Bill Owens issued a call for a special session of the legislature to deal with several immigration matters, including the provision of state benefits and services to illegal immigrants. As a result, house bill 1023 passed the legislature and was signed into law. House bill 1023 requires each agency or subdivision of the state to verify the lawful presence in the United States of each natural person, 18 years of age or older, who applies for a state or local public benefit, or for a Federal public benefit.

The act makes it unlawful for any agency or political subdivision to provide a Federal or a state or local public benefit in violation of the statute.

However, house bill 1023 contains language that some argue actually opens up a loophole and pays the way for state taxpayer-funded benefits to illegal immigrants.

First, the law creates a new class of benefits for illegal immigrants under 18 by exempting them from the verification requirements.

Second, house bill 1023 contains language that may be interpreted under Federal law as language that affirmatively provides for eligibility of state benefits, thus allowing state benefits to be conferred on those in the state illegally.

So what does this mean in terms of in-state tuition in Colorado? It is a question that may have to ultimately be decided by the courts.

An analysis by a lawyer within the attorney general's office concluded that although house bill 1023 may not directly apply to the college opportunity fund, that's our stipend program, this is a moot point since participation of undocumented aliens in that program is prohibited by Federal law.

Taken together, though, if the residency requirement is changed in Colorado law, or in Federal statute, house bill 1023 may be just enough for a court to interpret it as granting in-state tuition for an illegal immigrant under the age of eighteen.

As a matter of state policy, I believe it sends a misguided message to citizens and non-citizens alike, that we will allow a taxpayer-funded benefit, such as in-state tuition, to go to someone who is in violation of immigration laws.

As a Nation, we should not promote policies that encourage illegal immigration and provide disincentives to those patiently working through the proper legal channels.

The cost of education is increasing every day. It is difficult enough for us to provide for the educational needs of our own citizens, let alone those who are in the country illegally.

We must not reward illegal behavior, nor should we institute policies that perpetuate it.

Thank you, Mr. Chairman, and I'll be happy to answer any questions the committee may have.

[The prepared statement of Mr. Gardner follows:]

**Prepared Statement of Hon. Cory Gardner, Colorado State Representative**

Thank you, Mr. Chairman and members of the Committee. Welcome to Colorado, the recent epicenter of the state immigration debate. Congresswoman Musgrave, I applaud you for your efforts to bring real solutions to a complex problem. This is a tough, complicated issue. Your leadership is to be commended.

On the heels of an immigration special session, you convene at a time that finds the state searching for answers to a most important question: should taxpayer dollars be used to provide state benefits for illegal aliens, including in-state tuition?

To fully understand the significance of today's hearing and what it means to this state, it is important to have at least a snapshot of Colorado demographics and economics. Over 4.5 million people live in the state, working in tourism, agriculture, technology and other sectors. It is estimated that somewhere between 250,000 to 300,000 illegal aliens reside in Colorado. Between 1990 and 2000, the number of illegal aliens in Colorado increased by more than 100,000. Colorado now has the 6th highest percentage of illegal aliens in the nation.

In a study commissioned by Defend Colorado Now and written by Donald Rice, the cost of illegal aliens in Colorado is estimated at more than \$1 billion per year. The organization also reported that Medicaid paid approximately \$64 million for services rendered to illegal aliens in Colorado. According to an analysis by the Joint Budget Committee staff, in FY 2003-04, Health Care Policy and Financing paid

8,542 delivery claims for non-citizens at a total cost of over \$30 million. Over 40 percent of all births paid by Medicaid were for non-citizens—both legal and undocumented immigrants.

The budget for the state of Colorado is roughly \$15 billion. Of this total, over \$2 billion is spent on higher education. Roughly 200,000 in-state students attend state institutions, along with nearly 35,000 out of state students. According to the Colorado Commission on Higher Education Student Unit Records Data System, which contains student data provided by the institutions, of the 235,592 students enrolled last year, 98.6% provided valid social security numbers. The other 1.4% includes students who have permanent resident card numbers or Visas, or may be undocumented aliens. Because federal and state laws do not expressly prohibit the admission of undocumented aliens to colleges and universities, there is the possibility that undocumented aliens are already accessing postsecondary services in the State of Colorado, regardless of the availability of in-state tuition.

Earlier this year, I held a town meeting in my home town of Yuma, Colorado. Participating in the town meeting was a group of Hispanic high school students. They are students in a district that has, over the past 10 to 15 years, been transformed by immigration, growing from a very small percentage of minority students to a minority population approaching 50 percent. Because of federal and state law, it is impossible to determine how many students in the district are legal versus illegal.

The students were bright, articulate, and eager to learn. And the one question they wanted to know more than anything—did I support in-state tuition for illegal aliens. And my answer—no. To some, this answer seems harsh. But it is a policy to which we must adhere. We must stem the tide of illegal immigrants coming into this state. We cannot, as a state or a nation, give benefits to those who are here illegally, above and beyond the services and benefits that we are willing to offer to every person lawfully present in the United States. Not only does this grant preferential treatment to those in the country illegally, it also disrespects those who enter, or who are attempting to enter, the United States through legal processes. We cannot reward illegal activity even if it is the result of decades of lax immigration enforcement. To do so is to create a system where the only expectation of the law is an expectation of little to no law enforcement.

House District 63 is bordered by Kansas and Nebraska. Citizens from my district are strongly opposed to in-state tuition for illegal aliens, often commenting, “I can’t take my child to Nebraska and receive in-state tuition, why should we grant in-state tuition for people who are in this country illegally?”

Take for instance some of the students attending school in Wray, Colorado. The district has students who live just across the state line in Nebraska but attend school in Colorado because it is closer. Although the Nebraska student may be a legal U.S. citizen who eventually graduates from a Colorado high school, an in-state tuition policy for undocumented immigrants could have the effect of barring access to in-state tuition for the legal citizen from Nebraska while the undocumented classroom could attend college in Colorado at in-state tuition rates.

Proponents of in-state tuition for illegal aliens believe that to deny in-state tuition lacks compassion. There is no compassion in turning a blind eye on illegal immigration, allowing workers to enter this country illegally, watch them earn poor wages, and then give an “incentive” such as in-state tuition for them to stay here. Compassion is creating a legal immigration system that does not perpetuate poor conditions or education amnesty. It is a legal system that is efficient and secure. An efficient and secure legal system starts with a secure border.

It is difficult to determine how many undocumented students would take advantage of an in-state tuition policy and thus to estimate the cost of providing such a benefit. According to Jenna Langer, Executive Director of the Colorado Commission on Higher Education, the cost of post-secondary educational services accessed by undocumented aliens would be covered in most instances by the student’s payment of the out-of-state tuition rate, unsubsidized by state tuition benefits, stipends or financial aid. Langer noted that it is possible that undocumented students may be obtaining the postsecondary benefits of in-state tuition, stipends or financial aid through false documentation or fraud. However, current documentation policies would keep most undocumented aliens from receiving state postsecondary educational benefits and there is no way to estimate the cost if fraud does occur.

Because school districts do not inquire about a student’s immigration status, estimating the number of undocumented students is difficult. However, two organizations, the Urban Institute and the Federation for American Immigration Reform have developed formulas to determine the number of undocumented immigrant children in Kindergarten through 12th grade (K-12) and the cost of such education. If in-state tuition were granted to illegal aliens, all students in the formula would presumably be eligible to receive the benefit.

The Urban Institute, using data from the 2000 Census, has provided an estimate of 25,000 as the number of undocumented immigrant children in Colorado in K-12. The Institute's estimate was derived using the number of undocumented immigrants in Colorado in the K-12 age group, which is estimated at 22,000. The Institute then added 10 percent, the estimated undercount of undocumented children in the census, settling on a total of 24,000. Finally, recognizing a margin of error of plus or minus 20 percent, the Institute set the lower boundary of the estimate at 20,000 and the upper boundary at 28,000. Averaging these two numbers, they arrived at a final estimate of 25,000 undocumented children in the K-12 age group in Colorado.

Although the Federation for American Immigration Reform does not provide an estimate of the number, it does provide an estimate of the cost of educating school-aged undocumented immigrants in its publication, "Breaking the Piggy Bank: How Illegal Immigration is Sending Schools Into the Red" (Attachment A). The Federation estimates that the cost of educating undocumented children and the U.S.-born children of undocumented immigrants in Colorado in 2004 was \$564.1 million. The methodology used in reaching this estimate is described in the publication as follows: "[t]he 1.5 million school-aged illegal immigrants residing in the United States and their 2 million U.S.-born siblings can be divided among the states using government estimates of the illegal alien population. Using each state's per-pupil expenditure reported by the U.S. Department of Education, cost estimates for educating illegal immigrants in each state are shown \* \* \*"

In 2003, 2004, and 2005, legislation was introduced in the General Assembly to change Colorado law, effectively granting in-state tuition to illegal aliens and changing the residency requirements to conform to the stipulations of federal law. The legislation failed all three years.

In January of 2006, the Colorado Attorney General issued a formal opinion addressing the Colorado statute on in-state tuition benefits and undocumented aliens. In that opinion, the Attorney General confirmed that because current law bases in-state tuition benefits on the determination of a student's residency classification, undocumented aliens may not receive in-state tuition at Colorado institutions of higher education.

In July of 2006, Governor Bill Owens issued the call for a special session of the legislature to deal with several immigration matters, including the provision of state benefits and services to illegal aliens. As a result, House Bill 06S-1023 passed the legislature and was signed into law.

House Bill 1023 requires each agency or political subdivision of the State to verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for a state or local public benefit or for a federal public benefit. The Act makes it unlawful for any agency or political subdivision to provide a federal or a state or local public benefit in violation of the statute.

However, House Bill 1023 contains language that some argue actually opens up a loophole and paves the way for state taxpayer funded benefits to illegal aliens. First, the law creates a new class of benefits for illegal aliens under 18 by exempting them from the verification requirements. Secondly, HB-1023 contains language that may be interpreted under federal law as language that "affirmatively provides" for eligibility of state benefits, thus allowing state benefits to be conferred on those in the state illegally.

What does this mean in terms of in-state tuition? It is a question that may ultimately be decided by the courts. An analysis by a lawyer within the Attorney General's office concluded, "Although [HB-1023] may not apply directly to the College Opportunity Fund Program, this is a moot point since participation of undocumented aliens in that program is prohibited by 8 U.S.C. § 1623." The College Opportunity Fund is the college voucher program for in-state students. Taken together, if the residency requirement is changed in Colorado law or in federal statute, HB-1023 may be just enough for a court to interpret it as granting in-state tuition for an illegal alien under the age of 18.

As a matter of state policy, I believe it sends a misguided message to citizens and non-citizens alike that we will allow a taxpayer funded benefit, such as in-state tuition, to go to someone who is in violation of our immigration laws. As a nation, we should not promote policies that encourage illegal immigration and provide disincentives to those patiently working through the proper legal channels. The cost of education is increasing every day. It is difficult enough to provide for the educational needs of our own citizens, let alone those who may be in the country illegally. We must not reward illegal behavior. Nor should we institute policies that perpetuate it.

Thank you, Mr. Chairman. At this time I would be happy to answer any questions that the committee may have.

Chairman MCKEON. Thank you.  
Mr. Polis.

**STATEMENT OF JARED POLIS, VICE CHAIRMAN, COLORADO  
BOARD OF EDUCATION**

Mr. POLIS. Thank you, Mr. Chairman, and welcome to Colorado.  
Chairman MCKEON. Thank you.

