

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 2, DAY 1, AFTERNOON
February 14, 2022

On the 14th day of February, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

PROCEEDINGS

MS. JEFFRIES: Good afternoon and welcome back from your lunch break. I hope you all got a chance to relax and take a few minutes for yourself, and welcome back to those who are doing the live stream. I'm facilitator Cindy Jeffries. I'll be facilitating the session this afternoon. So, I'm not seeing any hands. David.

MR. SOCOLOW: Hi. Before we start the next topic.

MS. JEFFRIES: Well, let me just say this. We're going to go back to the section on gainful or on Ability to Benefit just so everybody knows, so go ahead.

MR. SOCOLOW: Okay well, I guess what I was going to ask is, in light of the direct questions that we heard during, the morning, I would like to request caucus with the Department in the weeks between this session and the one in March to talk about those issues on Ability to Benefit.

MS. JEFFRIES: We will discuss that with the Department, David, and let you all know, okay, what transpires with that. I appreciate that request. Let me just make one point clear here on protocols that we didn't we didn't cover real clearly this morning that during this week, unless otherwise indicated, we are only taking temperature checks. We are not taking consensus checks. Okay? So the temperature check is just so the Department gets a can get a feel of what you all feel about what's out there, what's proposed after all the discussion and hearing, you know, your questions, comments and concerns. So, they are temperature checks, not consensus. Alright? We most likely won't get into any consensus checks,

for the most part until week three. Okay? That being said, I'm going to bring us back to the Ability to Benefit, specifically section 668.157 where there were five, I believe it was five negotiators, who were thumbs down on that. The Department would like to have a conversation with you to get more specific and a better understanding of what your concerns are and what they need to consider. Okay? So, the five people that I that we noted that were thumbs down, that's not to say others can't weigh in, but we do want to hear from the five people for sure. Okay? We had Will, Barmak, David, Kelli, and Beverly, so it doesn't matter to me who wants to start this conversation. Will, thanks for jumping up there. Appreciate it.

MR. DURDEN: Yeah, let's get going. And with apologies, I just got a little confused on the order when we were doing that and coming back to the temperature check. I actually do want to very briefly go back to 668.156. Sorry to slow us down, but I'll be quick. That was on the state plan and I do have thumbs down reservations on the state process as-is, looking at the success rate. I talked about sticking to just the 1 percent cap instead of the success rate. If we have to stick with the success rate, I would like to entertain conversation on lowering that 95 percent. I would worry that a state would get to 94 percent, which is still in an educational parlance, and be shut down because they were 1 percent off on that success rate. So, I would like to see a lower success rate, maybe starting at 80 percent. I wanted to make sure that comment was there and that I still have a thumbs down on 1.56, and nothing to add on 157 at this time. I'll defer to others.

MS. JEFFRIES: Okay, thank you. Thank you, Will for that. We will make a note of that so that when we come back around in the third session, that and the Department has that. David, you have your hand up.

MR. SOCOLOW: Well, I mean, the Department is asking for more clarification on why I indicated a thumbs down temperature check on 157. I submitted a paper on February 1st. The Department's written response that Greg was reading seems like not to answer the question that's asked. It's not whether IET is the only way to do career pathways for adults without a high school diploma, but whether it's the best, most effective and evidence-based way that would therefore serve as an excellent way to meet the spirit of the statute from 2014, adding career pathways as a limiting factor for all ATB eligibility. And in my view, and in the Department's own view, it is the best practice. It is the gold standard. And so it doesn't seem that the Department has engaged with that question. They've engaged with a different question. Is it the only way? That's not the point I'm making. In addition, as several people pointed out, the language is inconsistent about applying strong standards to all three methods. I think the Department indicated a willingness to fix that, but there's two places that have to get fixed. And then as it relates to not only the IET, but also the whole concept of partnership and also of defining what's a valid high school diploma. I think the language in six needs to be strengthened. So, there's a number of issues that have been raised. And again, I and then the Department have now raised a number of additional issues relative to the approval process. So yeah, I think it would be good to have a caucus on this between sessions next

week or the week after, but even better next week so that we can pick up some speed and get a better understanding of one another between now and March 14th.

MS. JEFFRIES: Okay, thank you for that, David. And just to remind the negotiators that caucuses take place during the negotiating sessions themselves. Work groups are the potential for outside of the negotiating sessions, so I just want to clarify that.

MR. SOCOLOW: Okay. Excuse me. Then I amend my request and ask instead for a workgroup.

MS. JEFFRIES: Thank you. Appreciate it. Okay. Kelli.

MS. PERRY: Mine's a little simpler than that. In 157(a), it says an institution demonstrates to the Secretary that a student is enrolled in an eligible career pathways program and then it has in, you know, comma as required under 668.1563(a) of this part by documenting that. I just think that in between those commas, that reference to 668.156(a)(3) needs to be removed because my understanding of the section was that this is what institutions were going to be held to as it related to the career pathway programs, regardless of how the student was eligible to participate. If that's not the case, and I'm misunderstanding what this means, then I guess I need an explanation of what the purpose of 157 is.

MS. JEFFRIES: Okay, Greg, I see you're off mute.

MR. MARTIN: No, that's okay. I'm sorry, can I ask to have that rephrased again? I didn't-

MS. MORELLI: This is Denise. I [inaudible], Kelli, you're correct. 157 applies to whether or not it's a state process or non-state process career pathways program.

MS. PERRY: So, right, so [inaudible] clarify. I just think that "as required under 668.156(a)(3)" needs to be removed from A. Because this is meant to cover everything, regardless of how the student is eligible. I think.

MS. JEFFRIES: Okay. Alright, thank you, Kelli, for that. Mike, I should note that we picked right up where we had left off with Mike Lanouette being in for proprietary schools instead of Brad Adams, and that Will Durden is in for two-year school institutions in place of Dr. Anne Kress.

MR. LANOUILLE: Thank you. I did want to go on the record, I did vote thumbs down. I don't know if I was on the list when you went through that. I did vote thumbs down for several reasons. Some of the reasons brought up by David with respect to the inconsistent standards with the importance of including the IET. But there was an additional bit of clarification I'd like on one 156(3). The draft language indicates 1 percent of enrollment for each institution participating, but I'm pretty sure I heard in the narrative 1 percent of the state or something like that, so I'd like to get a little more clarification on that. And regardless of clarification, it does appear that 1 percent seems to be seems to be pretty arbitrary and would certainly exclude smaller, smaller schools. So, I'd like to get some more clarification on that.

MS. JEFFRIES: Okay.

MR. MARTIN: I just want to clarify that, as written, it's by institution. We did ask for comment on whether or not that's appropriate, or whether it should be statewide, but as written, it was by institution. Thank you, so you would be suggesting another percentage greater than one percent? Just to be clear?

MR. LANOUILLE: Yes, yes, I think so.

MS. JEFFRIES: Yes. Thank you both for that. Barmak and Beverly, you were also both thumbs down. Could we get some further clarification from both of you?

MR. NASSIRIAN: I was following David's lead. It strikes me that his points are very persuasive, and I'd like them addressed.

MS. JEFFRIES: Okay. Thank you, Barmak. Beverly, are you here? Is Beverly here?

MS. SCHOFIELD: Beverly had to leave the table. She'll be back around [inaudible].

MS. JEFFRIES: Okay, so. Greg, do you have some additional questions or anything further that you would like to get clarified on this, knowing that we don't know from Beverly until she's back around 2:00, but you can certainly reach out to her and get that as well.

MR. MARTIN: No, not at this point. We have, I thank everybody for their comments. We'll go back and take a look at what's in A with respect to the reference to 160, 156(a)(3), the IET issue we'll take back and discuss as well. So, I am

aware of the feelings several negotiators have around that, I will take that back, and I thank everybody for providing their reasons for voting thumbs down. I don't want to say voting, indicating that they had some issues with 157. So, we'll take that back and see what we can do with that. No, that's all I have for ATB.

MS. JEFFRIES: Okay, appreciate it. One last call for comment on ATB on anything that hasn't already been stated. Okay. Alright, with that, we are going to move on to the next agenda item, which is administrative capabilities, issue paper number two. Greg, I'm going to turn it over to you to walk through the document with the negotiators, please.

MR. MARTIN: Okay. And I'll wait for the-

MS. JEFFRIES: There you go, Vanessa, thank you.

MR. MARTIN: Thank you, Vanessa. Appreciate that. So, we are looking at issue paper number two: standards of administrative capability. And again, you have your regulatory statutory cites up there for you. And so, well, we'll just begin with some of the changes. Here, we have put in, just to review to begin and continue to participate in any Title IV HEA program, the institution must demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution-- and we're skipping to where our changes begin with paragraph H. So, we'll start there, provides adequate financial aid counseling with clear and accurate information to eligible students who

apply for title IV HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information related to the source of the amount of each type of aid offered, the method by which the aid is determined and disbursed, delivered or applied to a student's account, and the rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. The information includes the institution's refund policy, requirements for treatment of title IV HEA program funds, when a student withdraws under 668.22, its standards of satisfactory progress and other conditions that may alter the student's aid package. I'm going to stop there with a couple of comments here. We, in response to the negotiator comments, have suggested additional language here. That's with "clear and accurate information" in H. To be clear, we believe this will provide important additional information to support students' informed decision making, so we have added there with clear and accurate information. And I just want to make that point that we had heard the concerns of negotiators with respect to that. Any concerns about H? As I said, just that one addition there, but I'll open it up to see if anybody has any concerns about that because I do want to go through it by paragraph.

MS. JEFFRIES: Thank you, Greg. Vanessa, if you could stop share for just a minute. Before we take hands, I need to make a couple of announcements here. Debbie Cochran is in for state agencies, Brad Adams is in for proprietary schools. Dr. Anne Kress is joining back at the table with two-year colleges. Ashley Schofield is in for minority serving agencies

and Jessica Ranucci is back at the table for legal aid. With that, Amanda, you are up first.

MS. MARTINEZ: Okay, great. I want to pose a question. I understand in H, there's this added line of "clear and accurate information", and I'm still a little bit concerned that's still broad and vague. And you know, the Department goes further into offering suggestions of what information should be provided. But it can go further and be improved. So, my question is why did the Department determine that, including in my proposal, there was just additional minimum information to be included, such as basic information like college costs, which include direct and indirect college costs, a distinction between grants and loans. Just a basic calculation of net price of what that student is expected to pay once the financial aid is taken out into account. Why was that not appropriate in, at least, this subpart when it comes to improving financial aid counseling? That I mean, all those items that I mentioned are in line with the information provided here under subpart H.

MR. MARTIN: Well, I mean, I will say that this the administrative capability, a rule that that that references clear and accurate information and what's been provided to the student. We have other areas of the regulations that that do address this. Institutions are already required, as a matter of publishing consumer information, to give students information on costs of the program. We do require under our disbursement rules that an institution inform the student through what is normally considered, what most schools would call an award letter, but basically it's just a notice by our

regulations called a notice that would inform the student the type of aid he or she is to receive, when they can expect to receive it, whether it's loans. So that is that is already covered as far as the standardizing of financial aid offers. And that being useful to this end, we do provide the college financing plan to institutions, and we encourage institutions to use it. If you've looked at our college financing plan that we have out there, I'm pretty proud of it, understanding that it's a one size fits all and that there are constraints associated with that. We don't have the statutory authority to mandate that everybody use that. But many schools do, and to the extent that they do, it makes it very clear what is loans, what is grants, what the students are required to pay out of pocket. So, I think we addressed those those areas in many parts of the reg. And, so, you know, building redundancies in here. We tried to make it very clear that we require the schools to make that information clear and to make it and to make it accurate and, and we are and we do reference here the source type of aid often so as far as like whether it's loans or grants, I think that's already that's already covered here and again stressed in the in the cash management rules, the method that students will receive the aid, the rights and responsibilities students have to it. So, I would argue that we have a lot of that already. However, that doesn't mean that we're not amenable to looking at other suggestions, but I would open it up to hear what anybody has to say about it.

MS. JEFFRIES: Thanks, Amanda and Greg. Jessica.

MS. RANUCCI: I think I just want to echo what Amanda said, particularly as to the grants versus loans. I do think,

just in a commonsense way, like it is not an administratively capable financial aid office if it cannot explain to students the difference between a grant and a loan. So, I do think that at least with that piece, this is an appropriate place to put it, even if the actual disclosures are somewhere else in the regulation. And I appreciate what you're saying that it may be included in the language, but I thought Debbie had a proposal that was maybe even clearer. That was just something simple, like the nature of the aid and whether it must be earned or repaid. So, I'd encourage the Department to think about something really to clarify that point here, because again, that's how people end up in our office is they have loans they didn't know were loans.

MS. JEFFRIES: Alright, thank you. Alright, Greg, I don't see any more hands on that piece. Do you want to move on?

MR. MARTIN: I'm trying to think of how to do a temperature check. We're only dealing with 668.116. I mean, I know we just did the one thing, but I'd like to go by paragraph because it makes it easier than arbitrarily going back and saying, well, let's do it for three paragraphs or four paragraphs. Why don't we just see what people have to say about H. Let's take a temperature check to see how people feel about it as it is with the understanding that some folks would like to see some clarifications.

MS. JEFFRIES: Okay. Can you define so that the negotiators are all clear as well as the public? 668.16 H, is that what you're doing?

MR. MARTIN: Yes, we're doing you know what, though, before we do that- I want to make sure I've covered all of it, and I don't think I did. So, let's hold off on that for a moment. I'm just trying to make sure we don't do too much in here at once, so we'll hold off on that. And I don't think I went through the entirety of H. So, I want to go down to three, when we talk about the rights and responsibilities of the student with respect to enrollment at the institution that received financial aid. The information includes the institution's refund policy requirements under 668.22, the standards of satisfactory progress and other conditions that may alter the student's package. So, yeah, I want to make sure we read all of that. So yeah, with that in mind, then what we're looking at is H, and that goes down to right there. Just to make sure I have all that right down to where I began, so just down to the bottom of where we say may alter the student's aid package.

MS. JEFFRIES: Okay, so it would be paragraph H 1, 2, and 3 inclusive. Okay, so can we see your show of thumbs as to where the committee is on this temperature check for that section only? Okay. Alright, I see one thumbs down. Amanda, is there anything else you'd like to add?