Mr. POLIS. And Representative Musgrave. My name is Jared Polis and I am the vice chairman of the Colorado State Board of Education, and I want to begin by thanking you for the opportunity to share my thoughts with you this morning.

As you well know, there are significant good faith disagreements among Coloradans, like many Americans, on the issue of immigration. But there is one element of the immigration discussion where there seems to be substantial agreement and common ground, among Americans of all stripes, Republican, Independent and Democrat, progressive, moderate and conservative. And that relates to children.

As the Supreme Court very eloquently noted in its 1982 opinion, the rights and opportunities of children are a separate issue from the issue of their parents' immigration status.

We should not, the Court said, quote, impose a lifetime of hardship on a discrete class of children.

Within that context, I am here today to strongly urge the U.S. Congress to pass the DREAM Act, a bipartisan bill that would give a fair chance to undocumented students who were brought to this country as children, through no fault of their own, as early as age five or ten.

Instead of punishing these students, the act would allow them to complete their education, provide them a path to citizenship, and improve our state and our country's competitiveness.

This bill is not about immigration. It is about whether young people who have grown up here can complete their education or not.

In Colorado, and nationally, we hear about the importance of preventing dropouts, closing the achievement gaps, and improving student achievement.

My message to you in Congress is it is time to put action to these words. Pass this legislation, so our state and Nation can begin to meet these goals. Our state board and our school districts are accountable under No Child Left Behind. The DREAM Act would be a vital tool toward closing the achievement gap, particularly among Latino students in Colorado and nationally.

The DREAM Act would do two things. First, and most importantly, it would provide a path to legal status for individuals who were brought to this Nation years ago, as children. To qualify, an undocumented person would have to show that he or she entered the U.S. at the age of 15 or less, at least 5 years before the bill was enacted, has good moral character and has graduated high school in the United States.

Those who qualify would be granted a conditional status that would permit them to remain here legally for 6 years, during which they would have to either graduate from community college, com-

plete 2 years toward a college degree or serve at least 2 years in the United States military.

Second, it would eliminate a provision of Federal law that most of the earlier comments referred to, that places conditions on whether states use their own funds to provide in-state tuition to undocumented students.

If this provision is repealed, states will be permitted to decide for themselves, without Federal interference, whether it's beneficial for the state to permit such students to study in their colleges and universities at the in-state rate.

The DREAM Act would not require Colorado or any other state to provide in-state tuition to undocumented immigrants. The choice would be up to each state.

In Representative Gardner's remarks, he echoed his own position on this matter. I am urging you, in Congress, to leave these matters to the states and the state assemblies of the states.

The Federal Government has failed miserably in securing our borders. The least it can do is allow states the flexibility in dealing with the impact of our failed border policy.

By providing a path to legal status, the DREAM Act would help transform the lives of an estimated 65,000 students who successfully graduate from high school each year, but who are ineligible to work legally, join the military, or in 40 states, pay in-state college tuition at public colleges and universities.

These students live on the margins of society and face limited futures because of their status, which is no fault of their own.

Although they consider the U.S. their home and want to contribute to its future by serving in the military or giving back to their community as teachers, doctors, or engineers, undocumented students currently have no way to legalize their immigration status and get on with their lives.

Critically, to many of these students, the United States is their only home and English is their only fluent language.

Mr. Chairman, these students are to be admired. They have met the challenges of transitioning to a new country, a new culture and a new language, and they have avoided the temptations that have derailed some of their peers and they have persevered to graduate from high school.

It is impressive, what many of them have accomplished, despite the barriers they have faced. Many are high achievers, including valedictorians, honor students, academic and athletic prize winners, team captains and class leaders.

Colorado and the country's economic future will depend on our ability to educate all of our young people and send them into the workforce, which the DREAM Act would help us do.

One of the items that I will be submitting into the record does talk about the contributions from state and local taxes in Colorado, paid in Colorado by undocumented immigrants, and we can refer the Chairman of the committee to similar studies that have been done at the Federal level about the tax impact of undocumented residents and the taxes that they do pay.

In the absence of Federal action, many states have taken it upon themselves to keep immigrant youth in school. Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, New

Mexico and Nebraska are the 10 states that have enacted laws permitting undocumented students who have attended high school to pay the discounted rate.

Mr. Chairman, I understand how hard it is to enact the needed comprehensive reforms on immigration policy. It is a complicated issue and reasonable minds can disagree about many of the issues and equities involved. The same cannot be said about the DREAM Act.

It represents a simple acknowledgement that the failure of our Federal immigration policy and the mistakes of adults not ought be visited on children who have done nothing wrong, who have, in fact, done exactly what we as a society have asked—go to school, stay out of trouble, succeed.

Congress should act to ensure that these students have an opportunity to legally pursue the American dream. It is the right thing to do and it is the American thing to do for our country and for these children's future. Thank you.

[The prepared statement of Mr. Polis follows:]

**Prepared Statement of Jared Polis, Vice Chairman and Member at Large,  
Colorado State Board of Education**

Members of the committee, my name is Jared Polis and I'm the Vice Chairman of the Colorado State Board of Education. I want to begin by thanking you for the opportunity to share my thoughts with you this morning. As we all know, there is significant good faith disagreement among Coloradans, like many Americans, on the issue of immigration. But there is one element of the immigration discussion where there seems to be substantial agreement among Americans—Republican or Democrat, progressive or conservative—and that relates to children.

As the Supreme Court eloquently noted in its 1982 opinion, the rights and opportunities of children are separate from the issue of their parents' immigration status. We should not, the Court said, impose "a lifetime of hardship on a discrete class of children". Within that context, I'm here today to strongly urge the United States Congress to pass the DREAM Act, a bipartisan bill that would give a fair chance to undocumented students, who were brought to this country as children through no fault of their own, as early as age 5 or 10. Instead of punishing these students, the act would help them complete their education, provide them with a path to citizenship, and improve our state's competitiveness. This bill is not about immigration—it is about whether young people who have grown up here can complete their education \* \* \* or not.

In Colorado and nationally, we hear about the importance of preventing dropouts, closing the achievement gaps, and improving student academic performance. Now, my message to you in Congress is: it's time to put action to these words—pass this legislation so our state and nation can begin to meet these goals.

The DREAM Act would do two things:

First, and most important, it would provide a path to legal status for individuals who were brought to this nation years ago as children. To qualify, an undocumented person would have to show that he or she:

- entered the U.S. at the age of 15 or less at least 5 years before the bill is enacted;
- has "good moral character" (a term of art in immigration law); and
- has graduated high school in the U.S.

Those who qualify would be granted a "conditional" status, that would permit them to remain legally in the U.S. for 6 years, during which they would be required to graduate from a community college, complete at least two years towards a college degree, or serve at least two years in the U.S. military.

Second, it would eliminate a provision of federal law that places conditions whether states use their own funds to provide in-state tuition to undocumented students. If this provision is repealed, states would be permitted to decide for themselves without federal interference whether it is beneficial to the state to permit such students to study in their colleges and universities at the in-state rate.

The DREAM Act would not require Colorado or any other state to provide in-state tuition to undocumented immigrants. The choice would be up to each state.

By providing a path to legal status, the DREAM Act would help transform the lives of an estimated 65,000 students who successfully graduate from high school each year but who are ineligible to work legally, join the military, or, in 40 states, to pay in-state college tuition rates at public colleges and universities, or apply for financial aid. These students live on the margins of society and face limited futures because of their undocumented status. Although they consider the U.S. their home and want to contribute to its future by serving in the military or giving back to their community as teachers, doctors or engineers, undocumented students currently have no way to legalize their immigration status and get on with their lives. To many of them, the United States is their only home and English their only fluent language.

Mr. Chairman, these students are to be admired. They have met the challenges of transitioning to a new country, a new culture, and a new language. They have avoided the temptations that derailed some of their peers and they have persevered to graduate from high school.

It is impressive what many of them have accomplished despite the barriers they have faced. Many are high achievers, including valedictorians, honors students, academic and athletic prize winners, team captains, and class leaders; in 2004, there were 17 undocumented immigrant high school valedictorians in California alone.

Colorado's economic future will depend on our ability to educate all of our young people and send them into the workforce, which the DREAM Act would help us to do.

In the absence of federal action, many states have taken it upon themselves to keep their immigrant youth in school. Ten states have enacted laws permitting undocumented students who have attended high school and graduated from high school in their state to pay the discounted in-state tuition rate at state colleges and universities. The states are Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, New Mexico, and Nebraska.

Colorado is one of the states that have considered similar legislation but thus far it has not passed here. The bipartisan Colorado Commission on High School Improvement, which I was privileged to co-chair, recommended that Colorado residents be eligible for in-state tuition regardless of their immigration status. This year the in-state tuition for a full-time undergraduate student at CU-Boulder is \$4,446 while the out-of-state tuition is \$21,900; at UNC, the in-state tuition is \$3,950, while the out-of-state is \$12,530; the in-state tuition at Arapahoe Community College is \$1,746 while the out-of-state is \$8,284. The vast majority of undocumented students come from low-income families that are unable to help them pay these tuition rates. If we want them to complete their education and contribute to our state up to their full abilities, then it is imperative that they not be charged above their means.

Mr. Chairman, I understand how hard it is to enact the needed comprehensive reforms of our immigration policy. It is complicated and reasonable minds can disagree about many of the issues and equities involved.

The same cannot be said about the DREAM Act. It represents a simple acknowledgement that our immigration failures and the mistakes of adults ought not to be visited on children who have done nothing wrong, who have, in fact, done what exactly what we, as a society have asked: go to school, stay out of trouble, succeed.

Congress should act to ensure that these students have an opportunity to legally pursue the American Dream. It is the right thing to do—for our country and for these children's future.

I ask that the following reports be entered into the permanent record, along with my testimony.

Closing the Education Gap: Benefits and Costs (Vernez, Krop, and Rydell, 1999), Rand Corporation

The Achievement Gap: Colorado's Biggest (Education) Problem, Donnell-Kay Foundation, Colorado Children's Campaign, Center for Education Policy Analysis, and the Piton Foundation.

High School Reform in Colorado: Meeting the Expectations of a New Era. The Colorado Commission on High School Reform. December 2005.

Closing the Achievement Gap: Focus on Latino Students. Color in Colorado, AFT Policy Brief #17. March 2004.

Day, Jennifer Cheeseman. Eric C. Newburger. The Big Pay Off: Educational Attainment & Synthetic Estimates of Work Life Earnings. U.S. Census Bureau. July 2002.

Thank you.

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Chairman MCKEON. Thank you.

In a congressional hearing, we will not have applause or reactions from the audience. We will just have to ask you to leave. So if you will please honor that. That is what we do in Washington. That is what we will do here.

Thank you very much.

Professor Kobach, let me ask you a question. If this retroactive amnesty were granted, would that complicate the issue of—what would you do about students that maybe receive these funds, are paid, a student paid out-of-state tuition, and then retroactively was granted in-state tuition? Would they be able to go back and ask for a rebate for any tuition they have paid?

Mr. KOBACH. Are you referring to an illegal alien student—

Chairman MCKEON. Yes.

Mr. KOBACH [continuing]. Or a U.S. citizen student? Well, it would depend on what a state chose to do. If the DREAM Act were passed as part of the Senate bill, then the states would have the option of a grant, so Colorado would then no longer have the Federal statutory barrier, that is in addition to all the policy reasons why, and tax reasons why Colorado might want to do. Colorado could then move ahead without a Federal statutory barrier.

If someone were midway through their college career, presumably the bill would allow, if it is like most states, it would allow someone in their, say they are between their sophomore and junior year, to go ahead and acquire in-state tuition access or pay a lower tuition rate earlier.

Now if a state wanted to retroactively give, you know, allow that student to go back and claim the extra tuition that he or she paid in his freshman or sophomore year, which is I think what you are asking, that would be possible under state law, under the U.S. Constitution or under most state constitutions.

A retroactive benefit is not an ex post facto violation, so if a state wished to give sort of a retroactive state credit, it could. That would of course impose an even bigger burden on state taxpayers, but there is no barrier to a state doing that under the terms of the DREAM Act, as it opened up that option to them.

May I respond to a point that was raised earlier by Mr. Polis?

Chairman MCKEON. Yes.

Mr. KOBACH. Talking about the constitutionality of this, he suggested that we leave it to the states, and that it would be best if we left the states the discretion to decide whether to give this incentive, this reward for illegal immigration.

Under our Federal Constitution, immigration is not like a commerce power. It's not like other powers which are shared at different levels with the states. Immigration is a Federal plenary power and the U.S. Supreme Court has recognized this for many, many decades.

As a result, the states cannot take the lead. The states can only act in the immigration arena in so far as Congress allows them an opening to act.

So even if section 1623, the part of Federal law we are talking about here, were repealed, and states were free to grant in-state tuition to illegal aliens, there would be many other provisions saying states can't give public benefits to illegal aliens, which is found in 8 USC section 1621, states cannot enact so-called sanctuary city

policies, which is found in 8 USC section 1644, notwithstanding the fact that some states have apparently ignored that.

There are many provisions in Federal law that tell states what they can and cannot do, and that is proper, because if our immigration are to be solved, you have to have the states and the Federal Government operating in concert.

If the Federal Government is trying to discourage illegal immigration, and the states are offering incentives, rewards for illegal immigration, such as the incentive that says don't go home and get a visa if you want to study here in Colorado. Stay here and we will give you a lower rate of tuition if you don't legalize your status.

If the states are operating in the opposite direction, we will never solve our immigration problem.

Chairman MCKEON. Thank you.

Representative Gardner, how is the state enforcing the new law that you just passed?

Mr. GARDNER. Thank you, Mr. Chairman. That is sort of a work in progress as we speak. There is a lot of confusion that is trying to be worked out in terms of who is and who is not required to verify. A lot of the verification requirements depend on the issuance to that agency or organization of state taxpayer dollars, and so the attorney general's office has issued some opinions in terms of who is and who is not supposed to be verifying.

The agencies with the dollars that are issuing the programs, that are overseeing the issuance of benefits to the taxpayers, or to the people coming into their office, are the ones that are verifying whether or not they meet the requirements of House bill 1023.

But again, there is still a little bit of confusion and problems in the system that are being worked through as we speak.

Chairman MCKEON. Thank you. My time is just about up but let me just say that over the last two decades, the cost of higher education has been going up at four times the rate of inflation, and the Federal Government has increasingly been putting more and more money into education. The state governments have been cutting their contribution to higher education.

If they use more of their resources to pay for illegal aliens, then the Federal Government would have to even pick up more of this burden, or the students and their parents would have to pick up more, and I have a huge concern, because 48 percent of low and middle-income students are not able to go to university right now because of cost, and if that were increased, more and more would be forced out of the opportunity to get a college education.

My time has ended.

Ms. Musgrave.

Ms. MUSGRAVE. Thank you, Mr. Chairman.

Kris, I would like you to comment on section 624(f) in regard to—could you elaborate on that a little bit, as to how it ties the hands of Federal law enforcement.

Mr. KOBACH. Yes. There are some provisions of the DREAM Act that are particularly problematic, and section 624(f) is the one that says, if you just file the application, then you are prohibited from being deported.

And not only that. That same section of the DREAM Act also includes a provision that says if a Federal officer shares information,

perhaps in your application you have admitted that you harbored other illegal aliens or you smuggled other people in—if any Federal officer share the information in that application with anyone else in the Federal Government, someone who might wish to enforce the law against you, that Federal officer is penalized up to \$10,000 per violation.

So, you know, in an era when we are talking about how Federal agencies aren't talking together well enough, this would actually tie the hands, even further, of the Federal agencies, by saying we don't want you to talk to one another because we are going to make sure that this applicant cannot be deported, no matter how ridiculous and how patently unqualified the applicant is under the terms of the law.

So it is a particularly pernicious provision and some have suspected that it might actually provide an incentive for some people to just apply for the DREAM Act amnesty, knowing full well they won't get it, but to give themselves a reprieve from immigration enforcement.

It is a truly problematic provision.

Ms. MUSGRAVE. Thank you.

Cory, would you talk about Yuma County and Phillips County, and some of those areas of Colorado where we routinely have some of our students go to another state to go to school, to high school, and how some of theirs come right into Colorado, it's just a few miles from a school, for instance.

Mr. GARDNER. Right. Thank you, Congresswoman Musgrave. I think the professor and Mr. Polis both touched on various issues regarding this question. The question is whether or not a person from out of state, whether they are a legal alien in this country or an out-of-state student, who may live in Kansas, come to Colorado and receive in-state tuition.

In many of the bordering communities in Colorado, in my particular district, it is Ray, Colorado, Burlington, Colorado, and others, Holyoke, Colorado, Peetz, Colorado—students from Nebraska or Kansas may attend the high school.

In fact they may live one or two miles within our bordering states, and so are very close, in fact the closest school district would be in Colorado. They may have attended Colorado schools, their entire K through 12 educational experience.

Yet under many of the acts that we have seen, many of the provisions of this policies, even though they are legal U.S. citizens, even though they graduated in the same class as a undocumented student in there, that may be in their class as well, they would not have the privilege of in-state tuition, even though they went to the same school, the same process, the same time, graduated in the same class.

Ms. MUSGRAVE. Thank you.

Dr. Kobach, you talked about two court cases. Could you tell me how those have originated. Have they come from students and families?

Mr. KOBACH. Yes, they have. Indeed, the two cases are Day v. Sebelius, which is now entitled Day v. Bond, that is the one in Kansas, and many, several of the plaintiffs in that case are residents of Colorado, I believe, it's a group of almost 20 students from

the states surrounding Kansas, that's in Federal court, a few of their parents are also litigants, and they are simply suing to enforce their right, under Federal law, to be given the same tuition or at least to not be paying any more in tuition than illegal aliens are charged in Kansas, and they are also suing under the Equal Protection Clause of the Fourteenth Amendment because they are being discriminated against because of their status as U.S. citizens.

The court, as I mentioned, never got to the merits of the issue, ruled on the preliminary threshold questions of standing and private right of action. Hopefully, if we prevail before the 10th Circuit here in Denver, it would go back to the District Court.

The case in California is a slightly larger group of U.S. citizens, students from all over the country who are attending California institutions of higher education. Interestingly, two of the plaintiffs in that lawsuit are the son and daughter of Congressman Brian Bilbray.

He is a Congressman representing the State of California, yet his own children cannot get in-state tuition in California while illegal aliens in California can obtain in-state tuition.

One final point on the perspective of the students here. It was suggested by Mr. Polis, that he made reference to the Supreme Court decision in 1982 of Plyler v. Doe, and that was the decision that says that states have to provide through public education, K through 12 to illegal aliens.

And he implied that somehow the opportunities end once you no longer have access to that free education.

On the contrary, there are many opportunities. One opportunity that every alien national has is to return of course to his home country where presumably there is subsidized higher education available.

The second option is at the age of 18, when you begin committing your own separate violation of Federal law. Prior to the age of 18, you are not in violation of Federal law as a separate, deportable offense. After the age of 18, you have started committing the crime of unlawful presence. That individual could go back to his home country, stay with relatives and actually apply for a visa, do what millions of people around the world are trying to do. Apply for a student visa or a work visa and try to get on the legal track.

I suggest that if we are truly compassionate, we encourage people to get on the legal track instead of offering them an incentive to remain in the United States illegally. If they get on the legal track, then that would demonstrate the kind of respect for the rule of law that I think would entitle them to consideration to become U.S. citizens.

Ms. MUSGRAVE. Thank you.

Thank you, Mr. Chairman.

Chairman McKEON. Thank you very much. That concludes our time for the first panel. Thank you for your participation. It is really appreciated. If you think of something else that you want to have in the record, you have 14 days to get it added to the record. Thank you very much.

We will take just a short recess while we are waiting for the next panel to take their places.

[Recess.]

Chairman MCKEON. The committee will please come to order.

Thank you. We will now begin with our second panel. Again, we want to thank all of you for being here today.

We will hear first from Ms. Theresa Shaw, who has served as the chief operating officer of the Department of Education of Federal student aid for the past 4 years. Prior to her current appointment, Ms. Shaw was the executive vice president and chief operating officer of Enumerate Solutions, Inc., a Virginia-based startup technology firm. She began her career working for Sally Mae, eventually advancing to the position of senior vice president and chief information officer prior to her departure in 1999.

Ms. Shaw graduated with a bachelor of science degree from George Mason University and completed the executive development series at George Washington University.

Then we will hear from Ms. Debra DeMuth, who was named as director of the College Access Network, the guarantee agency for the State of Colorado, in January 2006. She is also the director of College Invest, the nonprofit secondary market in Colorado, since 2000.

Ms. DeMuth is on the board of directors of the Education Finance Council and involved in the College Savings Plan Network, and the National Council of Higher Education Loan Programs.

Prior to her service with the College Access Network and College Invest, Ms. DeMuth served as the assistant deputy manager of aviation for finance at Denver International Airport.

She has also worked as executive vice president and chief financial officer of Airport Integrated Systems and as senior audit manager with Coopers and Lybrand in Boston and Denver. Ms. DeMuth graduated from Colorado State University.

And then we will hear from Dr. Marilyn Marc Liddell. She has been the president of Aims Community College since 2003. Prior to this position, she served as president of Glen Oaks Community College, and the vice president of academic affairs at Morton College in Illinois.

She has recently received a Fulbright scholarship and spent 6 weeks in Germany. Dr. Liddell is the president of the American Association for Women in Community Colleges and serves on their task force for global education.

She graduated from Drake University with a bachelor of arts and a master's of arts. She obtained her doctorate of education from the University of Houston and her PhD from Tristate University.

Welcome, all of you. We will hear first from Ms. Shaw. You already heard about the 5 minute time limit.

Ms. SHAW. Yes, sir.

Chairman MCKEON. Thank you.

**STATEMENT OF THERESA S. SHAW, CHIEF OPERATING OFFICER, OFFICE OF FEDERAL STUDENT AID, U.S. DEPARTMENT OF EDUCATION**

Ms. SHAW. Thank you. Good morning, Chairman McKeon, Congresswoman Musgrave, members of the committee. Thank you for inviting me to testify today.

I am Terri Shaw, the Department of Education's chief operating officer for Federal student aid, and I am very pleased to be here

representing Secretary Spellings, the Department, and the very talented and dedicated Federal student aid team.

The Department of Education's grant, loan and work assistance programs represent the largest source of student aid for postsecondary education in the United States.

In fiscal year 2007, these programs will provide more than \$82 billion in financial support to more than 10 million students and their families.