MS. MARTINEZ: No, nothing, I'd like to add. I think there definitely can be improvements, and I think the Education Department should really consider. I think the response of 'we already have, we don't want to create redundancies.' I think clearly this problem is large enough that clearly there needs to be better alignment, even more redundancies and even more clear guidance at a federal level

in these regs as many times as we can to actually try to close barriers in the specific part, it's related to financing. It's related to basic information that students are receiving. So whatever parts we can include that in, I think redundancy is actually a better thing than no redundancy and we want to patch up the holes. So, I think if the Department could go back and really look at Debbie's comments and again, our comments with this in mind, that would be helpful.

MS. JEFFRIES: Okay.

MR. MARTIN: And just to clarify, I think what I'm hearing here is that, especially those of you who've seen students come to you with the problems, it is very important for students to know. Maybe in addition to how they were packaged, when we look at what a student actually has received, it's very clear what portion of that for that student is grants and what loans they have that need to be repaid. Right. So that's a very important thing you want to see stressed here because some students may be seeking help and saying that they didn't know that- that wasn't that wasn't evident to them. So, that's reiterated by schools, even in addition to any award letter, or we could call a funding notice, a student receives.

MS. JEFFRIES: Thank you, Sam.

MS. VEEDER: Thank you, I just wanted to kind of make a counterpoint to that. I mean, we many of the schools do use the template that is already provided, and even if we don't, there are already significant disclosure requirements that we do provide to students that, you know, explain this. It

doesn't mean that they always read it, no matter how many times we send them notices annually about how much they borrowed so far and where they are at and that it's a loan. I'm not sure that more regulations are the answer to the problem you described Jessica.

MS. JEFFRIES: Thank you, Sam. Jessica, you want to respond to that?

MS. RANUCCI: Yeah, I was just going to say quickly, you know, I'm not I'm not a financial aid professional. I defer to the Department, but to the extent that the Department thinks that this is an important thing to emphasize. I think that the grant and loan distinction is one of the places where students are just really hurt the most. So, I'd encourage the Department when considering its own priorities to consider that.

MS. JEFFRIES: Okay. Thank you. Amanda, you have something new to add?

MS. MARTINEZ: Besides this point about distinction between grants and loans, I think generally a minimum requirement institutions to be able to communicate to their students is college costs, both direct and indirect, so they have control over that. That should be something provided to students. And really, I want to demystify for students when they're getting this information, potentially maybe the assumption that they don't read it. I'm not sure if that's the right assumption. For instance, I recently read a story about a Latina high school student that did have when she entered college all this paperwork, and she was running through it by

herself. She's a first generation college student. Her family only speaks Spanish, so she's trying to communicate and understand the information to herself and then also trying to go to the high school. But the high school doesn't really understand and is trying to communicate with the institution. The institution didn't have sufficient counseling, and that's a separate problem, like financial aid counseling, and being able to respond to students and their needs when they're at the moment in time they're trying to make their decision. So really, that shows a lot of gaps in systems, right? It depends if you're a student that luckily you're going to an institution that has all of those services available to you at the right time, that you're fully equipped with a family that understands all those terms that think, hopefully, maybe you got a financial aid award letter that uses this encouraging financing plan. We don't really know how many institutions actually use that. As you said, it just encourages, not necessarily required. So, it's varied, right? So, the opportunity is not equal. So really, this is a direct cost. Both direct and indirect should be at least a minimum requirement, their distinction, and then also the grants, the distinction between grant, aid, and loans. And also, I guess I'll put this in the chat, but I would really like a data request for the college financing plan and how many institutions are actually taking up this example or the model.

MR. MARTIN: I'll take that back. I don't know that we have that data anywhere. I know outside entities have queried schools as to whether they've whether they use it or not. I think NASFAA may have done that at one time, but I'll go and take that back. I do want to say one thing with respect

to direct and indirect costs. Certainly, the discussion we're having here is a is a very good one, and any way that we can get students to understand their aid is in a better way is good. Whenever I step back from financial aid and try to look at it from the perspective of somebody who doesn't have any background in it at all, I think it becomes a little bit difficult sometimes to think about this concept of direct and indirect costs because it's something you kind of know intrinsically if you deal with it. But I think it's very confusing to students because the indirect costs, you know, aren't billed to them. They don't necessarily owe that in the form of a of tuition fee to the school. Yet it's part of the way that their aid was determined, and it becomes very difficult, I think, to try to convey all these things to students without adding levels of complication. I struggle with that quite a bit. Yes, it does affect disproportionately lower income students, first generation college students and those kinds of those families. But I think it's a lot of families, and this runs the gamut. For instance, they wonder why if they got an outside scholarship, their aid gets changed because it's considered estimated financial assistance. And people will say things to me like, why am I being punished for getting another source of aid? All these things become very difficult to explain to students in how they how they come together and form a package. Which is not to say that we shouldn't strive to do a better job. But it is a complicated thing, and I think we have to keep in mind as we think about regulations, think about disclosures that we make them clear, concise and helpful. And we don't confuse people further. But it is an inherently confusing thing. I tried to read my own

daughter's financial aid offer going back to the last year when we got it, and tried to view it in terms of somebody who didn't know anything about it. And I thought to myself, yeah, this is not easy to decipher, you know? And so I do understand that as we move forward here trying to think of ways that we can make these disclosures or this counseling, you know, useful as opposed to just requiring it. Okay, I'll stop there, and any other comments we have?

MS. JEFFRIES: Okay, thank you. Johnson, you'll be next. But I want to note that Yael Shavit is joining us at the table for state attorneys general.

Mr. Tyler: Hi, thank you. With respect to H and adding 'with clear and accurate information' below that in section three, the existing rule has to do with providing a refund policy. And this is, I know we're supposed to save a transcript withholding for Wednesday, but this is this is a large reason that people end up with institutional debt. They don't really understand the refund policy. And so anything that will help put more thought into providing information to students to avoid that would certainly be of great value to the institution as well as the student. So, I just wanted to add that.

MS. JEFFRIES: Thank you, Johnson, appreciate that. Yael.

MS. SHAVIT: Thank you. I wanted to go back to the question of the nature of the information that's conveyed to students. And Greg, I do appreciate your comment that it's complicated to convey the complexities of student aid to

students. But I think it's a Department imperative to ensure that we're doing that and, frankly, our obligation to students to make sure that their efforts to get an education don't result in financial ruin because they didn't understand what they were signing up for. And I wanted to note that, frankly, the complexities that you're pointing to conveying this information clearly and accurately emphasizes the importance of ensuring that the Department doing the work to ensure consistency in the manner that schools convey this information to students and that it's not left to the institutions on an institution-by-institution basis to do so. And to the point about students not reading the letters, I will tell you that I have myself interacted with probably hundreds of students, but our offices deal with you know a large number of students that end up in trouble because they didn't understand the aid. And by and large, it's not students who aren't reading their letters or trying to understand them. It's 18-year-olds who don't have the tools to and 18-year-olds that might come from families where they don't have familial support to understand it. It is not laziness or inattention- it's inability. And I think this is somewhere where the Department has an obligation to students and, frankly, to taxpayers as well to ensure the investment. But as to the issue of redundancy, I think that there are some elegant ways that redundancy can be both helpful and uncomplicated, including cross references to other areas and other regs where you may believe that there are more, more detailed descriptions of what information is required, where that's laid out. To the extent it's not laid out, I think it certainly could be laid out here, and if it's laid out elsewhere, I think a cross-reference might solve this

problem. But I do want to kind of blend the State AG voice to the importance of this issue and of specificity on this issue.

MR. MARTIN: I agree with you that we need to be we need to be mindful of what information we can convey to students. And I'll make one final go on record again as encouraging institutions to adopt the college financing plan where possible. As I said, I'm not going to go out there and say it's perfect in every respect, but we look at it every year when we make a concerted effort to craft it so that it's clear to students and provides them with a true picture of what their aid package will be. So, I'm very proud of it. I didn't do it myself, but I have had some contact with it and in reviewing it. So, I just want to go out there again and encourage the use of that form.

MS. JEFFRIES: Thanks, Greg, and all of the negotiators that spoke up. So that is section I. Did you cover everything in that?

MR. MARTIN: I believe I did.

MS. JEFFRIES: Okay, so you want to take-

MR. MARTIN: No, I didn't. Okay, so we're looking at I: provides adequate career services to eligible students who receive title IV HEA program assistance in determining whether an institution provides adequate career services. The Secretary considers the share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation, the number and distribution of career services staff, the career services the institution has published to students and the presence of institutional

partnerships with recruiters and employers who regularly hire graduates of the institution. And we also have here provides students with accessible clinical or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation within 45 days of the completion of required of required coursework. So, we have added additional factors here related to the types of career services that institutions public publicize to their students. We do not believe we should consider only job placement, and down here also reference again that we have maintained that we have the actual providing of the externship opportunity required for completion of the program. Again, the Department believes this is this is essential for students who are in a program where the where that clinical opportunity or externship is part of the program. It's one of the reasons why students would take that program because it is offered and we believe it's imperative that students actually be given the opportunity to complete that externship and have it provided by the school, not be something that the institution says to the student well, this is a required part of the program. We have seen this happen before. The student is required to go out and obtain the externship or clinical on their own and here we want to make certain that is the school offering this program. It's incumbent upon the school to also provide the internship or clinical opportunity.

MS. JEFFRIES: Vanessa, can we get you to please share the screen with that with section I so negotiators can see it. There you go. Thank you. No, section I. Scroll back up, please.

MS. MORELLI: I think Greg read I and J, so.

MS. JEFFRIES: Okay.

MS. MORELLI: So, I first.

MS. JEFFRIES: Thank you.

MR. MARTIN: I'm sorry. You know what, Denise, I did. I did read I and J. That was the problem. I think the problem with this is that J was difficult to see. I was struggling to find the J and just alighted it. So yes, it was I and J. Thank you.

MS. JEFFRIES: So, the discussion will be on section I and J. Barmak, you were first.

MR. NASSIRIAN: Yeah, I have issues with both I and J, but let's talk about I first, and then I'll come back to J when the time comes. I think you heard from several negotiators that the whole construct of the Department of Education judging the adequacy of career placement is problematic at multiple levels. And I don't think any of us object to the idea that if an institution is marketing itself, and again, we are here attempting to ensure good behavior. Institutions that make representations about jobs, about earnings, about career outcomes of their programs certainly should be held accountable to those promises. Most bad actors actually abuse those kinds of representations, and it's entirely appropriate for the Department to adjudicate that. But you know, honestly, this is almost meaningless. Greg, with all due respect, I have a lot of empathy for you because you struggled during the first session to describe how the

Department would make the determination of inadequacy. And some of us provided you language to suggest that the most concrete way for the Department to articulate what it's after and the most objective way for it to pursue anybody who does the wrong thing is to focus on what the institution promised and whether what it promised is being adequately delivered. So that's my first objection is just the platitude of just putting you have to have adequate services. It's neither meaningful on the front end nor particularly actionable in court. I don't think you would have much success enforcing it so it becomes a meaningless, just noise in the system. And then secondly, I really do think you need to specify, even if you were to say you're going to judge them on the basis of what they promised, what exactly you will look at. And it can't just be abstractions, like number and distribution of career services staff, which is again, I think we all understand what you're saying, but it's a subjective judgment nobody can articulate. You can't defend it in court. I think there are more specific, more concrete ways to get at what you're trying to get at. We don't disagree with where you're going, but this isn't the way to get there. Thank you.

MS. JEFFRIES: Thank you. Vanessa, you can take the screen down now, if you would please, your screen share. Thank you. Okay, Anne, you are next.

DR. KRESS: Sure. My question has, and I agree with everything Barmak just said, but my question has to do with J, and it's with the use of the word accessible. I'm a little concerned by the use of that term because within higher education, accessibility is typically aligned with ADA

accommodations. And here, I don't think that's how you're using accessible, but I do think it raises a red flag when you use that word in any Department of Education policy. So, if we're going to keep that in there, I would just strongly encourage the use of some other word.

MR. MARTIN: I will take that back. You're right, though, I want to point out we didn't use it within the context of ADA. We used it within the context of these opportunities are provided that that that the students actually get to them and take advantage of the opportunity. We have seen situations where what's being offered to the student is not reasonably accessible, given where the student lives and what measures the student has to go to to participate in that. But we'll take that. And also acknowledge Barmak's comment above.

MS. JEFFRIES: Thank you, and certainly, Anne, if you have any suggestions on how to reword that, please feel free to put it in the chat or submit it. Thank you. Marvin, you are next.

Mr. Smith: Yeah, just wanted to reiterate the support of Barmak's proposed language on career services that isn't here, but I have a question on J. Is this in particular trying to address gainful employment programs because there's a lot packed in here about accessible clinical and externship opportunities. Wasn't sure what the 45-day requirement meant and whether some type of program, a nursing program or a specialty program, that started in summer with 60 days after the end of a spring term, if that suddenly becomes questionable. I think that this would be easier to support if

it said gainful employment, but it seems like it might, well, I guess I'm just still trying to figure out the problem you're trying to solve with this particular one, J.

MR. MARTIN: The problem we're trying to solve with it is the existence of some programs where the- and what we're looking at here, just to be clear, is clinical or externship opportunities required for the completion of the credential or licensure. So, these are not just programs where there's an externship or internship available. These are required as part of the programs. The student cannot graduate until and unless this has been completed, and we have seen instances where either it's not offered at all, whereas it's required. But students are essentially expected to obtain this opportunity on their own, and they don't have the background or wherewithal to do that. And the other issue we see with it is a huge timeframe is going by where students have to complete the coursework, but because of the lack of availability of the externship or clinical aspect of the program, students are being required to wait for inordinate periods of time. And I could invite my counsel to respond, I think Denise might be able to add to what I've said there.

MS. MORELLI: I would just add, I do a lot of work in the field, so Greg's right, we're trying to plug the hole where we have students that know they'll be told they have to have an externship for the program. They either can't get one they carried for months and months. And then a lot of times they have to go on and quit the school because they need to get a job. They're put in provided externships that aren't even related to the program of study, so they're not

meaningful. So then, they get out and they can't actually work in the field because they don't have the requisite. So, that's we're trying to make sure that the schools are providing externships that are needed for the program so that the students can get out and get the job that they are expecting to get when they complete a program. So that's what we're trying to do here.

Mr. Smith: And not just gainful employment programs, but all programs?

MS. MORELLI: Programs that are requiring the externship for the credentials, so it would probably cover your nursing situation as well. I'd have to go back and talk to my colleagues on that, but it's the programs that are requiring the externship or completion of that program.

MS. JEFFRIES: Okay, thank you. Brad.

MR. ADAMS: Hi, thank you. I'll stick to I for the time being, and then I can get back in line on J. But I want to second Barmak's comments here, and both of us provided text, although different, somewhat similar in concept that I'll put back in the chat. But just having the word adequate is still vague and very undefined. You know, we do support the additional subset three, requiring an institution to offer career services consistent with what they publicize because institutions should be doing what they say they do. But the rest of this section is very problematic. I don't understand what it means on the number and distribution of career services staff. Or is the Department going to set some sort of metric here that they want us to hit? And what does the phrase

presence of institutional partnerships mean? Is having one institutional partnership enough, or is the Department looking for more? Maybe explain what is in one, two and four what you mean there?

MS. JEFFRIES: Okay, Greg, you took your mute off?

MR. MARTIN: Yeah, I just briefly, I mean, I know that there's no number in distribution of staff. We've not proposed any type of a formula here to hold schools accountable for, and I don't think we have. any intention of doing so. And I do realize that there is some area of room for interpretation, I should say when it comes to this. The intent is to give us the ability and authority to look at the schools, especially with schools where none of this is offered. Where institutions have clearly abrogated their responsibility to help students in this regard. So, I don't think anybody would want us to put into place some type of a metric to calculate this. But it does give us some way of holding the institution accountable, especially for those instances where we've seen this happen where no support in this area is given to students.

MR. ADAMS: Well, Greg, I would kindly request that you'd state that. Say, you know, you have to have support. None is unacceptable. Sorry, go ahead.

MR. MARTIN: Yeah, I get that. We do have a similar requirement for financial aid staffing. Some entities have put a staffing model in place, but the Department does not do that. And if we have ever written schools up for that, I would imagine it's in cases where it's pretty egregious. I don't

think we've ever gone to a school and said, you know, based on the way I'm looking at this, you've got three financial aid staff and I, representing the Department, believe you ought to have five. We've never done that. And the standard that applies to financial aid is moving that over here into offering career services. But I will say that I've heard your your thoughts on it, I will take that back.

MR. ADAMS: And thank you. I'll put the language in the chat that we submitted. Thank you.

MS. JEFFRIES: Thank you. Jamie.

MS. STUDLEY: Thank you very much. I agree wholeheartedly with Barmak that this seems an odd way to come at this issue, although I certainly agree that if there is misleadingness or failure to provide what's promised or committed, that the Department needs to be able to do that, and if it wants to include this example, fine. It is the way it's described here is really a quality issue that belongs in other hands, and if others are not doing their job, the Department has tools for that. I am told that professional and specialty accreditors, for the most part, specifically look at career services. Laura, the alternate, is available if you have questions about that. She's looked into it, and institutional accreditors look broadly at the question of career services as one element of student services. In any event, picking up on the last discussion, that notion of the number and distribution of staff is not really a good way to evaluate adequacy, anyway. And I appreciate your comments, Greg. The Secretary could consider the number or absence of staff if he or she wanted to without putting it into the

regulation. But putting it there, I think is confusing to the field. It makes Marvin and his colleagues wonder if they're supposed to be counting noses. I think there is a distinction between the previous one, financial aid, where the Department is in the best position to judge financial aid service provision, and career services, which is something else, and for many institutions, is an education program. So, I don't see an inconsistency between respecting the prior provision and considering a change in this one. Maybe it would be clearer for all of us. I'm going to double back to the basics right now. If Greg or you and/or Denise and your colleagues could tell us a little bit about how administrative capacity works, because this isn't saying the Department will review every school for career services. Do you do you look when something is triggered or there is an issue on an element like that? Or if there is a misleading, this issue that brings this to your attention? I think that might speak to some of the things that Marvin, Brad, and others were raised.

MS. JEFFRIES: Okay, thank you, Jamie. If you have if you want to put any of those questions into the chat, that would be most helpful. Jessica.

MS. RANUCCI: I just have a minor point on J, but I can hold it if we want to finish I and then go back.

MS. JEFFRIES: Oh, that's fine, I think a number of people are holding comments on J and there was a request to separate the two out. Greg, are you okay with that or?

MR. MARTIN: I am. Yeah, I apologize for the confusion before. It's just I don't know what it is with my

mind and Is and Js when it comes to regulation. They just kind of meld together sometimes. I was desperately searching for J and thought it was there, but I'm very thankful to Denise. Denise got my mind back there. So yes, we can look at them separately, that's not a problem. If we can look at what people have to say about I, and we'll move on to J.

MS. JEFFRIES: Okay. I don't see any more hands on I. The ones that were up went down, so I'm assuming those were for J. Do you want a temperature check on I or?

MR. MARTIN: Yeah, let's go ahead and do it. I know it's kind of small, but it keeps us going paragraph by paragraph.

MS. JEFFRIES: Okay, sounds good. So, if we could see a show of your thumbs on 668.16 section I, 1, 2, 3, and 4. I'm seeing I think three thumbs down, I believe. Okay.

MR. MARTIN: I think we have a pretty good idea. We already have a pretty good idea of why those people feel the way they do there, so I thank everybody for the very good conversation on that.

MS. JEFFRIES: Okay, thank you, everyone. Appreciate it. Alright. So, moving on to section J, and you weren't the only one who didn't see that Greg, because a lot of red and that bottom of the J always gets cut off by the underline. So, I'm right there with you.

MR. MARTIN: I've been looking at it for 30 years, so it should have been clear.

MS. JEFFRIES: Well, it happens. Alright. Jessica, your hand is up.

MS. RANUCCI: Thanks. This isn't just a minor point, but I don't understand the "related to" language. Obviously, the Department had a reason for adding it. I'd be curious to know what that is, but both Denise and Greg, when you were speaking, it sounded like you were really thinking about [inaudible] required for graduation or licensure. And is the idea that not all programs required for that would be related to the program? So, I just don't understand, so if you could clarify.

MS. MORELLI: Greg, I'll jump in. I think what Jessica related was an example that I was talking about before. We've seen situations where a student, let me say surge tech, and then the school puts them in an externship and all they're doing is filing medical billing kind of things. So that's what we're trying to get at. And if you have a different way to word that that'd be great. That's what I'm trying to get at with the "related to" so that it's actually related to the training. And not that they're just throwing them into some kind of job just so they can say they had a job where it actually isn't related to the training and what the credential they're trying to get is.

MS. RANUCCI: I think it just might need a clause rather than adjective.

MS. MORELLI: Okay. Anything in that area, just let us know we can come up with.

MS. JEFFRIES: Okay. I want to announce that Dr. Laura Rasar-King is in for accrediting agencies. Carolyn, you are up next.

MS. FAST: Wanted to say a quick word in support of including section J. I think it is a very important issue that comes up a lot for students who may find it really difficult to find an internship slot. Sometimes the institution actually puts the responsibility on the student to somehow figure out how to do an internship, and this puts students in a very difficult position. And in fact, in many cases, prevents them from graduating. And it's very frustrating for students who really did everything that they were supposed to do. But the institution let them down in that way.

MS. JEFFRIES: Thank you, Carolyn. Brad.

MR. ADAMS: Yes. So, the Department's changes here, I believe, are an improvement over what it had previously proposed. However, it still may be difficult for institutions to determine if they're meeting the standards set here. The Department wants the institutions to provide students with accessible clinical or externship opportunities. The word "accessible" typically means obtainable, but is the institutions need to put students in a position where they could reasonably hope to obtain a clinical externship opportunity? Is the Department looking for something more like some sort of guarantee of placement? Many programmatic accreditors, especially in healthcare, already require this practice. I think the Department still needs to consider building in some language so that labor market conditions are factored in. It might be fairly reasonable for institutions to

help line up externships. Those opportunities could dry up in a recession or during a pandemic. We know what just happened in nursing and hospital systems when they stopped accepting nursing students during COVID-19. But I'll drop some language that just adds the words "under the circumstances" to what's already there to kind of protect against the pandemic piece of this.

MS. JEFFRIES: Thank you, Brad.

MS. JEFFRIES: Laura.

MR. ADAMS: I guess, to my question, though, is can someone address what the Department may be looking for here, are they looking for a guarantee of placement?

MR. MARTIN: Certainly, if a student didn't meet the academic requirements, that's understandable and not something we're addressing here. But what this has to do with is where these are offered as part of a program. Often, schools advertise these opportunities because students rightly assume that a program that has an internship, externship or clinical opportunity is one that will help them to secure employment. Right? So, if I have an internship or something like that, that's going to give me an end towards getting a job, which it often does. So, if it's going to be advertised as part of the program, as we said here, required for completion or credential of licensure. You're training a student for this profession. It's required for part of that profession. Therefore, it is as integral to the program as any of the coursework the student takes. So, it needs to be there as we expect the coursework to be there. This has to be there as

well. So, we understand full well the effects of the pandemic and what effect it's had on society and the availability of many things. And so I think we have to acknowledge that. But also to understand that we are regulating here in general, not to the pandemic. And we are you know, on fairly firm ground here and saying that that if it's part of the program, it needs to be there. =If the student has met their side of the bargain by doing what they are supposed to do academically, and they've done everything they're supposed to do, and then there should be no impediment to that internship or externship opportunity based on the school saying, well, you know, we know that it's part of the program, but we can't find a place to place you or employers aren't out there or whatever because it has been marketed to the student as part of the program. So that's where we are with it. I'll let Denise add to that or say anything she wants to.

MS. MORELLI: No, I think you covered it Greg. Like I said, it's part of the program. The student needs it to graduate from the program to get the credential. So, we expect the institutions to provide those externships and provide meaningful ones. And the accessible question where students may be going to cities and public transportation and they provide a list of externships that are 50 miles away from the student or from school. Those are the situations where we're going to [inaudible] accessible. So, we need to revise that to not get it confused with ADA. But that's what we're looking for, if anybody has any additional thoughts on that language. But that's the situation we're dealing with. We're trying to deal with the word accessible.

Ms. JEFFRIES: Okay. Laura, you're next, but I just want to point out, Denise, your audio seems to be very distorted, so I don't know if you logged in with voice or not, but if you go to your private chat, Brady will work with you on that.

MS. MORELLI: Yeah, he was trying to. So, we'll see if I can. I may just have to call in and not be on video then. I will figure out how to do this.

MS. JEFFRIES: Okay, thank you. Alright. Laura, you are next.

DR. KING: Thanks. So I'm plus one to Greg's concerns. Absolutely. I think this is really critical and just really important to have in the regulations. I wanted to clarify something that concerns me about a potential other kind of iteration of this problem. So, in many programs that require clinicals, the clinicals are actually part of the required coursework. Or they're integrated throughout the required coursework. And what I have seen in some programs is that they are slow walking, providing the internship or whatever it is that's needed throughout the program so that it lengthens the program and potentially the cost of the program. And so it's not only following the completion of required coursework, it's actually if it's part of the required coursework, if that makes sense. And I don't want there to be a loophole that says that that would be allowable either because I think it could increase time and cost. So, I was thinking something like an "if then" statement. So, if the clinical or externship components are integrated into the required coursework and adequate clinical placements are not

available to students that may not increase program length by X time or X percent or something like that might be a way to address that. But I'm not a regulation writer. I just wanted to raise that issue.

MS. JEFFRIES: Okay, thank you. Alright, I don't see any further hands on section J. So why don't we go ahead. Greg, do you have what you need?

MR. MARTIN: I believe so. Yes, thank you very much.

MS. JEFFRIES: Okay, so you want to go ahead and take a quick temperature check on J to stay consistent with paragraphs?

MR. MARTIN: Yes, please.

MS. JEFFRIES: Okay. Alright. If I could kindly see the negotiators' thumbs. Okay, I'm seeing one thumb down, I believe. Is that correct? Anybody, okay.

MR. ADAMS: Yeah, you know, I made my comment. I'll think about it. It may not be substantial, so let me think about it. I may be a sideways.

MS. JEFFRIES: Okay. Alright.

MR. ADAMS: "Under the circumstances" would be helpful for us. It's not a yes/no, it's a yes. But you know, there could be another issue out there.

MS. JEFFRIES: Okay. Appreciate that statement, Brad. [Audio] Not sure what that was. There's a number of good suggestions in the chat as far as possibilities. I want to

remind the negotiators that in between sessions is a great time to develop some text of your own and send it in to the Department for consideration. Just to back that up in the chat, okay? So, with that, Greg, you want to move us on to K?

MR. MARTIN: K, correct, yes. And I see K coming up here, that's great. So, K is "disburse funds to students in a timely manner consistent with the with students needs as required in 34 CFR 668.164", that's subpart K, cash management. Violations of which may be assessed using student complaints, high rates of withdrawals attributable to delays and disbursements, disbursements delayed after the withdrawal date requirements in 34 CFR 668.22 B and C, disbursements delayed with the effect of ensuring an institution passes 90/10 or other methods. So, in response to the negotiators' suggestions, we have made this "students' needs" plural rather than student needs. We've also added the cross reference there to add to add clarity. So, entertain any comments related to paragraph K.

MS. JEFFRIES: Okay. Vanessa, if you could stop share, I'd appreciate it. Thank you. Alright, Jamie. Oh, you forgot to put it down. No worries. Not a problem. Marvin.

MR. SMITH: Does the Department have in mind what is a high rate of withdrawal?

MR. MARTIN: I didn't specify anything particular here. But remember, we're looking at the timely disbursement of funds, but then looking at violations of that and just looking at areas that might come up to indicate violations of student complaints, high rates of withdrawal that are

attributable to delays and disbursement. So, we're not looking for a particular figure here or a bright line, but where we see that schools delaying disbursements have resulted in students withdrawing as a result of that. That would be an indication that the disbursement protocols the schools operating under are not consistent with administrative capability.

MS. JEFFRIES: Okay. Anything else, Marvin? Oh, okay, Brad.

MR. ADAMS: Thank you, and plus one to Marvin's question, I had the same thing, so I'll add to that. On the other piece, you know, we noticed the Department has amended to reference funds under 668.164, and we agree with that and appreciate that. But if that's being added, then why would the rest of this provision even be necessary? If institutions are complying with the disbursement rules under 668.164, then why have all these other measures here?