Federal student aid, under the direction of the secretary, is charged with operational responsibility for oversight and administration of all of the Department's Federal student aid programs.

As one of the Government's few performance based organizations, we are focused on rigorous oversight, efficient operations, reduced costs, and superior customer service, and we are proud of our recent achievements.

In January of 2005, the General Accountability Office removed the Federal student aid program from the high risk list. Working with all of the participants in the program, the cohort default rate was reduced from an all-time high of 22.4 percent to an all-time low of 4.5. Yearly defaulted loan recoveries increased from \$38 million in 1993 to an estimated \$1.8 billion in 2006, while related collection costs decreased by more than 50 percent.

We continue to successfully manage dramatically increasing workloads with fewer staff, while controlling and containing budgetary impact.

We dramatically transformed the aid application process from 100 percent paper to more than 90 percent Web-based, saving approximately \$27 million annually in processing, printing and postage, and cutting processing time from weeks to days.

Mr. Chairman, your invitation specifically asked me to comment on two issues, student access to the Federal student aid programs and cost reduction in the Federal student loan programs, and how they are impacted by the provisions of the Deficit Reduction Act of 2005, and specifically the Higher Education Reconciliation Act of 2005, or the HERA.

HERA created two grant programs, the academic competitiveness grant or the ACG, for students who complete a rigorous high school program of study, and the National Science and Mathematics Access to Retain Talent, or SMART grant, for students who are majoring in math, science, technology, computer science, and in certain critical foreign languages.

These programs will provide \$790 million in additional student aid to students for the 2006-2007 academic year, and \$4.5 billion over the year 5 years.

Nationwide, we estimate 500,000 students will qualify to receive ACG and SMART grants.

To date, almost 59,000 potentially eligible students from California and over 5600 students from Colorado have applied for ACG grants for this school year.

These programs will encourage more students to take rigorous high school courses and to pursue these challenging majors to help ensure our Nation's security and economic competitiveness.

The HERA included other provisions that also increase access for students and their families to the student aid programs.

These provisions include increased annual loan limits, eligibility of graduate students for PLUS loans, reduced loan origination fees, and several changes for determining the illegality for Federal student aid, including change to family contribution and needs analysis calculations.

Although not directly related to increased access, another noteworthy student and borrower benefit provided by HERA is expanded loan forgiveness for highly qualified math, science, and special education teachers serving low-income communities.

Congress also included key provisions to allow active duty military personnel to be considered as an independent for determining Federal student aid eligibility, and to provide deferment of loan payment during active duty status.

To provide these benefits, the HERA included a number of cost saving provisions. The recapture of excess interest paid to FFEL lenders, restriction on lender subsidies for loans made with proceeds of tax-exempt securities, reductions in default insurance paid to FFEL lenders, and a requirement for default fees, the insurance premium, to be deposited into a guarantee agency's Federal fund.

Finally, as you know, Mr. Chairman, the secretary's Commission on the Future of Higher Education recently approved its final report, which will be formally presented to the secretary later this month for her review and appropriate action.

I know Secretary Spellings looks forward to working with you, Mr. Chairman, Congresswoman Musgrave, and other higher education leaders across the country to continue this dialog on how to become more responsive to the needs of students, parents, educators and the business community.

On behalf of the secretary, the Department and the Federal student aid staff, thank you for the opportunity to testify today and I will be happy to answer any questions.

[The prepared statement Ms. Shaw follows:]

**Prepared Statement of Theresa S. Shaw, Chief Operating Officer, Federal Student Aid, U.S. Department of Education**

*I. Introduction*

Good morning. Chairman McKeon, Congresswoman Musgrave, and Members of the Committee, thank you for inviting me to testify today. My name is Terri Shaw and I am the Department of Education's Chief Operating Officer for Federal Student Aid, a position I have held since September 2002. I am pleased to be here representing Secretary Spellings, the Department, and the Federal Student Aid staff to share with you some of our successes in elevating our performance, delivering tangible results, and transforming our workforce.

The Department of Education's grant, loan, and work assistance programs represent the largest source of student aid for postsecondary education in the United States. In Fiscal Year 2007, these programs will provide more than \$82 billion in financial support to more than 10 million students and their families. In addition, Federal Student Aid directly manages a student loan portfolio of \$90 billion and oversees a total student loan portfolio of nearly \$402 billion.

I should also note that funding for Federal Pell Grants has risen from \$8.8 billion in 2001 to a proposed \$13 billion for the coming fiscal year. In addition, the Department of Education will make or guarantee almost \$62 billion in new student loans next year, a \$4 billion increase over last year. These increases continue the President's longstanding practice of offering historic levels of support for college students.

Mr. Chairman, in the invitation you extended to me to testify today, you asked for comments on two specific issues: to address the impact of the Deficit Reduction Act on access by students to the federal student aid programs and to comment on issues related to cost reductions in the federal student loan programs. I will, of course, respond to that request, but I would first like to provide the Committee with

some background information about Federal Student Aid within the Department of Education.

## *II. Who/What Is Federal Student Aid*

Created by Congress in 1998 under your leadership, Chairman McKeon, Federal Student Aid was the federal government's first Performance-Based Organization, or PBO, and is specifically charged with operational responsibility for the administration and oversight of the federal student aid programs authorized under Title IV of the Higher Education Act of 1965. The authorizing statute provides that the purposes of the PBO are to improve service delivery, integrate business processes and systems, strengthen program integrity, reduce operating costs, and increase workforce and management accountability.

As one of the government's few PBOs, Federal Student Aid upholds high standards of operational efficiency, innovation, customer care, and individual and organization performance with particular emphasis on modernizing the delivery of the federal student aid programs.

Federal Student Aid is focused on:

- effectively managing the federal student aid programs;
- ensuring fair and effective oversight;
- delivering world-class customer service;
- developing award-winning products and services;
- providing service delivery at the lowest cost without sacrificing quality; and
- creating and fostering a work environment that not only attracts, develops, retains and rewards top performers, but also expects high performance and demands accountability.

Federal Student Aid contracts with, manages, and monitors a number of private sector providers for our major business functions. We have created innovative contract solutions, including performance incentives and disincentives, to optimize the investment of taxpayer dollars and the return on that investment. While our federal employee staff numbers just over 1,000 and is located in Washington and in ten regional offices around the country, these private sector service providers add the support of more than 5,000 clerical, technical, and professional staff in locations all across the country from Utica, New York to Bakersfield, California.

## *III. Historical Perspective*

Prior to the establishment of Federal Student Aid as a Performance Based Organization within the Department of Education, the federal student aid programs were challenged with oversight and management issues, high student loan cohort default rates, and customers who were not satisfied with the service they were receiving. In 1990, the Government Accountability Office (GAO) found the federal student aid programs at high risk for fraud, waste, abuse and mismanagement. Financial management and internal controls were deemed deficient and unqualified audit opinions were not attainable. In 1990, student loan default rates had hit an all time high of 22.4 per cent. Customer satisfaction scores were not even measured, but if they had been, they would not have been positive.

Federal Student Aid, with its specific statutory mandate, authorities, and flexibilities, was created to effect change. We demand and expect breakthrough performance and innovation from both our own employees and from our contractors that results in higher efficiency, greater productivity and a more satisfied customer. We are transforming our workforce and culture to be highly effective by: 1) ensuring clarity of vision, mission and values; 2) ensuring that staff at all levels firmly understand their individual and inter-dependent roles in attaining the vision and mission; and 3) most importantly, requiring high performance and individual and organization accountability.

## *IV. Accomplishments/Progress vs. Historical Perspective*

### *A. High Risk Removal and Clean Audits*

We are particularly proud of the Department's and Federal Student Aid's achievement of a major President's Management Agenda (PMA), GAO, and departmental objective of reducing the vulnerability of the federal student aid programs to fraud, waste, abuse, and mismanagement.

As a result of Federal Student Aid's specific focus on reducing these vulnerabilities and our clear and sustained demonstration of results, in January of 2005, GAO removed the federal student aid programs from its High Risk List. Additionally, in March 2005, we achieved "all green" status on the PMA Scorecard used by the Office of Management and Budget (OMB) for monitoring agency progress and status. We have received unqualified audit opinions since Fiscal Year 2002 with no material weaknesses noted since Fiscal Year 2003.

### *B. Default Rate Reductions and Default Management*

We continue to make meaningful progress on reducing student loan default rates. On September 19, 2005, the Secretary announced that the 2004 cohort default rate was 4.5 percent, an all-time low and a dramatic 80 percent reduction from the high of 22.4 percent in 1990. Additionally, the outstanding combined student loan portfolio for both the Federal Family Education Loan (FFEL) and Direct Loan programs has grown from \$65 billion in 1990 to nearly \$402 billion in 2005. As the outstanding portfolio has grown an astounding 518 percent over 15 years, the defaulted loan share has decreased from nearly 17 percent of the portfolio in 1990 to just over 6 percent in 2005.

### *C. Default Recoveries and Collection Costs*

As noted earlier, Federal Student Aid contracts with private-sector providers for our major business functions. One of these key business functions is the collection of defaulted loans that were made by, or assigned to, the Department of Education. Today, Federal Student Aid is the largest debt collection outsourcer in the federal government. We have approximately \$18 billion in defaulted student loans currently under management with 17 contractors, including five small businesses through set-aside contracts. Our most recent contracts have several performance-based evaluation measures, making the contracts models for performance-based contracting in the federal government.

Over the past several years, we have dramatically increased the recovery of defaulted dollars while significantly reducing the cost of that recovery. While yearly defaulted loan recoveries have increased from \$38 million in 1993 to an estimated \$1.8 billion in 2006 (47 times that of 1993), related collection costs have been reduced more than 50 percent since 1993; from 33 cents for every dollar collected to about 15 cents.

### *D. Direct Operating Cost Reductions*

Federal Student Aid's ability to manage and control operating expenses is based on a philosophy of sound fiscal management and continuous process improvement practices that increase productivity and operational efficiencies as well as innovation in our products, services and supporting technologies. This has allowed us to successfully manage dramatically increased workloads and control and contain budgetary impact. Since Fiscal Year 2000, applications for federal student aid (the FAFSA) have increased 13 percent, the number of loans has increased 63 percent, Federal Pell grant recipients have increased 30 percent; and collection accounts under our management have increased 6 percent, all without corresponding increases in our operating expenses or staffing levels. In fact, we continue to shrink our direct operating expenses as a portion of Federal Student Aid's overall administrative budget, down from 54 percent in Fiscal Year 2000 to 44 percent in Fiscal Year 2006, and we are operating at a staffing level 15 percent below that of Fiscal Year 2000. We measure the unit cost for all of our key delivery areas and annually set new performance targets for reduction, while maintaining or increasing the effectiveness in those areas.

One notable example is the reduction in the direct unit cost for processing applications for federal student aid (the FAFSA), with more than 90 percent of applications submitted electronically rather than by paper. Our award winning electronic student aid application, FAFSA on the Web, not only provides families with an efficient and customer focused electronic application process, but also results in reduced costs saving approximately \$27 million annually in processing, printing and postage costs.

We continue to develop and use performance-based contracts to reengineer and operate our student aid application, loan servicing, and loan collection business functions and systems. We have retooled our largest contracts in the past several years so that taxpayers will save more than one billion dollars over the period of the agreements.