MR. MARTIN: Well, you know, obviously 668.164 is where we have our cash management rules. So, we felt the need to reference that. 668.164, if I recall correctly, the only requirement there is that institutions disperse funds at some point during the payment period, and that was done to give to provide latitude where such latitude may be necessary and may well be in accordance with students' needs. There are instances where schools divide up payment periods into modules, and, as most of you are probably aware, we do allow payments for a payment period to be broken up into multiple disbursements. So, it might be that that the school breaks up that payment for the payment period into disbursements for

each module, which may well be in keeping with the student's needs, but that that particular section does not address how that meshes with the needs of students. Nor does it address areas where we feel there have been disbursement procedures at schools that don't mesh with the needs of students where there's delay and that delay is attributable to institutional concerns or the desire of institutions to avoid certain regulations rather than to be consistent with student needs. So, that's why we believe it is necessary here to add that element to it that not only do you have to look at what is required is 668.164 with respect to the procedural rules for disbursement, but also a line that disbursements with student needs such that they are timely. Students need this these funds not only to pay tuition and fees, but to pay for their indirect expenses. They have to pay rent, many of them without this money have no means of paying rent or securing food or transportation. So, it's we believe it's important that these funds be disbursed to students timely and hence this requirement.

MS. JEFFRIES: Sorry about that, thank you. Kelli, you are up next.

MS. PERRY: Alright. And I put this in the chat. I wasn't sure if I should say it out loud as well, but I would suggest removing "consistent with students' needs" because I'm unsure how that relates to what's in 668.164. I know, Greg, you just talked about the fact that you want people to consider both: what's in that regulation on top of what the students' needs are. But if that's the case, my first recommendation is to "remove consistent with students' needs".

If you need to have them both in there, I think this needs to be reworded because it makes it sound like 668.164 talks about students' needs, which it does not. I would recommend taking that out.

MR. MARTIN: Okay. Okay, we'll take that back.

MS. JEFFRIES: Thank you. Kelli. Greg and the Department, I just wanted to- Oh, never mind. Denise is back, I was just going to point out Denise had gone into a breakout room with Brady to try to fix her audio, but she is back. So, Jamie, your hand is up. And you are on mute, dear.

MS. STUDLEY: This is maybe a very quick question. Is K meant to say disperses funds to students as required in 668.164, and here are some examples and 164 reflects students' needs? Or is it meant to raise the bar and do something beyond what 164 now does? I think that's what you've got us into thinking about, Greg. This isn't even on the merits. The Department may feel that 164 is not sufficient, but I think we're confused here about whether this is descriptive, in which case none of the language for violations is needed because the Secretary can determine 164 violations anyway she wants, or he currently. Or it's just restating current law and maybe creating confusion in doing so.

MR. MARTIN: Yeah. Again, yeah. On 164, you're correct in pointing out 164 does not address students' needs. 164 cash management is more of an accounting view of disbursements. I think that I would point out that the Pell regulations have always had a provision about disbursing Pell in a way that meets students that's in accordance with

students' needs. So, I think this is not completely unchartered territory we're in here and not completely novel for the Department to consider that. We've given some examples of what schools do, what schools have done, some schools that's not in accordance with student needs, which used to be a bigger problem than it is now. But we used to have a lot of schools that just didn't want to do R2T4. They just thought it was administratively burdensome, didn't want to do it. So, they waited until 68.1 percent point to disburse funds to students. That's certainly not in accordance with student needs, though. If you would look at 164, just verbatim without anything else, it could be argued that 164 gives us the flexibility to disburse at any time during the payment period, and that's what we did. The Department believes, I believe as well, is that getting these funds to students in a timely manner is a compelling issue. Especially since many of them cannot find a way to pay expenses without this money. And it was factored into their award. The award the student is given is inclusive of these costs that students incur, often up front, not 50 percent and not 60 percent in.

MS. STUDLEY: I think that answers my question. This is meant to do something more than 164, and so the "timeliness consistent with students' needs" is actually saying something that is not just parroting another regulation.

MR. MARTIN: I would agree with that.

MS. STUDLEY: Thank you.

MS. JEFFRIES: Thank you. Brad.

MR. ADAMS: You know, I just think back to many schools for new students have 30-day holds on pulling down funds as required actually under HCM1, so I'm still confused on what is the definition of a timely disbursement based on a student's need. It's, tough for me to without putting a date on it, I fall back to 668.164. I just think undefining it is wide open and needs a benchmark there to measure against.

MR. MARTIN: Well, as I said, we're certainly willing to take any comments anybody has with respect to reimbursement. I would say that or you mentioned HCM, whether it's HCM1, HCM2 reimbursement, that with those provisions, those rules affect when an institution can actually draw title IV funds. And remember that under those provisions, the institution is still required to disperse in advance of requesting those funds from the Department. So, I don't view a disbursement date and when the institution can request reimbursement issues as negating this or in any way getting in front of it. The institution can still disperse at a timely point, irrespective of when it has actually drawn title IV funds. But I take the points, and we will consider them.

MS. JEFFRIES: Okay. I don't see any additional hands. So, let's go ahead and take a temperature check on K. Jamie, I can't see. Need a temperature check on K, please, Jamie. Okay, I'm seeing one thumbs down. Anything additional, Brad?

MR. ADAMS: No, not other than what I've said, but I did want to point out, I think there were two thumbs down.

MS. JEFFRIES: Yep, I did see that. Yep.

MR. ADAMS: Alright.

MS. JEFFRIES: Kelli, do you have anything additional?

MS. PERRY: I do not. I'm going to put additional language in the chat based on the description and what Greg said he was trying to accomplish.

MS. JEFFRIES: Okay, great. Thank you. Alright. It is 2:24. I do intend to give the team about a 10 minute break this afternoon. Greg, do you want to do it now or do you want to move on with a couple more?

MR. MARTIN: Let's do M next.

MS. JEFFRIES: Okay. L has no changes from the-

MR. MARTIN: Right. So, seeing I don't think I've made any blunders there this time. We'll move on, but stay tuned. We'll move on to M for an institution that offers gainful employment programs subject to the requirements in subpart Q. For this part, which would exist under these proposed rules but doesn't now, receives at least half of its title IV revenue in eligible programs from such programs that are passing under subpart Q, or has at least half of its regular enrolled students enrolled in such programs that are passing under subpart Q. We're just going paragraph by paragraph.

MS. JEFFRIES: Okay, appreciate it. Vanessa, could you please stop share for discussion? I want to note that Adam

is coming back to the table for state attorney general. So, any questions, comments? Brad.

MR. ADAMS: Yeah, so I know we'll spend all day tomorrow on gainful employment, but given that the administrative capabilities issue paper covers all schools I'm wondering why the Department's adding a gainful employment rule that is applied to approximately 25 percent or less of other programs that are subject to gainful employment. If they're passing a debt to earnings ratio for 50 percent of the programs, it's important not to link administrative capability. Then it should apply to all programs and not just those that lead to gainful employment. Also, the GE issue paper, as currently drafted, allows for programs to fail for at least two years out of three before you lose your title IV funding. So, does this proposed statement then push that threshold to losing title IV eligibility after just one year? It says if more than 50 percent of your programs failed, then it looks like you could lose your title IV, and that would be after one year. There's a disconnect there. But also, how did the Department settle on a 50 percent threshold?

MS. JEFFRIES: Okay, Greg.

MR. MARTIN: Yeah, well, again, we could have the discussion about which programs fall under gainful employment. The whole idea of the accountability being in this respect, limited to gainful employment programs and why we view those as different from other types of programs. Here, for an institution that offers gainful employment programs subject to the requirements of subpart Q receives at least half its revenue in eligible programs from some programs that are

passing or has at least half its regular students enrolled in this. What's in subpart Q does affect actual eligibility, like there's a built in, loss of eligibility for that program after two failing years. Here, this is just an indication of administrative capability, not a standard for removal of a program's eligibility. I would point out that as far as the 50 percent is concerned. We have settled on that as a reasonable, and I think any time you look at a percentage to look at 50/50, we've just built in here at least half of half of the programs is the standard that we've used. We are open to whether or not that is an appropriate standard or any other suggestions negotiators may have.

MR. ADAMS: So, can I add to that? Then why just apply it to gainful employment programs here in administrative capabilities? What's the thought behind that?

MR. MARTIN: Well, gainful employment programs are the only programs that are where it is required that they that there be a test of what the program. Does the program lead to gainful employment in terms of the metric that we that we have established. Currently these are the only programs that are that are that are measured that way. And this is n looking at whether such an institution that has those programs is administratively capable, just looking at when you have an inordinate amount of revenue from the institution coming from programs which don't pass that measure, that that is an indication of administrative issues at the institution.

MR. ADAMS: Okay, the last comment here, and I just want to clarify that I know it doesn't always happen, but if a school is deemed not administratively capable, it could lose

its title IV funding. So, in theory, after one year of GE, a school could be deemed not administratively capable, but still allowed to have those GE programs continue, but lose title IV under administrative capabilities. Just want to clarify that.

MR. MARTIN: Technically, the Department can always take action to remove an institution's eligibility. It would be like- maybe Denise would be the better one to address this. Administrative capability is generally looked at holistically. We generally do not move to limit, suspend or terminate an institution's eligibility for failure of one administrative capability of standard. So, usually when you see an administrative capability finding, it's the institution has problems in several areas. So, while technically, yes, the Department could move to remove the participation of any institution under for a violation of the rules. But we don't. I don't think we ever generally do that, and it would not be our intention here to use this for that purpose. It actually would be a longer path to that through this than it would be if a school's programs lost eligibility under the GE rules. I don't know if Denise wants to address that or not.

MS. JEFFRIES: Denise, you're on mute.

MS. MORELLI: I'm having a heck of a time. I think Greg is correct. We look at administrative capability as a holistic issue, not that you have to meet the standards, but in terms of us taking an action. Usually, it's a school that violates more than one provision of administrative capability. But I do think we can, Brad, we can certainly look at what you were discussing and see if we determine if there's any conflict with the absentee provision.

MS. JEFFRIES: Okay, thank you, Denise. I want to note that Adam is back at the table for state attorneys general and that Emmanuel Ezeugo will be coming in to ask a question. Barmak, you are next.

MR. NASSIRIAN: First, I want to express some sympathy for Brad's sense of injustice because he understands that what we're talking about here is almost entirely limited to the for-profit sector because as of now, while gainful does apply to all institutions, it is very unlikely that most nonprofit or public schools would derive more than 50 percent of their revenues from GE programs. But having said that, it's remarkable how it says something about the ethos of this Department, historically, that it extends the benefit of every doubt to the institution, instead of to the students who are making a decision that could really adversely affect them for the rest of their lives. It makes perfect sense to me. I don't see how there is any inconsistency in suggesting right or wrong. We have a gainful mechanism such as it is that has made a determination that a set of programs fail. So, the idea that you have, that's that you allow entities, half of whose offerings or that shoddy to still participate strikes me as overly generous and exceedingly charitable in the wrong ways. If it were me, I would draw the line at 75 percent pass rate. You know, we have an odd system in which we trust institutions under title IV programs instead of focusing on the programs. But I got to tell you, an institution, half of whose products are rotten, probably shouldn't be trusted with offering any products until it cleans up its act. So, you know, I appreciate Brad's point. We need to judge all programs on the basis of ability to service the debt. But right now, we

have this mechanism and, and the 50 percent threshold strikes me as more than generous, quite inappropriately so under the circumstances.

MS. JEFFRIES: Okay, thank you. We have one, two, three, four hands up, and then I do want to take a break. It's been a long session and let you stretch your legs. So, Jessica.

MS. RANUCCI: Thanks. I want to echo Barmak's point that I do think that there are important protections to build in here, and I think that this is among many ways in which the Department has a tool to protect students who need protecting, and I really support that. As a drafting matter, I wonder a little bit about the [inaudible] that are, quote unquote are passing here just doesn't seem to be quite how the GE rules are. If I'm understanding them correctly. And I'm just wondering, when the Department goes through a program review, like what time period are they talking about? Are they talking about now and how the students now will do on GE in the future? Or are they talking about how past students did on the latest GE metrics? So, I just would ask the Department to think about that. I don't have a good solution. I'm not the expert here, but it led to some confusion in my head.

MS. JEFFRIES: Okay. I don't know if the Department has an immediate response to that, Jessica, so they will take a look at that and get back to you. Jamie.

MS. STUDLEY: Oh, my-I was sort of thinking about out loud about the purpose of the administrative capacity rules. It's a little philosophical, but we can't let Barmak have a

monopoly on that approach. It seems to me, but the Department can correct this if I'm off base, that what they're looking for here is the competence to manage the institutions, programs, services, finances and so on, and that this provision could be seen as saying that the ability to design programs that can pass GE is one factor that the Department could take into account about whether it can do the job for which they are responsible. There may even be an element also of the financial fragility that affects the administrative capacity of the institution, even if the Department thinks financial fragility or sustainability is a separate question. This does go to the ability to design, operate, respond to rules, manage the program of the institution at a level as promised that suggests that it can continue to do so on a quality level in the future. So, the provision seems reasonable to me if that's the foundation.

MS. JEFFRIES: Thank you, Jamie, for that. Debbie.

MS. COCHRANE: Thank you. I wanted to make a couple of points. The first one is very similar to what Jamie was just saying. I think I really appreciate what the concept that the Department is trying to get at here. And I think it makes sense that the administrative capability of an institution would be called into question if most of the students or the revenue was being derived from programs that weren't in compliance. So that seems, as a general matter, appropriate. I actually also, just with respect to what the right thresholds are, which I think are important questions. I guess I will just also flag that the Department, of course, put out a proposal for the gainful employment rule for this session,

which we haven't yet gotten to. I knew that proposal stems from the 2014 rule, but also there's a lot of foundational questions that were in the paper around additional metrics. I think it's hard to have some of the questions around what the specifics should be until we really have that other discussion about the GE rule.

MS. JEFFRIES: Okay, thank you. Emmanuel, first, I want to apologize for mixing up your name when I announced it, it is Emmanuel Guillory who is at the table. Thank you.