### *E. Customer Satisfaction*

Independently collected customer satisfaction scores for our electronic FAFSA are comparable to corporations such as UPS, Mercedes Benz (DaimlerChrysler), and Amazon.com; Direct Loan Servicing scores are better than Wachovia Bank and similar financial services entities; Pell Grant and Direct Loan originations compare favorably to E-Trade.

In addition, the Federal Student Aid Ombudsman, in its statutorily mandated customer advocate role, recently provided assistance to its 100,000th customer.

### *V. Program Changes: Benefits to Students and Borrowers*

Mr. Chairman, allow me now to specifically respond to your request that I comment on the impact of the Deficit Reduction Act on access by students to the federal

student aid programs. The relevant section of the Deficit Reduction Act is the Higher Education Reconciliation Act of 2005, or the HERA. Included in the HERA were several provisions that directly address the issue of access by needy students and their families to our programs.

#### *A. ACG and SMART Grants*

The most obvious of the HERA provisions that increase access to the programs was the creation of two new grant programs that, in addition to providing increased grant funding to Federal Pell Grant recipients, address other issues of great importance to the nation. For students who complete a rigorous high school program of study, the Academic Competitiveness Grant, or ACG, Program provides additional funds of up to \$750 to students for their first academic year of a degree program and up to \$1,300 for their second academic year. This is in addition to Pell Grant money students are already receiving.

The National Science and Mathematics Access to Retain Talent Grant Program, or the SMART Grant, provides up to \$4,000 per year in new grant funding to students who are majoring in math, science, technology, computer science, and in certain critical foreign languages. These programs will help to encourage more students to take rigorous high school courses and to pursue these challenging majors to help ensure our nation's security and economic competitiveness.

These programs will provide \$790 million in additional student aid to students for the 2006-2007 academic year and \$4.5 billion over the next five years. Nationwide, we estimate that approximately 500,000 students will be eligible to receive ACG and SMART Grants for the 2006-2007 award year.

Secretary Spellings has taken a personal role in ensuring that the new grant programs are deployed on time so that eligible students are provided additional grant funding for the new school year that has just begun, or will soon begin, across the country.

The improved operational, management and performance capabilities of Federal Student Aid that I described earlier enabled the Department and Federal Student Aid to implement, in collaboration with the states and our college and university partners, the two new grant programs in just five short months after they were enacted by the HERA.

I would note that, to date, 552,562 potentially eligible ACG students have provided information to us so that their eligibility can be determined and funds delivered by their school. 58,670 of these students are from California and 5,683 are from Colorado. Thus far, schools have drawn down \$5.5 million to fund SMART grants to an estimated 2,900 students.

#### *B. Other HERA Provisions*

The HERA, of course, included other changes to the federal student aid programs. Some of these HERA changes, such as increased loan limits and expanded loan forgiveness were included in the Administration's Fiscal Year 2006 Budget. The changes related to the student loan programs make them more efficient and cost-effective vehicles for helping students finance postsecondary education. In fact, much of the additional student aid funding included in the Pell Grant Program, the two new grant programs, and the increases in loan limits, resulted from these cost savings.

Specifically, the following HERA provisions directly increase access for students and their families to the student aid programs:

- the new ACG and SMART Grants discussed earlier;
- increased annual loan limits in the FFEL and Direct Loan programs;
- eligibility of graduate students for PLUS Loans;
- reduced loan origination fees;
- the inclusion of additional expenses in a student's "cost of attendance" for the purpose of determining the student's eligibility for federal student aid;
- changes to the formulas for calculating a student's expected family contribution and thus increasing a student's eligibility for federal student aid;
- further simplification in determining eligibility for students from low income families including consideration of the receipt of other federal means tested benefit programs;
- active duty military personnel are now considered independent of their parents for determining eligibility for federal student aid;
- changes in the treatment of certain assets (small businesses, tuition savings plans, etc.) for determining eligibility for federal student aid; and
- modification of the "drug conviction" student eligibility requirement to clarify that only offenses that occurred while the student was receiving federal student aid would result in ineligibility.

Other important benefits provided to students and borrowers by the HERA, although not directly related to increased access are the following:

- expanded loan forgiveness for highly qualified math, science, and special education teachers serving low-income communities;
- new loan repayment deferment for active-duty military personnel;
- loan discharges based on identity theft;
- reduced number of on-time payments a borrower who has defaulted on his or her loan must make before “rehabilitating” the loan;
- changes to the return of Title IV funds rules so that some students do not need to repay as much in grant funds when they withdraw from school; and
- increased borrower control over loans used to meet remaining institutional charges when a student withdraws.

#### *VI. Cost Reduction in the Federal Student Loan Programs*

Additionally, in response to your request that I address issues related to cost reductions in the federal student loan programs, I first refer you to my earlier remarks about Federal Student Aid’s mandate. As stated earlier, ensuring fair and effective oversight is an overriding focus of Federal Student Aid. This oversight means that not only do we do everything we can to make sure that these important student aid dollars go only to students who have met the statutory eligibility requirements, but also that our delivery partners comply with all requirements and that they perform their fiduciary responsibilities properly. These partners include, in addition to schools and colleges, the lenders, secondary markets, and guaranty agencies that help us deliver more than \$43 billion annually in student loan funds under the FFEL Program. Among the activities and tools that Federal Student Aid uses to ensure FFEL partner compliance are on-site program compliance reviews, review of independent audited financial statements, performance scorecards and benchmarks, and data analysis and interrogation to identify potential risk areas for further review.

Of course, the HERA legislation included a number of student loan cost savings provisions that, as noted earlier, helped fund increases in the Pell Grant Program, the two new grant programs, and increased loan limits in the FFEL and Direct Loan programs. Those provisions include the:

- recapture of excess interest paid to FFEL lenders;
- placement of restrictions on “school lenders”;
- further limitation on special allowance payments for loans made under the “9.5 percent” rule;
- reductions in default insurance paid to FFEL lenders;
- requirement for default fee to be deposited into a guaranty agency’s federal fund; and
- restrictions on a guaranty agency’s use of consolidation as a collections tool.

#### *VII. Closing*

Finally, as you know, the Secretary’s Commission on the Future of Higher Education recently approved its final report, which will be formally presented to the Secretary later this month for her review and appropriate actions. I know she looks forward to working with you, Mr. Chairman, Congresswoman Musgrave and other higher education leaders across the country to continue this dialogue on how to become more responsive to the needs of students, parents, educators and the business community.

Mr. Chairman, in closing I would like to summarize by restating that Federal Student Aid, under the leadership of Secretary Spellings has, and will continue to, effectively and efficiently administer the federal student aid programs in accordance with the statutory and regulatory requirements. We will do so with pride in our accomplishments as the government’s first Performance-Based Organization and we will continue to meet our objectives of providing students and families with a world-class student aid delivery system with focus on reduced costs, rigorous oversight and superior customer service.

I am honored to be part of Secretary Spellings’ team at the Department of Education. Federal Student Aid’s goal is to ensure that all eligible students and families can benefit from federally supported financial assistance for postsecondary education and we champion that goal and its value to our society.

On behalf of the Secretary, the Department and the Federal Student Aid staff, thank you for the opportunity to testify today.

I am pleased to answer any questions you may have.

Chairman MCKEON. Thank you very much.

Ms. DeMuth.

**STATEMENT OF DEBRA L. DEMUTH, DIRECTOR, COLLEGE  
ACCESS NETWORK**

Ms. DEMUTH. Good morning, Mr. Chairman, Congresswoman Musgrave. Thank you for this opportunity to testify about Colorado's efforts to make higher education more accessible and affordable.

College Access Network is a division of the Colorado Department of Higher Education and it is the designated guarantor of student loans in the State of Colorado.

Colorado faces three fundamental issues. Students need to be better prepared to succeed in college. The rising cost of education is putting additional demands on financial aid resources, and families need to have knowledge of and access to the resources available.

Colorado not only recognized that it needed to improve in these areas but has already put a number of initiatives in place to move Colorado in the right direction.

I will outline some of these today that support the changes made under the Deficit Reduction Act.

The College in Colorado Scholarship was established to reward high need students who work hard to be academically prepared for a college education. Students must sign up in the 8th and 9th grades, maintain a 2.5 GPA and complete a rigorous curriculum of classes.

In the first 6 months, we have collected nearly 6000 applications. This scholarship complements the grants that Ms. Shaw just discussed under the Deficit Reduction Act.

In addition, launched in 2004, the College in Colorado Web site serves as a one-stop shop for students wishing to further their education past high school.

CollegeInColorado.org resources include the career center, which helps students determine which careers best fit their interests and goals, the academic planning section which outlines Colorado's higher education admission requirements and helps students plan for them. The college search section, which offers information about Colorado and out-of-state higher education institutions. The financial aid section which describes available grants, scholarships work study and loans, and the pre-collegiate partnerships component which highlights a statewide network of resources to help Colorado middle and high school students plan, apply and pay for college.

Nearly 550,000 people have visited CollegeInColorado.org in 2005, and visits in 2006 are on track to exceed that, with more than 400,000 visitors through July of this year.

Nearly 10,000 students have applied to college through CollegeInColorado.org since it was launched in 2002.

College Access Network is honored to be one of just five state guaranty agencies that won approval to operate under Voluntary Flexible Agreements or VFAs. VFAs are designed to reward guarantee agencies for results and performance, and allows them to test innovative ways to improve the program for students and parents.

Under our VFA approved in 2004, College Access Network has implemented innovative approaches to help borrowers avoid defaulting on their student loans.

Working in partnership with the U.S. Department of Education, Colorado received approval to focus our efforts on delinquency prevention, and to shift our funding from default collection to collection efforts associated with keeping the borrower loans in good standing and out of default.

College Access Network found that it is much more effective to use trained counselors to work intensively with borrowers, to avoid default in the first place.

Lenders have agreed to provide notification of default up to 60 days earlier than required by law, to allow early intervention and maximize the time available to assist borrowers in knowing their options and developing a plan that addresses their financial constraints.

If a borrower does default, the College Access Network outreach counselors focus on working with borrowers to rehabilitate their loans.

Under our VFA, a borrower can reestablish good standing by making 9 monthly on-time payments. This significantly increased our success in getting loans rehabilitated and keeping the borrowers out of default, in contrast to requiring 12 monthly on-time payments.

The alternative for borrowers is to consolidate out of default. We found, in Colorado, that 50 percent of our borrowers, that consolidated out of default actually would go into redefault. Under our VFA, we limited the defaulted loans that we could consolidate.

College Access Network has decreased its cohort default rate from over 6 percent in 1998 to a draft rate of 2.7 percent in 2004.

Both the shortening of the rehabilitation timeframe to 9 months and the reduction in revenue a guarantee agency can receive on consolidating loans out of default were incorporated into the Deficit Reduction Act.

This is a great example of Congress, Federal Government and state government working together for program improvement. At College Access Network, we share your goal of increasing access to higher education by reducing the financial hurdles students and families face.

We look forward to continuing to work with the committee and the U.S. Department of Education to make college a reality for students.

[The prepared statement Ms. DeMuth follows:]

**Prepared Statement of Debra L. DeMuth, Director, College Access Network and CollegeInvest**

Good morning Mr. Chairman and Congresswoman Musgrave. Thank you for this opportunity to testify about Colorado's efforts to make higher education more accessible and affordable and the impact of the Deficit Reduction Act.

College Access Network and CollegeInvest are both divisions of the Colorado Department of Higher Education. I serve as director of both entities, which were created by the Colorado General Assembly in 1979. College Access Network is the designated guarantor of student loans for the State of Colorado, with nearly \$15 billion in loans under the Federal Family Education Loan Program (FFELP). CollegeInvest provides low-cost student and parent loans and the only 529 college savings plans that combine federal tax advantages with a Colorado state income tax deduction for

all contributions. Although they both are affiliated with the State of Colorado, College Access Network and CollegeInvest operate without any subsidies from the state. In fact, revenue from the two entities supports various initiatives to improve access to higher education opportunities for Colorado residents. Specifically, CollegeInvest provides more than \$500,000 a year in scholarships and college savings accounts while the Colorado Access Network provides \$300,000 in college scholarships annually through participating higher education institutions. In addition, both entities have contributed to funding a \$75 million scholarship fund—the College In Colorado Scholarship.

In Colorado, intense interest has been focused on the issue of access to higher education opportunities, in part due to what is known as the “Colorado paradox.” While Colorado ranks near the top of all states for the number of college-educated adults, it ranks near the bottom in sending Colorado kids to college. While some states send nearly 60 percent of high school freshman to college within four years, in Colorado only 39 percent of high school freshman go on to college within that timeframe. When it comes to low-income or minority students, the numbers are especially sobering. Only 9 percent of the state’s college-age Latino males are enrolled in college and Colorado ranks in the bottom quartile when it comes to sending low-income students to college.

When the Deficit Reduction Act was enacted, much was written about its upsides and downsides for higher education. At the time, CollegeInvest noted that the law’s impacts varied depending on one’s specific circumstances and the longer term impacts of some of the changes are unknown. However, three fundamental issues remain true: students need to be better prepared to succeed in college, the rising cost of education is putting additional demands on financial aid resources, and families need to have knowledge of, and access to the resources available.

Colorado has not only recognized that it needs to improve in these areas but it has already put a number of initiatives in place to move Colorado in the right direction. I will outline some of those today that support the changes made under the Deficit Reduction Act.

#### *College In Colorado Scholarship*

Established in 2005, the goals of the College In Colorado Scholarship are to reward high need students who work hard to be academically prepared for a college education. Students sign up in the 8th and 9th grades, and agree to maintain a 2.5 GPA and complete a rigorous curriculum of classes established by the Colorado Commission on Higher Education. If they are Pell-eligible, they receive up to \$1,500 per year toward their cost of education for up to 5 years. While in college they must continue to maintain satisfactory academic progress and a 2.0 GPA.

This program was initially funded with \$50 million contribution from CollegeInvest, and subsequently received \$25 million from the College Access Network. In the first six months, we have collected nearly 6,000 applications from high school students committing to the requirements of this program. The College In Colorado scholarship will work well with and complement the Academic Competitiveness Grant created under the Deficit Reduction Act.

#### *College Access Initiative*

The College Access Initiative provision in the Deficit Reduction Act calls for each guaranty agency to provide access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Web sites, and other available services. I am pleased to say that Colorado is ahead of the curve in this area, thanks to the College In Colorado statewide initiative.

Launched in 2004, College In Colorado serves as a “one-stop shop” for students wishing to further their education past high school. A Web site ([www.CollegeInColorado.org](http://www.CollegeInColorado.org)) provides resources to address the hurdles that Colorado students face when contemplating college: primarily the lack of financial resources, academic preparation and information.

CollegeInColorado.org resources include the Career Center, which helps students determine which careers best fit their interests and goals; the Academic Planning section, which outlines Colorado’s Higher Education Admission Requirements and helps students plan for them; the College Search section, which offers information about Colorado and out-of-state higher education institutions; the Financial Aid section, which describes available grants, scholarships, work study and loans, and provides a calculator to help students compare their expected income for a chosen occupation to the amount of student loan debt they may accrue; and the Pre-Collegiate Partnerships component, which highlights a statewide network of resources to help Colorado middle and high school students plan, apply and pay for college.

College In Colorado is currently making some improvements to the Web site, including a comprehensive career and curriculum update and a re-structuring of the home page to make it more inviting, flexible and easier to navigate. These changes will help ensure that when someone visits CollegeInColorado.org with a question about planning, applying or paying for college, they will immediately know where to go for answers.

Nearly 550,000 people visited CollegeInColorado.org in 2005 and visits in 2006 are on track to exceed that, with more than 400,000 visitors through July of this year. Nearly 10,000 students have applied to college through CollegeInColorado.org since it was launched in 2002.

*Enhancements to Guarantee Agency Effectiveness*

College Access Network is honored to be one of just five state guaranty agencies that won approval to operate under a Voluntary Flexible Agreement (VFA). VFAs are designed to reward Guarantee Agencies for results and performance and allows them to test innovative ways to improve the program for students and parents. Under our VFA, approved in 2004, College Access Network has implemented innovative approaches to help borrowers avoid defaulting on their student loans. Working in partnership with the U.S Department of Education, Colorado received approval to focus our efforts on delinquency prevention, and to shift our funding from default collection efforts to results associated with keeping borrower loans in good standing and out of default. College Access Network found that it is more effective to use trained counselors to work intensively with borrowers to avoid default in the first place. Lenders have agreed to provide notification of defaults up to 60 days earlier than required to allow early intervention and maximize the time available to assist the borrowers in knowing their options and developing a plan that addresses their financial constraints.

Once a borrower does default, the College Access Network outreach counselors focus on working with borrowers to rehabilitate their loans. Under our VFA, a borrower can reestablish good standing by making 9 monthly on-time payments. This significantly increased our success in getting loans rehabilitated and keeping borrowers out of default in contrast to requiring 12 monthly on-time payments. The alternative for borrowers is to consolidate out of default. We found that 50% of borrowers that consolidated out of default would redefault. In partnership with the Department of Education, under our VFA we limited the defaulted loans that we would consolidate. Our efforts and funding are based on our success in rehabilitating the loans. Thanks in part to these strategies; College Access Network was able to decrease its cohort default rate from over 6% in 1998 to a draft cohort rate of 2.7% in 2004.

Both the shortening of the rehabilitation timeframe to 9 months and the reduction in revenue a guarantee agency can receive on consolidating loans out of default were incorporated into the Deficit Reduction Act. This is a great example of congress, federal government, and state government working together for program improvement. We appreciate the U.S. Department of Education's efforts to partner with us to continue to identify new ways of improving the program.

At College Access Network and CollegeInvest we share your goal of increasing access to higher education by reducing financial hurdles students and families may face. We look forward to continue working with you and the U.S. Department of Education to make college a reality for more students.

Chairman MCKEON. Thank you very much.  
Dr. Liddell.

**STATEMENT OF DR. MARILYNN LIDDELL, PRESIDENT, AIMS  
COMMUNITY COLLEGE**

Dr. LIDDELL. Thank you very much, Mr. Chairman, and Congresswoman Musgrave. I appreciate you allowing me to come here to bring this down to the local level from the state level and the national level.

As you know, community colleges have two rather distinct characteristics that separate us from our university colleagues.

First, we focus on undergraduate teaching and learning rather than graduate training and research, and also the community college mission embraces open access.

In light of these factors, then I would like to share with you the story about our financial aid realities at Aims Community College. total financial aid recipients increased to 52.2 percent in last year's award year of 2005-2006. Some of the demographics about our students include 54 percent are female, 59 percent are full-time students, many of those working full time as well so that they can afford to go to school.

32 percent plan to transfer to a 4-year college or university. More than half of them come right here to UNC. 36 percent are enrolled in career and technical education programs, leading to a certificate or associate of applied science.

In 2004-2005, almost half of the financial aid recipients had incomes of under 15,000. 1349 of these students received Pell grants in an average amount of \$2350. They borrowed an average of \$2298 in subsidized Federal direct student loans, and an average of \$2690 in unsubsidized Federal direct loans, for a combined yearly average loan debt of \$2415.

Despite this, for last year, our default draft rate is under 10 percent.

Pell grant recipients for 2004-2005, and 2005-2006, were 43 percent first generation students. Loan recipients for the same were 41 percent first generation.

In 2004-2005, 17.6 percent of Pell grant recipients were employed full time and 14.1 percent were employed part time.

Direct loan recipients were employed at higher rates in both years. For 2004-2005, 24.2 percent of loan recipients were employed full time and 19.4 percent were employed part time.

For 2005-2006, that increased to 30.3 percent full time and 20.4 percent part time. Total borrowers of subsidized and unsubsidized Federal student loans increased by 15 percent from 2004-2005 to 2005-2006.

In its 2006 report, Grants For Students: What They Do, Why They Work, the Educational Policy Institute documents that an increase in available grant aid will help to recruit low-income students. These students, we find, process the cost-benefit ratio of postsecondary education differently than more affluent youth, and consequently are more in need of financial inducements to encourage enrolling and remaining in school.

The larger question is where will such grant aid come from. Many priorities vie for Federal funding as the Federal deficit continues to rise.

However, the deficit reduction act we believe is a positive one in as much as it limits the profit levels for lenders and only might be negative in terms of loss of the fluctuating percent of interest.

The financial aid community is also supportive of the concept that most dollars should be channeled to neediest students. Colorado, as you know, is one of the states that has seen significant decreases in funding for the past years.

That has caused our university colleagues to raise tuition significantly, in some cases 25 to 30 percent.

As tuition levels rise and more restrictive enrollment policies are implemented at these 4-year institutions, we probably will see a corresponding increase in the number of low and middle-income

students enrolling in community colleges. Indeed, we have seen evidence of that this year as our enrollments are up 5 percent.

The picture at Aims Community College is reflected nationally. Nationwide, community colleges enroll 45 percent of all students in American higher education. 59 percent are women, and community colleges enroll 55 percent of all Hispanics attending college in the United States.

66 percent of our funding comes from state and local sources. We know that preparation for college plays a key role in access and success, but student financial aid is also essential.

In 2004, college enrollment in the year following high school graduation was 35 percent of those with incomes below 10,000 and 75 percent, or more than twice that, for those with incomes between 75,000 and a 100,000.

In 2005-2006, more than 2 million community college students received \$4.3 billion in Pell grants. Despite this support and low tuition, our students are not immune from debt, and in 2004, 28 percent of community college associate degree recipients graduated with an average debt amount of \$5800.

Given this, community colleges, and indeed, all of American higher education support an increase in the maximum Pell grant to \$4500 per year. We know that the maximum Pell grant increased dramatically in the last decade but we encourage Congress to consider the maximum grant being frozen at \$4,050 for the last 4 years.

We have managed to keep our in-district tuition at Aims flat for the past 3 years and we hope to be able to continue to do that by having Federal and state subsidies for our students.

Last, I would be remiss if I did not mention two community college priorities. One was certainly reflected in statements by my colleagues about the academic competitiveness grant. We would like to see part-time students made eligible for the new academic competitiveness grants, and also certificate students should receive these grants.

Finally, helping students fund higher education must become and remain a top priority at the Federal level, if we wish to continue to provide access for students from all economic levels.

Increases in grant assistance to the neediest students are a means to that end and modest increases in loan limits will be of some help, but ethically, we must ask the question, how much debt can we encourage or allow students to accumulate in exchange for higher education?