MR. GUILLORY: Thanks for that. My question was really around the drafting. So how I read this particular paragraph. Basically, it's putting the GE programs into another sub part. So, what I mean by that is, "receives at least half the title IV revenue in its eligible GE programs". I'm assuming that's what that's referring to [inaudible] programs, it's eligible GE programs from such programs that are passing for the overall institution. I think about in our sector, you know, we may have, let's say we have 10 programs that are GE programs on a campus. And out of those 10, then at least half of the title IV revenue from those 10 should be coming from passing programs within the 10 programs on our on the campus. If that is indeed accurate in how I'm interpreting that, then the remainder of that sentence, I believe, needs a little bit of tweaking to basically read "or has at least at least half of its regular enrolled students enrolled in such eligible GE programs enrolled in such programs that are passing" just to keep that subpart there. So basically, you have the example I give is that our campus has 10 GE programs. Out of those 10 programs, at least half of the title IV

revenue is coming from programs that are passing within those 10 and then students, at least half of students are enrolled within eligible programs within those 10 that are passing. Does that make sense? Yes, Greg, does that make sense.

MR. MARTIN: I was reading it again with you, yeah, we'll take that back. I want a chance to mull that over a bit, but I see what you're saying.

MR. GUILLORY: Yeah, and I can put the suggested language in the chat.

MR. MARTIN: Yeah, go ahead and do that.

MR. GUILLORY: Just to clarify. I want to make sure I understood that that is indeed how it should be interpreted. Is that accurate?

MR. MARTIN: Yeah. So, it's half, the revenues, at least half the revenues have to come from those programs that are that are eligible. So, you would look at whichever of those 10 programs you have that are that are that are eligible programs that are passing under subpart Q, the revenue would have to come from those passing programs. You know, irrespective of how many there are, right? So, I don't know if I break you down in the numbers, it would just be looking at the revenue. Where was the revenue derived from which programs? At least half that revenue have to come from those programs that have passed. That's the way I view the reg that was intended.

MR. GUILLORY: Okay, I just wanted to clarify. For non-for-profit, you know, for the public and the private

nonprofit institutions out there. All of our programs are not going to be GE programs on our campuses. And so some campuses may have, and I use the example of 10 GE programs. So from this language, only those 10 programs.

MR. MARTIN: Oh, I see what you're saying, only those programs are subject to subpart Q. Yes, yes. Now you're looking at your all your revenue. You know, the fewer obviously, the fewer programs you have are subject to subpart Q, the more of your revenue will be derived from those that aren't subject to subpart Q at all, irrespective of passing or failing. But yes, it would only be in looking at the revenues would be at least half the revenues from those programs that are passing.

MR. GUILLORY: That are GE programs.

MR. MARTIN: So I think I see what you're saying. You're looking at it from the standpoint of how that's going to mesh with overall number of programs, right? Yeah. Well, I'll take that back and look at it. Thank you. I appreciate that.

MR. GUILLORY: Thanks.

MS. JEFFRIES: Alright. Thank you. Brad, do you have something new because I do want to move on?

MR. ADAMS: I do think that's what Emmanuel just asked is very important for me to understand as well if we're talking about half of its students from just the subset of GE programs or if only 10 percent of your revenue is coming from GE programs, would you automatically pass?

MR. MARTIN: I think that's a very good point, and I thank Emmanuel for bringing that up and we'll definitely clarify that.

MS. JEFFRIES: Thank you. Alright. Let's go ahead and take a temperature check on this, and then we'll take a quick 10 minute break and come back and wrap this up before public comment starts at 3:30. For the public, for the people who have registered for public comment and those on the wait list, I'd like to invite you to log in early to get into the waiting room so that when we get into the public comment period, we can get to as many of you as is possible. So, with that, let's go ahead and take the temperature check on M. Okay, I see one thumbs down, is that correct?

MR. ADAMS: That's correct, but I'm wondering if it'd be more thumbs down once you define whether or not what we just talked through.

MS. JEFFRIES: It may, Brad. Oh, that gave me a kink in my neck, Brad. Alright, it is 2:44, let's go ahead and take a 10-minute break. Let's come back at five minutes to three and finish up with the administrative capabilities. Thank you. Welcome back. So, let's continue on with moving forward in issue paper two, administrative capabilities. And that brings us to section N, Greg.

MR. MARTIN: Section N, right, and before we move on, I want to correct one more thing I said earlier today. I think earlier we were talking about ATB, and we were talking about the completion rate. I referenced 668.16 where the withdrawal rate was found, and I said it was 668.16 I. It's actually

currently in 668.16 L. But given my difficulties today with I's, L's, and J's, that's not surprising. So, I has to do with something with compliance with fiscal reports. It's actually L. So again, I want to apologize for that. Just remembered to correct myself there. So, we are now, as Cynthia said, looking at N and because it's so small, if I can beg the indulgence of the group, why don't we look at N and O together? I try to go paragraph by paragraph. But in this case, it would seem to be in the interest of expediency to do both. So, we'll do that. We'll look at N and O. N does not engage in misrepresentations, including as defined in subpart F of this of this part or aggressive recruitment included in as defined in subpart R of this part. Moving on to O, has not been placed under significant negative action by state or federal agency or an accrediting agency, and has not lost the ability to participate in another federal educational assistance program due to administrative action against the school. So, we'll look at those two areas, excuse me. At the suggestion of negotiators, we have clarified this item could be inclusive of misrepresentations or aggressive recruitment practices that are not included in the regulations if such situations arose. Let's open it up for discussion, then, with respect to N and O.

MS. JEFFRIES: Okay. Thank you for that. Brad.

MR. ADAMS: I'll start with N, and then I'll get back in line for O. But the term, and I mentioned this in week one, but the term aggressive recruiting is still not defined in the regulations, and the previous negotiated rulemaking panel did not come to consensus on the definition. I'm struggling to

know how the Department expects negotiators to agree on a definition that doesn't exist in the regs. On the second piece around misrepresentations, I do believe we need to have a "substantially" threshold for misrepresentations. Institutions should not be deemed administratively incapable for minor and accidental misrepresentations. So, I'm going to suggest we add the word substantial in front of misrepresentation within this part and then delete the comment on aggressive recruitment. And I'll submit that in the chat. Thank you.

MS. JEFFRIES: Thanks, Brad. Carolyn.

MS. FAST: I just wanted to offer support for the changes the Department made in adding the word "including" which addressed some significant concerns that we had, that we didn't know what the language was going to be and that it potentially be even narrower than what would, for example, be considered a misrepresentation under state law. So, I think this change is really helpful in M. I'm sorry, in N, that added the word including. That really made it a lot more acceptable in my mind. And I also wanted to offer support for O, which I think is a very useful addition and will create a really useful and meaningful protection for consumers, for students.

MR. MARTIN: I just want to clarify, because we said as defined in subpart F, that is the subpart that deals with of the general provisions, that is misrepresentations, and I should have pointed that out.

MS. JEFFRIES: Thanks, Greg, for clarification.

Barmak.

MR. NASSIRIAN: Yeah, I also want to support the language, including as a more expansive construct here under N. And then I wanted to raise an issue under O, which is that I know the VA does not render judgment, unlike the Department of Education, about the entire institution. The VA deals with specific programs, so loss of eligibility does not necessarily have to be institutional. It could be programmatic, and it could be due to significant compliance issues. So, I would suggest you somehow need to wordsmith O to clarify that loss of eligibility of any program offered by the institution due to noncompliance could be a trigger for loss of institutional eligibility for a judgment of lack of administrative capability under this section.

MS. JEFFRIES: Okay, thanks, Barmak. Brad, you are next.

MR. ADAMS: Yes, on O, the reference to significant negative action by a state or federal agency or an accrediting agency. I wanted to confirm, are we talking about a programmatic accreditation? Are we talking about something else? Are we getting down to the programmatic level here?

MR. MARTIN: We've not specified that here. We simply say, is not is not subject to a negative action by a state or federal agency. That could be any negative action. I think with respect to a program or the school where we say has not lost eligibility to participate in another federal assistance program due to an administrative action against the school. So, the way it's worded here, I know Barmak had just asked that be that be tightened up. But the way it's worded here,

that would refer to an action against this. That would be the loss of eligibility due to an action against the school.

MS. JEFFRIES: Okay. Thank you. Barmak.

MR. NASSIRIAN: Brad, you shouldn't have asked that question, because this sort of brings me back to Jamie's earlier excellent point. If an institution loses programmatic accreditation of one of its offerings, isn't that a reflection of poor institutional capabilities? I mean, to me, this concept of all or nothing doesn't make sense. To me, it seems like the institution has voluntarily, to the extent that programmatic accreditation is not a mandatory requirement for participation in title IV under most circumstances, the institution has subjected itself to the jurisdiction of an accreditor. That accreditor is finding not insignificant noncompliance. That says something about the administrative capabilities of that institution, if nothing else about their poor judgment in seeking that accreditation in the first place. So, it seems to me like that's a fairly relevant thing, and you really do need to be fairly granular here.

MR. MARTIN: Okay, we'll take that suggestion back.

MS. JEFFRIES: Okay, thank you. Brad.

MR. ADAMS: I think the word significant is helpful here, but to Barmak's point, I mean, if you had an issue with a program that's less than 1 percent of your total students, or maybe it's at one location out of 20. Again, I don't think it would raise the level of significance, so hopefully that will be better defined, but you know I think it should not be at the programmatic level.

MS. JEFFRIES: Thank you. Alright. Seeing no additional hands in sections N and O, Greg, do you want to go ahead and take the temperature check?

MR. MARTIN: Sure. Thank you.

MS. JEFFRIES: Alright. So, this temperature check will be on N and O. Can I please see your thumbs? Okay, I see one thumbs down. Brad, anything additional or new you thought of?

MR. ADAMS: Just let me ask the question, are we going to have a definition of aggressive recruiting by March?

MR. MARTIN: We will not have final regulations by March. You're right, that there was no consensus reached on that. The Department will provide an NPRM and then there will be comments. I cannot say exactly what the wording of that will be, but there will be a definition of aggressive recruiting there.

MS. JEFFRIES: Okay, thank you. So, Greg, that brings us up to section P. You want to take us through however many of these you think make sense?

MR. MARTIN: Yeah, sure. I think we need to move down to, if I've got my lettering correctly here, Let's go down to Q where we actually have some changes. Oh, no, that is P. You're right. I should stop. I should quit while I'm ahead. Nothing in P. We are going to Q. Q is not and does not have any principal or affiliate of the institution, as those terms are defined in 2 CFR parts 180 and 3485. This is an addition that we did at the suggestion of negotiators: a former

director, officer, executive or principal of an institution whose misconduct or closure resulted in liabilities to the federal government in excess of 5 percent of its title IV HEA program funds. So, I'll open it up for discussion.

MS. JEFFRIES: Alright. Thank you, Vanessa. Brad.

MR. ADAMS: I'm going to start with, I'm happy to see a threshold, I'll just go ahead and say it, Greg. That's good that we have a defined number here. The concern I have is we need the language to be clear that the person was actually employed by the institution at the time of the misconduct or closure. What if the executive left the institution years before the misconduct or closure occurred? And then the second piece is, I don't think the Department means every director or officer, executive or principal of an institution, but really, they're really looking at here, in my opinion, is those that exercised substantial control over the institution. So, I think this would be necessary [inaudible] the Department's past performance regulations at 666.15 C. So, I can submit my proposed language in the chat to those two points.

MR. MARTIN: Okay, thank you.

MS. JEFFRIES: Thank you. Jessica.

MS. RANUCCI: And I don't necessarily disagree with Brad on principle that there could be lines drawn here, but I really want to push back against the idea that, for example, someone would have had to be employed by a school at the time of closure. I think someone who bails early on a sinking ship is often the person who knows that the ship is sinking. And I think that you know people don't have a right to a job in a

title IV program. So, I would just encourage the Department to think about this broadly to make sure that the [inaudible] are effectuated.

MS. JEFFRIES: Okay.

MR. ADAMS: Sorry, I don't recall the section, but isn't that already addressed somewhere that if a company goes out of, a school goes out of business, isn't the executives forbidden from being an executive at any schools going forward?

MS. MORELLI: [Inaudible] if they owe liabilities to the Department. At least currently, that's 174. The past performance provisions of 174.

MR. ADAMS: I'll need to go read that [inaudible].

MS. JEFFRIES: One second, Barmak. Jamie, you put a question in the chat that I'm not sure you articulated to the Department. So, you may want to get in queue and bring that up. Thanks. Barmak.

MR. NASSIRIAN: Yeah, I just wanted to echo Jessica's point and encourage the Department to think expansively about this provision. I mean, you know, sadly, the track record of this Department has not been particularly spectacular over the course of the decades when it comes to preventing massive fraud against students and against the taxpayers of this country. And one of the reasons, obviously, is you don't have any, you know, there are no criminal penalties here that we can apply to folks who do the wrong things. And it seems to me that most of your triggers are set too late in the process to

really recover anything. But the one effective thing you can do is stop this sort of group of itinerant fraudsters from setting up shop on their new corporate banners to basically do the same thing over and over again. So I agree with Jessica. There is no entitlement to employment in a title IV participating institution. And if you want to change the institutional behavior, you need to change people's behavior and exclude people that have demonstrated pretty horrific past behavior. So please think broadly because you know the ugly little truth we're all dancing around here is that none of the stuff you're doing here would have stopped most of the most spectacular failures. I think this is one of those things that, if done right, could really make a difference. So, I would encourage you to think very broadly about it. Thank you.

MS. JEFFRIES: Thank you, Barmak. Jamie has a question, and I see no hands after that, so perhaps we'll take a temperature check at that point. Jamie.

MS. STUDLEY: Well, at your invitation, Cindy, the point I was making there related to an earlier discussion about whether an institution can say, wait, that wasn't significant or sorry, Mr. Secretary, we don't think that's something that should stand for a determination that we're not administratively capable. So, I think to the extent that these things are determined, but then the institution can respond that may address some of those special circumstances that Brad was talking about. Two quick thoughts. I thought when I signed a program participation agreement for an institution, I actually thought that there was criminal liability. Maybe it's not for all the elements of it, but I thought, Barmak, that

there was a very high bar. GC can answer us later. It may not be relevant right now. But I thought some of those protections were in place. But difficult to meet a criminal standard or no longer available, there are all sorts of other reasons, but I thought that was one door of the barn that had been at least considered, and there was a lot.

MS. MORELLI: Cindy, I'm going to go ahead and answer. Jamie, you're correct that the Department determines either that they're going to take action to deny certification, terminate a school, revoke a participation agreement. The school, based on administrative capability grounds or any other grounds, the school has a right to appeal within their different mechanisms. And even if it's an administrative capability finding in a program review determination, a final determination, the school has a right to appeal that to us. They can bring up any of those other issues in terms of whether it's, you know, material, or all the different things that have been raised that could be raised in the appeal process.

MS. JEFFRIES: Thank you, Denise, appreciate it. So, Greg, seeing no further hands. Okay, to go ahead and take the temperature check?

MR. MARTIN: Yes.

MS. JEFFRIES: Okay. And that is on cue. So, could I please see your thumbs? Okay I see one thumb down. Brad, have you articulated everything you wanted to put out there?

MR. ADAMS: I put the language in the chat.

MS. JEFFRIES: I see that.

MR. ADAMS: Thank you.

MS. JEFFRIES: Great. Thank you. Alright, Greg, you want to keep moving here?

MR. MARTIN: Yeah, we have 15 minutes until public comment, right? So, let's move on. We have some numbering changes throughout, but the next area of change is in V, as in Victor. And so let's move to the- I may make mistakes sometimes in this lettering sometimes but I do know my NATO phonetic alphabet. That I will not make any mistakes, I don't think. Okay, so here we are with V. This has to do with high school diploma. So, let's look at that. Develops and follows adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. And we have revised the language here to refer consistently to high school diplomas. So, the adequate procedures to evaluate the validity of a high school diploma must include obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following transcripts, written descriptions of course requirements or written in signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school. And if the high school is regulated or overseen by a state agency confirming with or receiving documentation from that agency that the high school diploma is recognized or meets requirements established by that agency. Looking at two, a

high school diploma is not valid if it is not recognized, or does not meet the requirements established by the appropriate state agency in the state where the high school is located, has been determined to be invalid by the Department, the appropriate state agency in the state the high school is located or through a court proceeding, was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under 600.2, or was obtained from an entity that maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled and is not accredited. So, some things we've done here. We, at the negotiators' suggestion, have replaced education with instruction to clarify the meaning of the provision and specify that it is secondary instruction. Also, at negotiators requests, we have expanded the list to include unaccredited high school diploma providers with which the institution maintains a business relationship in that list of what makes a high school diploma not valid. So, with that, I will open the floor for discussion.

MS. JEFFRIES: Okay, thank you very much, I want to make note that Beverly Hogan is returning to the table for minority serving institutions. Welcome back, Beverly. Barmak.

MR. NASSIRIAN: So, I kept thinking about this, and it may just be me. But it strikes me that you're attempting to deal with two distinct problems, and that the legitimate solution to one problem becomes a pretty big loophole for the other. The two issues that I suspect the Department is

concerned with are a) the possibility that the student has not legitimately graduated. The student attended seemingly like a regular high school or legitimate high school, and there is some doubt as to whether the student actually graduated and has a diploma. The cure to that would typically be a transcript. By the way, a written description of courses is neither here nor there. In registrar circles, the proof of graduation is not the diploma, which is a decorative instrument, but rather the transcript. You make the additional accommodation in case there are extenuating circumstances that are written, signed, statement by the principal, etc., etc. That's cure to suspicions about the student. Unfortunately, that's also a loophole if your second concern comes to pass, which is that the school is a sham because if the school is a sham, they will issue a transcript, they will sign a statement, they'll provide you with whatever you want. They'll go out of their way to convince you that the student graduated, so I would separate the two if I could. Maybe I'm reading it wrong, but I would absolutely separate. Typically, by the way, suspicions about students tend to, you know, we always talk about official transcript. People think it's just like how lawyers talk about null and void, but there are two distinct notions. Transcript describes the formatting of the document. It has to include certain things to be considered the transcript. Official means it hasn't been tampered with. So, typically if there's suspicions about a student, it's because the school has reason on the basis of the initial transcript it received, not the final transcript- at the application point that there's something fishy going on. So, I would separate the two. I would focus on solving the diploma

mill problem. You know, you can't have the "out of submission of transcripts" because diploma mills will submit transcripts to you.

MS. JEFFRIES: Alright. Thank you, Barmak. Brad, you are up next.

MR. ADAMS: So, I'll start with one romanette 1, and I'll come back in for 2. Under one romanette 1, I do think we need to add in language here that if the high school is still open, you'll get either ABC, and I'd like to add a new one under transcript, written description of course, or written statements. I think just getting a copy of your diploma or other official record from that high school should suffice as an option. I submitted that in the chat after our first week session and didn't get a response. Is there a reason why we would not want to get a diploma or other official record as one of the four options under one romanette 1?

MS. JEFFRIES: I'm not sure that the Department-

MR. NASSIRIAN: Can I answer that?

MS. JEFFRIES: Go ahead.

MR. NASSIRIAN: Diplomas, in registrar land, diplomas are not proof of graduation. Transcripts are. Diplomas are given to people so they can hang them on the wall. They're not proof of graduation.

MR. MARTIN: If we go back to one, the adequate procedures to evaluate the validity of a high school diploma itself- we're talking about obtaining documentation from the

high school to confirm the validity of the of the diploma. So, if the diploma is in question, then the diploma would not validate the diploma. I think that's what we're looking at here. And in these cases these are cases where the institution or Secretary has reason to believe a high school diploma is not valid. So, we're generally not looking here at instances where the school already is in possession of transcripts. In many cases, schools don't routinely require anything beyond students' indication on the FAFSA, that he or she completed a high school education, and we are looking at two things here. I recognize the complexity that you're looking at the student, the possibility of the student being at issue and also the school. So, we've tried to work that into one and two to go back to Barmak's point. Looking in two that a high school diploma is not valid if it doesn't meet the stipulations that we have below there. So, I guess that's how I would describe our effort to make sure that we address both of those both of those concerns.

MS. JEFFRIES: Thanks, Greg. Brad.

MR. ADAMS: So, just to confirm Greg, so under this, what you just described, the assumption is you already have the diploma and you believe it's not valid. So, because of that, you're doing steps ABC. Is that- I just didn't read it that way. I just want to make sure.

MR. MARTIN: I think it could be. I mean, maybe Denise has some comments here. It could also mean that- see and before we had high school completion. The issue that comes in here with diploma, because the school may or may not be in possession of the diploma, it could be in a possession of a

diploma which indicates that it's from a less than above board institution, there could be to be no diploma, there could be a student that may have indicated that that they have completed high school, you know, via what's on the FAFSA. And then it could be other conflicting information at the school, which would indicate otherwise it would necessitate the school going out and getting something else. I think what you're asking, Brad, is if that were the case and the school got that diploma, if once in possession of the diploma, it had no reason to believe that there was a problem, could they stop there? Yeah, I think if they had no cause to believe beyond that, if the issue were a completion issue and the student provided the diploma and the school had no reason to question the validity of that, I don't think they would have to go further. But =I'll ask Denise for her take on that.

MS. JEFFRIES: Denise, go ahead.

MS. MORELLI: Well, I actually was going to ask because I think Anne, Barmak and Anne both said the same thing. So, you're saying that the transcript is what you would be looking at, which is, I think, what we were talking about as backup because the students could self-certify and a lot of schools, they don't, but some schools allow self-certification. So, this is what we're looking at, if we doubt that or the school doubts that, the diploma. So, I just want to make sure I was understanding what Barmak said, that the transcript is really the valid document for completion. Okay. And then, Brad, did Greg clarify what you were talking about? I mean, basically we added on to the provision that was already in the regulation. It was very simplistic before that:

we would have the ability to look behind if either the Department or the school didn't think that the diploma was valid, that we would be able to look behind it. So, we wanted to add some more things to clarify what we would be doing to look behind it and what we don't consider valid, which 2 is really getting at. I think it's 2, what Barmak was talking about or what we consider not to be valid diploma situations that we run into for what we would call diploma mills, high school diplomas.

MS. JEFFRIES: Brad.

MR. ADAMS: Yeah, so I'll just let Greg come back to that, you know, at a later point in time, just confirming that it would only if you've got the diploma and have reason to believe that it's invalid, which I read there with Victor. Then you would do steps ABC. And so I'm good on that. On 2 though, I did want to make a point on 2 romanette 4. Help me understand what a business relationship means in this context. And then, on the accreditation piece, you know, accredited by who? I'm not following, I guess A and B under romanette 4, 2 romanette 4.

MR. MARTIN: In the time we have left, I know we're getting down to the wire here, so we're talking about a business we have seen. This is to address situations that we have we have seen, and Denise, obviously more so than I have because she works there in the field, where schools maintain a relationship with an unaccredited, basically a mill where they funnel students from that entity. And then, there's not really a high school education taking place there. It's brief, the tests are minimal. It's just meant to stamp someone's

eligibility so they can go on to the school. And in these cases, the post-secondary institution had an actual relationship with that entity to funnel those students in which both benefit from the mill and presumably get some type of payment, or the fact that the school has referred students to it and then the post-secondary entity benefits in that it gets students who wouldn't otherwise have a high school diploma funnel to it through this through this nefarious entity that's sending students over to it. And I'll just say to Denise in that 30 seconds, did I describe that correctly?

MS. MORELLI: Yes, you did, and I think number romanette 4 we were trying to address, Barmak, I think you raised it with the business relationship. I think it was critical because we have run into it in the field where they're steering people. And I think you said accredited. We were struggling with it. And if anybody has any additional comments, we would appreciate them. Because we had looked at just saying if there's a business relationship. But I but some of my colleagues believe that there were some legitimate business relationships too, so we added the unaccredited part. So we want to make sure we're covering our concerns, and we've been seeing it a lot where they hook up with some buddy down the street that has a computer test or something, and then they funnel everybody. So, I want to make sure we were we want to make sure we're covering all that.

MS. JEFFRIES: Alright. I'm going to defer all the rest of the comments. Debbie right now, you're the only one with your hand up. So, first thing tomorrow morning because we must move to public comment. I do not want to spend much time

on questions with this because you have a very full day tomorrow with gainful employment as well. Okay? So, with that, we are going to move to our public comment period. Brady, can you please- Amanda-

MS. MARTINEZ: I apologize. Before we, this is on the topic of public comment. I know that we're going to switch into that, but I was hoping, in the spirit of open democracy and just getting in as many public comments as we can, we've been hearing that there's been waiting lists. I know there's a wait list in the past. So, how do we ensure that those on the waitlist are able to also-

MS. JEFFRIES: They only get, they, Amanda, they only get called upon if there's extra time, like maybe a scheduled person does not show up or they don't take their full time. If they're not called on when they're on the wait list, then they need to try to reregister the next day. Okay, we must-

MS. MARTINEZ: Is it possible for this committee to extend one like one person for two minutes to add so that they can have [interposing] speaking time?

MS. JEFFRIES: Amanda, please, we need to move on. We are taking up time from the public commenters. I'd be happy to discuss this. It is published in federal registry from 3:30 to 4:00, and we must adhere to that. Okay. But I'd be happy to have more conversation with you. But at this point, I need to move to public comments. Thank you, though. Brady, who is first?

MR. ROBERTS: I just admitted Nathan Arnold, who's here representing the Education Council.

MS. JEFFRIES: Okay, welcome, Nathan. He is connecting his audio. And then he's good to go. Welcome, Nathan.

MR. ARNOLD: Can you hear me okay?

MS. JEFFRIES: Yes, we can. You have three minutes to speak and that starts whenever you're ready.

MR. ARNOLD: Hi, there. My name is Nathan Arnold. I'm a senior advisor with Education Council. We work to advance policy that improves outcomes for students, particularly those that have been poorly served by our system of higher education. And before that, I was actually at the Department of Education for about eight years, where I mostly did what you're doing right now, writing regulations governing the student aid programs. I'm here today to alert you to a new, statutorily required risk-based review system to protect GI Bill recipients and to report on this new system with findings and policy recommendations we released a few weeks ago with the American Legion. You can find the report, which has direct applicability to this rulemaking linked from the front page of our website EducationCouncil.com, and there's a five-page summary there if you don't have time to review a full 30-page report plus appendices. But in this work, we were able to successfully predict bad outcomes based on public data and in a context that is directly analogous to what the Department is trying to do right here. So, there is direct legal and research support for the policies the Department is trying to

achieve with these proposed rules, and there are three clear policy recommendations supported by our work that apply to the rules you're writing. First, on gainful employment, we found that one of the metrics the Department's considering, earnings above a high school graduate, were strongly predictive of harm to students. Schools with fewer students earning above a high school graduate were much more likely to have students making complaints to oversight agencies, much more likely to have complaints directly related to academic quality and much more likely to be subject to a state or federal investigation. So again, there's both legal and empirical support for using the high school earnings threshold as an indicator for gainful employment. Second, on financial responsibility, we found six public metrics that successfully predict whether an institution has sufficient cash on hand, current assets and net worth to withstand an adverse financial event. So, for this reason, we recommend that you add the following six metrics as discretionary triggers for financial responsibility: low completion rate, low completion rate among Pell recipients, high net price, large year to year changes in tuition prices, big swings in year to year enrollment, and high cohort default rates. Finally, we recommend that if an institution hits any discretionary trigger, regardless of whether the Secretary imposes a letter of credit, the Department must require the institution to submit its most recent financial information, including its balance sheet, cash flow statements, and income statement. These schools have demonstrated a sufficient risk that the Department should know how their current financial status is in detail and use that information to determine how likely it is the school could

suddenly close. Again, these findings and recommendations can be found linked directly from our website EducationCouncil.com. Thanks for the opportunity to share these recommendations.

MS. JEFFRIES: Thank you very much, Nathan, for your comments. We appreciate it. Who do we have up next?

MR. ROBERTS: Cindy, I just admitted to Tashani Gaskins, who is a former student at Walden University.

MS. JEFFRIES: Great. Thanks, Brady. Tashani, can you hear me?

MR. ROBERTS: It looks like she's still joining, so she just has to accept, but she was in the waiting room before. You want me to move on while she gets connected?

MS. JEFFRIES: Yes, if you could, please.

MR. ROBERTS: I just admitted Marc Jerome, who is the president of Monroe College.

MS. JEFFRIES: He's connecting to his audio. Good afternoon, Marc. Welcome to the public comments. Can you hear me okay?

MR. JEROME: I hear you fabulous.

MS. JEFFRIES: Perfect. You will have three minutes to speak, and that three minutes will start whenever you are ready.

MR. JEROME: Ready now.

MS. JEFFRIES: Okay. Go ahead.