Thank you. I also will be happy to answer any questions.  
[The presentation submitted by Ms. Liddell follows:]

**Presentation Submitted by Dr. Marilyn Liddell, President, Aims  
Community College**

*Aims Community College*

Greeley, Colorado

Fall 2006 enrollment: 4518

*Aims Student Profile:*

Students at Aims Community College are increasingly applying for and receiving financial assistance. In award year 2004-05, 45.7 percent of students received some form of aid. Total aid recipients increased to 52.2 percent in award year 2005-06.

*Who are our students? Here are the demographics:*

- Almost 54 percent are female.
- 19 percent are 18-24.
- 72 percent are white; 18.8 percent are Hispanic.
- 59 percent are full-time students.
- 84 percent are degree seekers.
- 32 percent plan to transfer to a four-year college or university.
- 36 are enrolled in career and technical education programs, leading to a certificate or Associate of Applied Science degree.

*Income and Financial Aid:*

- In 2004-05, almost half of the 2406 financial aid recipients had income under \$15,000.
- 1349 of these students received Pell Grants in an average amount of \$2350.
- They borrowed an average of \$2298 in subsidized Federal Direct Student Loans and an average of \$2690 in unsubsidized Federal Direct Student Loans for a combined yearly average loan debt of \$2415.

*Additional demographic information:*

- Pell Grant recipients for 2004-05 and 2005-06 were 43 percent first generation.
- Loan recipients for 2004-05 were 41 percent first generation. That number increased to 42 percent for 2005-06.
- In 2004-05, 17.6 percent of Pell Grant recipients were employed full-time; 14.1 percent were employed part-time. For 2005-06 full-time employed Pell recipients declined to 15.6 percent; part-time employed also declined to 12.9 percent.
- Direct Loan recipients were employed at a higher rate in both years. For 2004-05, 24.2 percent of loan recipients were employed full-time and 19.4 percent were employed part-time. Numbers for 2005-06 increased to 30.3 percent employed full-time and 20.4 percent employed part-time.
- Total borrowers of subsidized and unsubsidized federal student loans increased by 15 percent from 2004-05 to 2005-06. Many students are eligible for both loans, but make different decisions about how to use that eligibility. Some accept only subsidized loans so they will not be responsible for any interest payment or accumulation while they are in school. Others need the entire amount they can borrow to meet school and living costs, so accept both loans.

*The Local View:*

In its 2006 report; Grants for Students: What They Do, Why They Work; the Educational Policy Institute documents that an increase in available grant aid will help to recruit low-income students. These students process the cost-benefit ratio of post-secondary education differently than more affluent youth, and consequently are more in need of financial inducements to encourage enrolling and remaining in college.

The larger question is where such grant aid will come from. Many priorities vie for federal funding as the federal deficit continues to rise. However reducing financial aid to offset deficit budget will severely restrict access to post-secondary education for lower socio-economic classes. That in turn will cyclically reduce the ability of future generations to earn sustainable wages, causing an additional drain on state funding for welfare.

State budgets are also dependent on state economies and changing ideas of how financial aid funds should be allocated to schools. One encouraging concept in review now for Colorado is that of determining aid allocations based on the need levels of students at each eligible institution rather than on an archaic entitlement model.

The financial aid community is supportive of the concept that the most dollars should be channeled to the neediest students. Institutional financial aid needs continued expansion, perhaps in conjunction with student support services to minority and low-income students. Institutional priorities such as recruiting and retention of qualified faculty, administrators and other personnel; maintenance of physical plant facilities, and development of new initiatives that respond to changing clientele needs and priorities also compete for dollars. As tuition levels rise and more restrictive enrollment policies are implemented at four-year institutions, we may see a corresponding increase in the number of low-and middle-income students enrolling in community colleges. College Foundations and other philanthropic organizations recognize the need for student funds as well, but can't fill the void on their own.

*The National Picture:*

The picture at Aims Community College is reflected nationally. Nationwide, community colleges enroll 45% of all the students in American higher education. 59%

are women, and community colleges enroll 55% of all the Hispanics attending college in the U.S. 66% of our funding comes from state and local sources.

We know that preparation for college plays a key role in access and success, but student financial aid is also essential. In 2004, college enrollment in the year following high school graduation was 35% for those with incomes below \$10,000. 75% or more than twice that, for those with incomes between \$75,000 and \$100,000. High school graduates of high ability and low incomes are more likely to enroll in college than those with low ability and high incomes.

In 2005-06, more than 2 million community college students received \$4.3 billion in Pell grants. Despite this support and our low tuitions, our students are not immune from debt: in 2004, 28% of community college associate degree recipients graduated with debt; the average amount was about \$5,880.

Given this, community colleges and indeed all of American higher education support an increase in the maximum Pell Grant to \$4,500. A significant increase in the Pell Grant was recently endorsed by Secretary Spellings's Commission on the Future of Higher Education, which called for a substantial increase in need-based financial aid generally.

The maximum Pell Grant increased dramatically in the last decade, from \$2,340 in Fiscal Year (FY) 1995 to \$4,000 in FY 2002. Unfortunately, the maximum grant has been frozen at \$4,050 the last four years. This is at a time when, due largely to funding reductions by state and local sources, community colleges tuitions have been increased.

We all know that we have a large federal deficit, but we also know that there is no better investment than higher education. In 2005, the average high school diploma holder earned \$31,600, the average associate degree holder earned \$ 40,600, and the average B.A. holder garnered \$51,000. For millions of students, federal student aid makes these degrees possible.

Lastly, I would be remiss were I not to mention two community colleges priorities: Part-time students should be made eligible for the new Academic Competitiveness Grants, which needs a legislative change, and certificate students should receive these grants, which we believe is required by law but which has not been implemented by the Department of Education.

Helping students fund higher education must become and remain a top priority at the federal level if we wish to continue to provide access to college for students from all economic levels. Increases in grant assistance to the neediest students are a means to that end. Modest increases in loan limits will be of some help as well, but ethically how much debt should we encourage or allow students to accumulate in exchange for higher education?

AIMS JUNIOR COLLEGE DISTRICT SCHEDULE OF FEDERAL FUNDS  
[FY02 through FY06]

Federal Grantor/Pass-Through Grantor/Program or Cluster Title	Federal CFDA Number	Fiscal Year					Total	Aims Department or Program	Funding Notes
		D02	03	04	05	06			
<b>U.S. Department of Education:</b>									
Pell Grant Program	84-063	1,953,366	2,418,356	2,758,822	3,173,441	2,794,918	13,098,903	Financial Aid Program	Funding Ongoing
Supplemental Educational Opportunity Grants	84-007	77,099	75,967	89,812	76,362	82,885	402,125	Financial Aid Program	Funding Ongoing
College Work-Study Program	84-033	31,202	26,023	22,254	49,996	34,370	163,845	Financial Aid Program	Funding Ongoing
Federal Direct Student Loans	84-268	2,200,237	2,871,658	3,780,736	4,621,033	5,242,404	18,716,068	Financial Aid Program	Funding Ongoing
English Language Acquisition—Career Ladder	84-195		104,939	302,199	375,422	279,195	1,061,755	Ft. Lupton Campus MECEC	Continuing in FY07
Child Care Access Means Parents in School	84-335	15,036	26,811			26,000	67,847	Student Support Services	Continuing in FY07
Trio Student Support Services	84-042					146,290	146,290		Continuing in FY07
Title V—Strengthening Hispanic Serving Institutions	84-031	411,725	327,201	309,162	281,672	247,317	1,577,077	Ft. Lupton Campus Strengthening Institutions	Ended FY06
Title III—Strengthening Institutions	84-031		219,799	268,700	391,914	449,016	1,329,429		Continuing in FY07
Passed through Colorado Community Colleges: Perkins Vocational Education—Basic Grants to States:	84-048	353,400	298,894	309,912	303,874	344,596	1,610,676	Career & Technical Ed	Continuing in FY07
School to Career Partnership	84-278	153,071	615				153,686		Ended in FY03
School to Career Lighthouse	84-278	38,947	79				39,026		Ended in FY03
Passed through Colorado Department of Education: Teacher Quality Enhancement—UNC	84-336			21,244	28,493	5,945	55,682	Education Dept.	Ended in FY06
Teacher Quality Enhancement—Arapahoe CC	84-336			50,956	65,237		116,193	Education Dept.	Ended in FY05
Passed through the University of Colorado: English Language Acquisition—CO-TOP*ELA	84-195			6,498	8,472	3,539	18,509	Education Dept.	Continuing in FY07
Migrant Education—CU CAMP	84-149		23,357	4,474			27,831		Ended in FY04
Passed through University of Northern Colorado: Disabilities	84-333			27,545	31,868	11,326	70,739	Supplemental Instruction	Ended in FY06
<b>Total U.S. Department of Education</b>		5,234,083	6,393,699	7,952,314	9,407,784	9,667,801	38,655,681		



**AIMS JUNIOR COLLEGE DISTRICT SCHEDULE OF FEDERAL FUNDS—Continued**  
 [FY02 through FY06]

Federal Grantor/Pass-Through Grantor/Program or Cluster Title	Federal CFDA Number	Fiscal Year					Aims Department or Program	Funding Notes
		D02	03	04	05	06		
<b>U.S. Small Business Administration:</b>								
Passed through Colorado Office of Business Development:								
Small Business Development Center .....	59.037	37,792	39,812	35,015	37,226	36,294	186,139	Continuing in FY07
<b>Total Federal Funds .....</b>		5,655,914	6,779,560	8,372,354	10,017,213	10,154,603	40,979,644	

Chairman MCKEON. Thank you very much.

Well, I really appreciate your testimony. I have chaired the Subcommittee on Higher Education for almost the last 12 years. You can see how much financial aid has increased during that time. I have had a big concern that students are graduating from college with a mortgage and no house. Ten years ago, they were graduating with an average loan of \$8000. Now it has gone up to about \$18,000, and heading up. And a few years ago, I introduced a bill, because of the concern I had for the ever-increasing cost of education, and I had my head handed to me because I was told that is cost controls.

But what seems to be happening is—and I know some people, the schools say this is not so—but the more the Federal financial aid goes up, the more tuition seems to go up. And I know they say there's no correlation, but it is a big coincidence that that seems to happen.

And so I have had a real concern about accessibility, about affordability, and about accountability in higher education, and that is what we really focused on and have been focusing on, trying to get this reauthorized, the Higher Education Act, and it seems like when I introduced that bill, there was a little bit of a lowering but then we are right back up to ever-increasing costs again, and even though we keep putting more in, we have increased the Pell grant level. We have given a lot more students Pell grants and we have increased other Federal financial aid. The costs keep going up.

So I think it is a problem that the Federal Government, the state government, parents, students, schools, everybody has to come together, to work together on this problem, because we need to do a better job of educating all of our population or we are not going to be able to compete on the worldwide scope.

I took a congressional group to China last year and saw what they are doing over there, and it is scary, and we need to do all we can to be able to meet that competition.

Ms. SHAW, the Deficit Reduction Act has been referred to, by some, as a raid on student aid. It seems like education really shouldn't be a partisan issue; but it is. Back in Washington, everything is partisan. And opponents have called this a raid on student aid.

I would just like to ask you the question: Will students receive any less aid after the Deficit Reduction Act than they did before the Deficit Reduction Act?

Ms. SHAW. Mr. Chairman, I think the clear answer to that is no. The HERA actually increased the amount of aid students and families will receive. The two new grant programs alone are going to provide \$790 million in the first year and \$4.5 billion over the 5 year period after that. The annual loan increase has already been mentioned and the reduction in the loan fees. The changes in the needs analysis formulas will increase eligibility, especially grant eligibility to the neediest of students and families. So the answer to that is no.