MR. JEROME: Hi, my name is Marc Jerome, I'm the president of Monroe College in the Bronx. Thank you for allowing me to share my perspective today and actually thank you for your work. I was a federal negotiator twice, and I'm actually still recovering from the experience. There are a lot about good policy protecting students and holding institutions accountable, and the Department has repeatedly identified high student debt and low earnings to be a major crisis. I really couldn't agree more. I really believe students should have a reasonable expectation that if they take a student loan, their earnings will be enough to pay the debt and colleges should be held accountable if debt is too high and salaries are too low. Yet that is not happening across higher ed. You, the negotiators, have an opportunity to address the student debt crisis that can be found all over the country, and I believe you can tackle it in three areas. The first is standards of administrative capability. The second is certification, and the third is when you revisit gainful employment. I have three requests for you today. The first, bring more transparency to the student debt crisis by openly and honestly examining the data about the programs that saddle students with the most debt relative to their earnings. The facts in the data actually need some sunlight. Number two, consider how the Department can use the eligibility process to identify and improve programs that have too much debt and earnings that are too low. And three, something very important to me, consider how we can assure that students and their families have relevant information to compare degree programs across institutions and sectors. I believe the Department has the

authority to do these things and to protect students and consumers from any program that has too much debt and earnings that are too low. Now, I've been tracking this data for over a decade since my first gainful employment negotiation, and I really believe the policies have not caught up with the data. Whether you look at programmatic debt and earnings or institutional debt and earnings, the problem of high debt and low earnings can be found across all of higher ed. And this should lead you to question the 8 percent rate that you're looking at because huge swathes of higher education wouldn't pass it. And maybe most importantly, to me, some really great programs that have the best earnings and the lowest debt would be closed while some of the worst programs would continue to welcome students. This is not just theoretical for us.

MR. WAGNER: Excuse me, Marc, you have 30 seconds remaining.

MR. JEROME: My institution actually has students that come look at our criminal justice program and Grambling State's criminal justice program. At a programmatic debt level, our program for borrowers has a 9 percent rate and Grambling has a 23 percent rate. The Department and the federal government wouldn't want to close ours and have students go to the other program with high debt and low earnings. It's not just good policy. We have a chance to get this right. It's really important. I thank you for your time.

MS. JEFFRIES: Thank you, Marc, appreciate it. Brady.

MR. ROBERTS: I'm going to try to Tashani again. Okay, it looks like she's able to join this time. She's just waiting to- there we go. She should be able to hear us now.

MS. JEFFRIES: Okay.

MR. ROBERTS: And this is Tashani Gaskins representing, she's a former student at Walden University.

MS. JEFFRIES: Thank you. Hi Tashani. Can you hear me okay?

DR. GASKINS: Yes, I can. Can you hear me?

MS. JEFFRIES: Yes, we can. You will have three minutes to speak Tashani, and whenever you're ready, your three minutes will start.

DR. GASKINS: Okay, so as you guys mentioned, my name is Dr. Tashani Gaskins and I'm from Raleigh, North Carolina. Thank you for allowing me to speak today at the negotiated rulemaking session. My understanding is that you're interested in how schools who take federal loan money are being responsible to the students who take on that debt. And I think it's important for you all to hear from the students directly. So, I do welcome the opportunity to speak with you today. So, in 2019, I graduated with a Doctorate of Business Administration degree from Walden University, which is an online for-profit college. I had to borrow almost 100,000 dollars in order to from the federal government in order to go to Walden. I also have private loan debt, so, you know, earning a doctorate degree was important to me, so I completely prepared to borrow the money and to do the

coursework. However, Walden misled me, and I ended up borrowing almost as twice as much as I needed debt in order to finish at Walden. So, what happened was when Walden recruited students, it described a program where we had coursework and a dissertation process that was supposed to be completed over five course periods with 20 credit hours. I had no problem getting through the coursework. However, the problem came when I went through the dissertation process. The full program was supposed to cost about \$60,000. I did commit again to borrow that money and to pay tuition, and I was prepared to do the work. But Walden kept me and many students like me in the program much longer than it represented, and I ended up in debt much deeper than I planned. Again, no problem completing the coursework, but the dissertation process was dragged out. It's much longer to get feedback than was promised, and because of the delays, it took me three times as long and three times as many credits to finish my dissertation. And of course, I was charged by Walden for all that extra time and that's something they never told me or other students when we enrolled. From what I could see, most of the students in the program were older students, students of color, and women. Once I enrolled and the process was dragged out, I had no way out. I had to continue to keep paying to finish the process or all the time and money that I already spent had been wasted would be wasted. This has been going on for years, and I think students like myself need the Department of Education to watch closely for high schools like Walden run up the cost for students. There are many other former students that I've talked with who have a huge amount of debt to the Department, and that this is not what we signed up for, but it is

heartening to hear that there's a possibility for rules to change and protect future students.

MR. WAGNER: Tashani, you have 30 seconds remaining.

DR. GASKINS: Sure. So again, it's great that you know there's a possibility that this might change for future students. So, my question to you is, what are you going to do about this? And that's all I have for today.

MS. JEFFRIES: Brady, who do we have next?

MR. ROBERTS: Thank you for the comment. I'm now admitting Ella Azoulay representing Generation Progress.

MS. AZOULAY: Hello.

MS. JEFFRIES: Hi, Ella, can you hear me alright?

MS. AZOULAY: Yes, sorry, I just think there's an echo. Hello. Okay, can you hear me?

MS. JEFFRIES: Yes, we can. So, Ella, thanks for joining us today. You will have three minutes to speak and that begins whenever you're ready.

MS. AZOULAY: Thank you. Thanks for the opportunity to comment today. I'm speaking on behalf of Generation Progress, and I'll be sharing the stories of some of the thousands of student loan borrowers we hear from who have been misled or scammed by predatory for-profit institutions. I want to make it clear, these student experiences are the rule and not the exception. Any policy process that aims to be equitable must center the experiences of those who are most

harmful by existing structures. In this case, we see Black and brown borrowers and students from low income backgrounds being disproportionately targeted by low quality for-profit institutions. The Education Department must instate a strong, gainful employment rule. Some colleges care more about their profits than the quality of education they're providing for students, and the Department must hold those schools accountable. Due to the current lack of accountability, students are taking on debts they are unable to repay, and graduates are not qualified for jobs in their fields. Please remember the following student stories as you discuss the gainful employment rule tomorrow. Students have granted permission for their names and stories to be shared. A successfully implemented gainful employment rule would have prevented Orinda F from Florida from suffering at the hands of the Art Institute. Her story would have ended entirely differently. Orinda owes around 70,000 dollars in student loans, and her loans are in forbearance due to her autoimmune disease and limited income. Orinda, a parent from a low-income background, wanted to be quote "the first Hispanic person in my family to get a higher degree. I wanted to better my life and do something for a career I've always dreamed of." But instead, she was targeted by a predatory institution with low quality programs. She says, "My experience at the art institute was so scarring that I burned out and had to stop. Loans were piling up while I felt I hadn't earned enough. Their work assistance consisted of sending Craigslist or other links instead of the help they said they would provide me. I have a 20 something percent interest rate on a car because of my student loans. I can barely pay for my car health insurance

and what it takes to keep my autoimmune disease in check. If I paid those student loans, I wouldn't have any money for any other things. We've been fighting for years to get our loans dismissed, like what's happened for other schools, but that went down to no avail. I would like to be able to go back to a reputable university to get a higher education, but I can't keep piling on debt." Another borrower, Christina H. from Pennsylvania, is a first-generation student and parent who attended Ashford University and owes 160,000 dollars in student loans. Christina pursued a degree in mental health so that she could help others, and she's now a school counselor. As a first-generation student, she was unfamiliar with the differences between nonprofit and for-profit schools. She was a stay at home mom, working overnights to support her family while attending school full-time so she could live the American dream. Christina says, "My debt to income ratio is so high that I'm not able to get a decent credit card, car loan, or if I wanted to leave my marriage, I could not because of that debt to income ratio. That debt will hang over my head for the rest of my life."

MR. WAGNER: Excuse me, Ella, you have 30 seconds remaining.

MS. AZOULAY: That's okay because I'm all done. Thank you so much for your time.

MS. JEFFRIES: Thank you very much, and we do appreciate the use of first names only. We just don't want people to be personally identifiable if they're not present. So, we do appreciate the fact you use the first name only. Have a great day.

MS. AZOULAY: Thanks, you too.

MS. JEFFRIES: Who's next, Brady?

MR. ROBERTS: Cindy, I just admitted Sergio Solorza, who is a former University of Phoenix student.

MS. JEFFRIES: Okay. Hello, Sergio. How are you today?

MR. SOLORZA: Good, how about yourself?

MS. JEFFRIES: Just wonderful. Thanks for joining us. You have 30 minutes to address the committee with your public comments and that three minutes- did I say 30?

MR. SOLORZA: Yes, 30.

MS. JEFFRIES: I meant three. I got 30 on the mind. You got three minutes. I'm sorry. And that will start whenever you're ready to begin.

MR. SOLORZA: I'm ready already [inaudible].

MS. JEFFRIES: Alright, go for it.

MR. SOLORZA: Hello, my name is Sergio Solorza, and I'm here today to speak about my experience as a student of the University of Phoenix MAOM Program, or Master of Arts in Organizational Management Program. My experience to enroll in this school was much like the other stories I'm sure you've heard. The school's financial counselors were quick to offer loans with the promise of finding gainful employment after graduation. Well, it never happened. They lied about their employment rates and promised me a career that could never be

possible with their name on my diploma. After several years, I found out that the University of Phoenix actually discontinued their master's degree program I was enrolled in. When I called to inquire as to why, all they would say was times had changed without further explanation, probably because it didn't work. I've tried to apply to jobs and use my degree to start my degree, my career, I'm sorry, like you're supposed to do after college. But employers never took it seriously. All they knew was that the University of Phoenix had a bad reputation, especially when a lot of military students from my area near Fort Bliss Army base in Texas had also complained of being defrauded by the school. My degree has only harmed my prospects of employment, and my debt makes it almost impossible to move forward with my life. I am currently retired and only receiving Social Security while living and taking care of my 92-year-old mother. I'm renting my house that I can't afford to live in because the mortgage payment is too high and I am stuck with over 70,000 dollars of debt. I've tried to refinance my home, only for there to be red flags all over my credit check because of the mess it involved the student loan. It feels criminal that I have to pay for a degree that doesn't exist, and it's not respected in any way. I have been turned down for a government contractor jobs because of my extensive student loan debt. The University of Phoenix has forced me to put parts of my life on hold, the exact opposite of why I had signed up in the first place. I need a way out, and I am not alone. The Department of Education has an opportunity to right the wrongs this school has done to me and thousands of students like me. We've all

suffered at the hands of the [inaudible] college, and it's just not right. That's it.

MS. JEFFRIES: Sergio, thank you very much for sharing with the committee. Brady, who is next, please?

MR. ROBERTS: I am admitting Adnan Medic, who's representing themselves. Looks like their camera is not working.

MS. JEFFRIES: Adnan, can you hear me? Adnan, can you hear me? Brady, do you want to admit someone else and work with Adnan on that connection?

MR. ROBERTS: I'll message them. I just admitted Emily Escobar, who's here representing the United State of Women.

MS. JEFFRIES: Emily, are you there?

MS. ESCOBAR: Yes, I'm here.

MS. JEFFRIES: Okay. I don't know if you have video capability or if you feel like turning it on, you're more than welcome to do that. Otherwise, you have three minutes for your public comment and that will start whenever you're ready.

MS. ESCOBAR: Okay, thank you for the opportunity to comment. I'm speaking today on behalf of the United State of Women, an initiative of Civic Nation which aims to create a world in which women and people of all marginalized genders can thrive. I'd like to share the stories of student loan borrowers who fell prey to predatory bad actors and are now in a financial hole without a decent paying job, without a

quality degree, with no way out. The students gave me permission to share their names and stories. Heather, from Washington, is a multiracial Latina LGBTQ student loan borrower from a low-income background who attended Argosy University until 2009. She says, "I thought I'd graduated and then found out after they had gone bankrupt that they withdrew me and did not notify me, so my degree is useless." Interest accruing over the years has caused her student loan balance to balloon from 140,000 to around 283,000 dollars. She is struggling to afford payments. Heather says, "I think about my future daily. What if I get sick? What if I injure myself? I can't afford healthcare and I work on my feet as a server. If I get hurt, I don't get paid and there is no backup plan for restaurant people. If I'm paying off my debt for the next 30 years, I'll be in my seventies when they're paid off. No one should be in the position that I am in. I'm one of many that was taken advantage of by a for-profit college. We were kids brushing our adulthood [phonetic]. We were not prepared to take on or understand how these colleges were going to take advantage of us. I want to get on a bullhorn and warn everyone to stay away from those types of colleges." Heather's story is a perfect example of why for-profit colleges must be regulated. We need to ensure they're able to give their students the education needed to succeed in their field and have a fighting chance of paying off their loans. No one should be stuck in Heather's position. Ellie is low-income first-generation student who graduated from the Art Institute of Pittsburgh. Ellie now owes \$130,000 in student loans and is struggling to afford payments. The predatory behavior by the Art Institute has had a monumental impact on Ellie and changed

the course of her life. She says, "Because of my debt, I cannot afford to move away from my home and be independent. Because of where I currently live, I'm not able to get high-speed internet that would allow me to telecommute for a better paying job or to work from home and minimize my exposure to COVID 19. My student loans cost so much each month. There is no possible way I could afford to live, even if I cut all possible corners financially up to, and including, not eating and not taking necessary medication every day. If I stopped paying, my cosigner will suffer the consequences." To prevent future students from falling into the same trap. I urge the Department to pass the strong gainful employment rule. Thank you for your time.

MS. JEFFRIES: Thank you very much, Emily. We appreciate it. Brady, who do we have next?

MR. ROBERTS: I'm admitting the last person in our waiting room right now, Alphi Coleman, representing themselves.

MS. JEFFRIES: Okay. Alphi, can you hear me?

MS. COLEMAN: I can. Can you hear me?

MS. JEFFRIES: Yes, thank you. And we see you as well. Welcome.

MS. COLEMAN: Perfect. Hi, how are you?

MS. JEFFRIES: Good, good. Alphi, you will have three minutes to address the committee this afternoon, and that three minutes starts whenever you want to begin.

MS. COLEMAN: Okay, I am ready to begin.

MS. JEFFRIES: Okay. Go right ahead.