Chairman MCKEON. Thank you. It is good to have that on the record because that was my feeling, that was my understanding when we worked on this bill, what we tried to accomplish. Also when we increased aid in the first part, you know, the first 2 years,

increasing aid, because we found that most students drop out in the first 2 years.

Dr. Liddell, I spend a lot of time visiting schools. I visit a lot of community colleges. In California, the average age of the community college—we are not looking at, for the most part, 18, 19-year-old kids. The average age is up into the thirties.

How is it at your school?

Dr. LIDDELL. Oh, one of the statistics i didn't give you, Mr. Chairman, was that about 20 percent, right under 20 percent of our students are between 18 and 24. Our mean age for students at Aims is now about 25. It's dropped a little over the past four or 5 years, but we're right at 25. So you're correct. Many of them have families as well.

Chairman MCKEON. I think that is a good thing. We used to title the subcommittee as Postsecondary Education, Training, and Lifelong Learning. I thought that they made me Chairman because it took me 30 years to get through college. But I think it is important that people understand, the way our society is operating now, you can't get a static education, whether it be 2 years, 4 years, or even a PhD, and then figure you are done for life. Life is changing, situations are changing so rapidly, that people are going to have to continue their education, and community colleges seem to be one of the best places where they can come back and pick up a class or pick up a degree that will prepare them for a different job or a different career, because their job or career has ended.

So you are really performing a vital service here, in addition to giving a jump-start to students. I understand your tuition for your community colleges here is not a lot lower than for here, Northern Colorado, but in California the community college tuition is much lower, and I know that 50 percent of students start at a community college, and that is good, because for the most part it is less expensive, they can stay at home, and they can go there and then move on to a university for a further degree. So you are performing a great service.

Dr. LIDDELL. Thank you.

Chairman MCKEON. Ms. Musgrave.

Ms. MUSGRAVE. Thank you, Mr. Chairman.

Ms. Shaw, you talked about the default rate and I believe you addressed it over a 14-year period, how it had gone down dramatically. Could you tell me what has taken place to cause this shift.

Ms. SHAW. Actually, it is a number of things, and my colleague, here, Ms. DeMuth, mentioned one of them. A critical shift in emphasis on default prevention rather than default collection, and all the participants in the programs, schools, lenders, guaranty agencies, certainly the Department, all work together, and have worked together, to shift that focus on default prevention.

We have many outreach efforts like our student loan repayment symposium, default prevention days. We have a partnership on debt management with the National Council of Higher Education, and there has been an incredible, and it is required now, emphasis on entrance and exit counseling for students, where when they are entering school, make sure they understand their Federal student aid and what that means, and as they are leaving school, they understand their obligation with respect to repaying their loan debts.

In addition, there has been much better oversight, over the years, by the Department, leading to the removal of quite a few schools over the years. Since 1998, I believe it has been in the neighborhood of a 1000 schools from the programs for failure to comply with Title 4 regulations.

So it is a number of those things, and those things all working together, that have led to the decrease.

Ms. MUSGRAVE. Thank you very much.

Ms. DeMuth, are you aware of Colorado taxpayers are currently funding the education of illegal immigrants? And what are the documentation requirements that are needed to apply for financial aid in Colorado?

Ms. DEMUTH. I'm not aware that there are a significant number of illegal immigrants that are receiving financial aid. The programs that we run are the Federal programs. Under FFEL, they are required to complete the FAFSA application process, which goes through and documents their legal residency within the United States.

As the previous panel discussed, in addition, the state legislature recently passed Bill 1023, that puts additional burden on us to verify that a student applying for the College Opportunity Fund actually is a legal resident of the United States, and we have implemented additional procedures, in addition to the FAFSA process, to ensure that those students are in fact legal residents.

Ms. MUSGRAVE. I just would like to ask you, Dr. Liddell, could you talk about the unique role that community colleges play in expanding educational opportunities.

Dr. LIDDELL. I would be glad to do that. Community colleges' mission, part of their mission, as I mentioned earlier, is certainly open access. Its particularly strong draw is for those students who might not be academically or economically prepared to go on to a 4-year institution.

One of our great strengths, I believe, is flexibility in programs. We are able to adapt and adopt curriculum at a much faster pace than perhaps our 4-year colleagues are able to do, and so some of the training that we provide for career and technical programs is absolutely outstanding.

I would highlight, for example, Congresswoman, you mentioned the nursing hearings you had not too long ago. That is one of the very big strengths of community colleges.

For example, we have a nursing program where nurses who go through a 2-year program can in fact sit for their RN after the period of time. We like to send a lot of them over here to UNC, and other places, to get their bachelor's and master's degree, so that they can come back and teach for us, because that is a huge issue.

But community colleges provide an absolutely wonderful chance for those students who might not be prepared, in any way, to go to university first, and also, as Mr. Chairman mentioned earlier, a wonderful opportunity for adults who perhaps are downsized or outsized, or their career track is no longer there because of the changing dynamics of the labor force, to come back to community college and have an opportunity to get a whole new career.

Ms. MUSGRAVE. Thank you very much.

Dr. LIDDELL. Thank you.

Ms. MUSGRAVE. Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Our time is up. I want to thank you for your being here, and for your comments, and we are going to, when we get back to Washington, try to finish up the reauthorization that we have been working on for 4 years.

I don't know if we are going to have the time to be able to get it finished up. We passed the reauthorization in the House but the Senate hasn't had time yet to get theirs done. So we are running out of time for this session.

But it is very important that we get this done. Education is so important, to be able to solve the problems, both the individual's problems and the Nation's problems, and I commend you for the work that you are doing to make this possible.

I want to commend you, Ms. Musgrave, for letting us come here and holding this hearing, for arranging with the school. I met with the president this morning, earlier, and she gave me a little insight into the size of the school, \$3800 a year tuition. That is fantastic. They are doing a great job of keeping the cost of education down. That is very important.

And I appreciate the leadership that you are providing, both on the committee, and here, in your community, on education.

With that, I would ask if you have anything further that you would like to add for the record, that we will have the record open for 14 days, and we would appreciate any other comments you have, and encourage you to work closely with us as we go through the full reauthorization process, whether it be before the end of the year or early next year. We would appreciate all the input that you have for us on that process.

With that, we will adjourn this hearing. Thank you.

[Whereupon, at 10:22 a.m., the committee was adjourned.]

[The prepared statement of the National Association for College Admission Counseling follows:]

**Prepared Statement of the National Association for College Admission Counseling (NACAC)**

On behalf of the National Association for College Admission Counseling (NACAC), representing more than 9,000 college counseling and admission professionals, this testimony is submitted regarding in-state tuition for undocumented students. NACAC urges the committee to recognize the success of in-state tuition programs in ten states across the country, and urge immediate action on behalf of hundreds of thousands of undocumented children and young adults who have been effectively excluded from educational opportunity by an inconsistency in federal law. The Senate's immigration reform bill (S 2611) includes a legislative remedy (also known as the DREAM Act) that would allow states to provide in-state tuition for qualified undocumented students. Legislation sponsored by Congressman Lincoln Diaz-Balart (HR 5131) provides the same remedy.

By holding hearings like the one in Greeley, Colorado at this late stage of the legislative process, the House of Representatives has ensured that tens of thousands of students who have worked hard to graduate from high school in 2006 will effectively have no educational opportunity beyond high school. This lack of opportunity means real financial and academic losses to the states in which these students reside.

As counselors and admission officers, NACAC members regularly encounter undocumented students who are prepared and willing to pursue higher education, but are unable to do so because of legal and financial barriers. These conditions represent a loss to the student, the college or university where they would have attended, and ultimately to American society.

As established by the Supreme Court decision in Plyer v. Doe (1982), these children have broken no law and are entitled to elementary and secondary education

in this country. Provisions in S 2611, as well as the American Dream Act (HR 5131, sponsored by Rep. Lincoln Diaz-Balart) would allow these students to pursue higher education and become productive adults in the US workforce by providing clear, legal paths to higher education and to citizenship.

The DREAM Act was conceived as a remedy for undocumented students who have legally attended and graduated from high school in this country, but for whom the law provided no clear paths to higher education or citizenship. The DREAM Act has enjoyed bipartisan support in the past, and similar legislation is in effect in ten states (CA, IL, KS, NE, NM, NY, OK, TX, UT and WA), with successful results.

Passage of the DREAM Act as part of comprehensive immigration reform or stand-alone legislation would mean real benefits to thousands of students, the institutions they attend, the states in which they live, and the country as a whole. The DREAM Act would:

*Restore Authority to the States*

The Supreme Court ruled in 1982 that undocumented minors are not responsible for their immigration status and are therefore entitled to elementary and secondary education. The DREAM Act would repeal a federal law that discourages states from providing in-state tuition to these students. This contradiction represents a wasted investment for the states, who have educated these students through high school but can't benefit from their tuition dollars or contributions to the economy or tax revenue.

*Increase Educated Workforce*

Over 80% of the 23 million jobs that will be created in the next 10 years will require postsecondary education (ACE, 2004). Currently, only 36% of all 18-24 year olds are enrolled in postsecondary education (NCES, 2004). Providing clear, legal paths to higher education, citizenship and employment for undocumented students will have a significant positive impact on the workforce of the future. Additionally, research shows that a more educated workforce leads to increased earnings (and subsequent increase in state and federal tax return), lower crime and poverty rates, and fewer demands on public assistance programs.

*Improve Access to College*

The DREAM Act would allow qualified undocumented students to be eligible for in-state tuition in the states where they graduated high school, providing they meet certain criteria, including national service and pursuing legal status. Currently thousands of undocumented students graduate from high school each year, many at the top of their class, who are prepared for and interested in pursuing higher education but cannot afford to do so. Because undocumented students are ineligible for state or federal financial aid, allowing their eligibility for in-state tuition would significantly improve college access. Research shows that access to financial aid improves college access for all students, from all socioeconomic backgrounds. Eligibility for in-state tuition would be the only financial aid option for undocumented students.

*Increase Revenue for the States*

Ten states have passed legislation similar to the DREAM Act, and have not seen an influx of immigration, the displacement of other students in higher education, or a drain on the education system, as many critics have feared. The Texas Higher Education Coordinating Board conducted a study of their undocumented student population after enacting a law similar to the DREAM Act in 2001. The study showed a significant increase in postsecondary enrollment of these students—nearly 10 times greater from 2001 to 2004, with most enrolling at community colleges. While the percentage undergraduate students in Texas that are undocumented is small (although Texas has the second largest population of undocumented individuals in the country), the study still showed several thousand students paying tuition to state institutions that would not have prior to the 2001 passage of the law.

NACAC members are disappointed that the House of Representatives has chosen to hold field hearings rather than proceed with conference on S 2611 and HR 4437, or with progress on The American Dream Act, HR 5131. While field hearings are going on, another graduating class of qualified undocumented students is barred from giving back to the American society in which they grew up; state institutions nationwide will lose thousands in lost tuition dollars; and the American workforce of the future is diminished.

NACAC urges Congress to proceed to conference with the Senate on comprehensive immigration reform, and support the DREAM Act provisions contained in S 2611. Please contact NACAC's director of public policy, David Hawkins at

dhawkins@nacac.com with any questions on college access and the educational and economic benefits of the DREAM Act.