MS. COLEMAN: Good afternoon. My name is Alphi Black, and I am an Army veteran who used my GI Bill to attend the University of Phoenix. I graduated in 2018, but this did not provide me the fulfillment and access the university promised. I wanted to share my story because not enough people are comfortable with speaking out. I am lucky to be self-employed, not because of my University of Phoenix degree, but despite my degree. Not a single employer has valued my University of Phoenix education. I even had an interviewer laugh in my face when I brought up the fact that I went to that school. In fact, I took University of Phoenix off my resume because I showed that I got more responses. When I first started school, I was working with the Department of Defense while also serving as a reservist. The DOD kept telling me that I needed to get my degree to move up. University of Phoenix seemed to be reputable, but they were also authorized to recruit at my DOD facility, and they had recruiters there on a regular basis. They even carried around military coins in order to give the impression that they were supported by the DOD. I later heard that the school got in a lot of trouble for that, but at the time I didn't know that it was not authorized. I felt pressured to enroll from University of Phoenix, recruiters who told me that I needed to enroll quickly or I'd miss out. So, I signed up right away. But when I arrived, I found out the classes started every week. I was- they also claimed that their alumni went on to be executives for companies like Microsoft and that they had partnerships with

government agencies and AT&T. I never saw those or any other job placement services. I went I went in thinking that I would do well and flourish because of what the recruiter said to me. But once they got me in, the school constantly changed the rules. My tuition was not locked in as it was promised. They kept adjusting my program requirements, and I had to travel to multiple campuses in order to meet those new requirements. They also claimed that I would finish in two years and that my GI Bill would cover every cost that I had. That also turned out to be a lie. Phoenix was constantly canceling required courses, which forced me to then take involuntary breaks when classes that I needed weren't available. During one break-

MR. WAGNER: Excuse me, Alphi, you have 30 seconds remaining.

MS. COLEMAN: Okay. During one break, I tried to transfer it to another college, and they told me that my credits were subpar and would not transfer. These breaks prolonged the time and it took me more than two years to finish my degree, and I exhausted my GI bill and I am nearly \$90,000 in debt. Phoenix does not treat its students right. I was aggressively recruited, lied to about the length and the cost of my program, promised career services that were nonexistent. I hope the Department of Education will make sure that schools like this, like University of Phoenix, cannot continue to lie to their students and other veterans. Thank you for your time.

MS. JEFFRIES: Thank you very much, Alphi. You have a great day.

MS. COLEMAN: You, too.

MS. JEFFRIES: Okay, so that we have now gone through, we heard from everyone that logged into the meeting, including wait list people. So, I'd like to take this couple of minutes and circle back to you, Amanda, with your request and your concern. I do want to remind everyone that people will have another opportunity to comment on the NPRM when, that will have a public comment period once the NPRM is published, so that is an additional opportunity for public comment. So, this is not the only forum for that public comment. Also, just I'd like to share with you that we are already providing more public comment time than previously has been done. In prior negotiated rulemaking, up to the 2021/22 session that took place just before this, they typically only had three days of public comment in a week. Now we're doing the full five days and for a full half hour, so we do need to balance the public comment with time for the committee to discuss the proposals. And we'd like to let you know the members know of the public that you can also contact the negotiators themselves to provide input. So, I wanted to share those things with you that we have been able to provide more time for public comment than has been allowed in the past. The virtual environment has enabled that. And as I stated, we went through everyone who registered that logged into the meeting, as well as the waitlist people who logged into the meeting. So, I don't know if that helps address your concerns, Amanda.

MS. MARTINEZ: Yes and no. I think that yes, while given we have an opportunity in an online environment to open and expand public comment, and it's kind of opened up this

process for the public in great [inaudible], potentially this could be actually the standard. This should have been the standard previously, and due to the chain of opportunity the pandemic has now created, such a great standard. We should try to expand that process and expand open public comment. I guess my question here is, while the examples you've provided are additional examples of where the public can input their story and input their opinions, I think it's important as we are deliberating in real-time that we hear stories. And yes, while you know each of us can bring up stories, there's nothing like hearing specifically from people who are impacted by the decisions we are making. So, and the decision is in real-time versus when the NPRM comes out, the decisions and deliberations have already been made. So how is that really being able to truly input in the process coming after the fact? So, my question really is to the Education Department, is there you know, and maybe the best way to ask this question to and maybe we can have a discussion tomorrow morning. I don't think it's harmful to the discussion to potentially ask if there is a waiting list, maybe one or two people, if we're willing to be on here for three minutes more, 4:03, like 4:03 as we are now, or 4:10 just to hear those additional people. Maybe there are two people on the wait list. I don't think that's harmful for our deliberations, and I would like to hear whether the Education Department would allow the committee to make that decision. And maybe we can have a discussion about it tomorrow morning if you would support something of that nature. But if the ideal is that we stick to this very strict standard and you already think that there's enough public comment and there's already the rules in place, I can

understand that. I'm just asking an appeal for those on the wait list.

MS. JEFFRIES: I will speak to that, Amanda. As I stated today, and I think that we've been consistent in stating this, we have been getting to the people on the wait list that have logged in. Okay? We will consult with the Department. FMCS sets the agenda. We but we have to abide by what is published in the public in the Federal Registry, as well as what is published on the website as far as when these things take place. But nevertheless, I will consult with them, and I will give you a response tomorrow morning. We unfortunately, the schedule is not going to allow for another discussion on this in the morning. But we will take it under advisement this evening with the Department and give you a response in the morning. Okay? So, with that, like I said, we can wrap up quickly in the morning on the administrative capabilities. You all are doing a great job moving through these issue papers. And then we will jump immediately into what will be most likely a robust discussion on gainful employment. And that is the only issue paper that is scheduled at this point for all day tomorrow. So, rest up. Enjoy your evening and we will see you in the morning.

Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 2, Day 1, Afternoon, February 14, 2022

From Johnson (P) Legal Aid to Everyone:

I agree with David on the usefulness of a caucus.

From Will Durden (A) Comm Colleges to Everyone:

+1 to the usefulness of an ATB caucus as well

From Bradley Adams (P - Proprietary Institutions) to Everyone:

michael voted no, so I will let him come back to the committee

From Barmak Nassirian (A) Servicemembers & Vets to Everyone:

I echo David's concerns here

From Anne Kress (P) Comm Colleges to Everyone:

The two year colleges would ask to be part of this work group, @David and Dept.

From Mike Lanouette (A) Proprietary Institutions to Everyone:

Potential revision to the 1% language,

From Anne Kress (P) Comm Colleges to Everyone:

I'm coming back in for CCs and replacing Will Durden.

From Mike Lanouette (A) Proprietary Institutions to Everyone:

"The State agrees that the total number of students that enroll during the initial period will total no more than 5 percent of enrollment at each institution participating in the State process or 50 students, whichever is higher."

From Debbie Cochran (P), State agencies to Everyone:

I will be coming back for state agencies.

From Bradley Adams (P - Proprietary Institutions) to Everyone:

I am also coming back to the table

From Ashley Schofield (A) - MSIs to Everyone:

I am at the table for MSIs replacing Beverly Hogan.

From Jessica Ranucci (A) - Legal Aid to Everyone:

I'll be at the table for legal aids

From Debbie Cochran (P), State agencies to Everyone:

I would echo Jessica's comments about the importance of calling out the grant/loan distinction, in particular. The blurring of that critical line is a source of abuse.

From David Socolow (A) State agencies to Everyone:

+1 to Amanda's and Jessica's point that stds of admin capability should include "clear and accurate info" that makes a distinction between grants and loans and makes it clear to students that loans have to be repaid.

From Ernest Ezeugo (P), Students & Loan Borrowers to Everyone:

+1 Amanda's point.

From Carolyn Fast (P) Consumer advocates/Civil Rights to Everyone:

+1 to Amanda and Jessica's point

From Ashley Schofield (A) - MSIs to Everyone:

+1 to Amanda's point.

From Debbie Cochran (P), State agencies to Everyone:

The proposed language Jessica referenced would have (1) read as follows: The source and amount of each type of aid offered, the nature of the aid and whether it must be earned or repaid, and instructions and deadlines for accepting, declining, or adjusting award amounts;

From Anne Kress (P) Comm Colleges to Everyone:

+1 to Sam

From David Socolow (A) State agencies to Everyone:

In response to Sam's point, many award letters and financial aid packages blur the distinction between grants and loans, and sometimes don't even use the word "loan" to refer to loans: <https://www.uaspire.org/News-Events/uAspire-and-New-America-Release-Decoding-the-Cost>

From Anne Kress (P) Comm Colleges to Everyone:

Rather than adding on to disclosures—I'd strongly suggest user testing existing disclosure templates to ensure they are

designed for the intended audience vs. higher ed professionals.

From Jamienne Studley to Everyone:

+1 to Anne's suggestion

From Debbie Cochran (P), State agencies to Everyone:

Consumer testing is great, but it isn't either/or if the disclosure templates aren't required.

From Adam Welle, P -- State AGs to Everyone:

Yael Shavit will be coming in for state AGs

From Jamienne Studley to Everyone:

True, Debbie, not either/or.

From Sam Veeder, (P) FA Administrators to Everyone:

+1 to Anne's suggestion

From Debbie Cochran (P), State agencies to Everyone:

I do not see this as adding onto disclosures. Anyone using the College Financing Plan would not need to do anything more.

From Ernest Ezeugo (P), Students & Loan Borrowers to Everyone:

+1 Amanda's earlier point, +1 Yael's point here.

From Jamienne Studley to Everyone:

can we see the revised text?

From Amanda Martinez (P-Civil Rights) to Everyone:

Data request for the share of institutions that use the College Financing Plan

From Yael Shavit State AGs (A) to Everyone:

Ideally by sector

From Emmanuel Guillory (A-PNPs) to Everyone:

In section 685.304, there is language regarding what is needed when conducting entrance counseling for borrowers. Perhaps a reference to a portion of this or the pulling of this language may be helpful to address concerns were expressed regarding the financial aid counseling.

From Anne Kress (P) Comm Colleges to Everyone:

+1 Barmak

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 Barmak

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

+1 Barmak

From Jessica Ranucci (A)- Legal Aid to Everyone:

Can we take down the redline now so we can see the speakers/group?

From Jamiene Studley to Everyone:

+1 Barmak

From Emmanuel Guillory (A-PNPs) to Everyone:

+1 Anne

From Jamiene Studley to Everyone:

respectfully suggest we separate (i) and (J) -- it's confusing to toggle between the two diff topics

From Bradley Adams (P - Proprietary Institutions) to Everyone:

I previously submitted wording to the Department that I will drop in the chat. I think we should delete subparagraphs (1) through (4) and rewrite subsection (i) to state:

Provides adequate career services to eligible students who receive Title IV, HEA program assistance consistent with how the institution advertises or describes its career services.

From Laura Rasar King (A) Accrediting Agencies to Everyone:

Laura Rasar King will take the chair to make a comment on item (i)

From Laura Rasar King (A) Accrediting Agencies to Everyone:

For Accrediting Agencies

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 Jamiene

From Jamiene Studley to Everyone:

Laura Rasor King will step in to contribute to this item

From Yael Shavit State AGs (A) to Everyone:

+1 Carolyn

From Ernest Ezeugo (P), Students & Loan Borrowers to Everyone:

+1 Carolyn

From Jessica Ranucci (A)- Legal Aid to Everyone:

+1 Carolyn

From Bradley Adams (P - Proprietary Institutions) to Everyone:

Provides students with accessible clinical or externship opportunities under the circumstances related to and required for completion of the credential or licensure in a recognized occupation within 45 days of the completion of required coursework.

From Jamiene Studley to Everyone:

Brad's "under the circumstances" point could/should be handled under federal waiver provisions like the COVID emergency or a local FEMA emergency condition, not school-determined

From Marvin Smith (P) 4 Year Publics to Everyone:

Suggest j should include misrepresentation language, i.e., "as the school advertised"...

From Laura Rasar King (A) Accrediting Agencies to Everyone:

+1 Jamie

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

668.16(k) - suggest changing language from "Disburses funds to students in a timely manner consistent with students' needs as required in 34 CFR 668.164" to "Disburses funds to students in a timely manner consistent with the requirements in 34 CFR 668.164" I am unsure how "consistent with students' needs" relates to 668.164.

From Sam Veeder, (P) FA Administrators to Everyone:

+1 Kelli

From Anne Kress (P) Comm Colleges to Everyone:

+1 Kelli

From Emmanuel Guillory (A-PNPs) to Everyone:

+1 Kelli

From Jamiene Studley to Everyone:

+1 to Kelli re dropping the needs reference.

From Marvin Smith (P) 4 Year Publics to Everyone:

Maybe it should say "instances" instead of "high rate" based on Greg's response

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 to Kelli

From Marvin Smith (P) 4 Year Publics to Everyone:

+1 to Kelli

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 Jamienne

From Yael Shavit State AGs (A) to Everyone:

Adam is coming back for State AGs

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

668.16(k) - As a follow-up based on the conversation we had with regard to student needs being in addition, would suggest the following, "Disburses funds to students in a timely manner consistent with the requirements in 34 CFR 668.164 and in consideration of students' needs."

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

Emmanual will be coming to the table to ask a question.

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 Debbie on point that it is hard to review a rule that has not been defined.

From Barmak Nassirian (A) Servicemembers & Vets to Everyone:

I endorse Jamie's very thoughtful analysis of the rationale here: "if you can't manage to ensure that at least

half of your institution's programs pass, you lack the requisite sophistication to run any programs"

From Jessica Ranucci (A)- Legal Aid to Everyone:

+1 to Jamie/Barmak

From Adam Welle, P -- State AGs to Everyone:

+1 to Jamie and Barmak's comments

From Ashley Schofield (A) - MSIs to Everyone:

+1 Jaime/Barmack's comments

From Anne Kress (P) Comm Colleges to Everyone:

+1 Jaime

From Anne Kress (P) Comm Colleges to Everyone:

Oops, Jamie

From Bradley Adams (P - Proprietary Institutions) to Everyone:

Does not engage in substantial misrepresentations as defined in subpart F. delete reference to aggressive recruitment.

From Emmanuel Guillory (A-PNPs) to Everyone:

To Brad's point, the Affordability and Student Loans neg reg committee did not reach consensus on the borrower defense language that included aggressive recruitment; however, the Department did say that they would agree to honor the language as if it did reach consensus.

From Adam Welle, P -- State AGs to Everyone:

+1 to Carolyn

From Jessica Ranucci (A)- Legal Aid to Everyone:

+1 to Carolyn

From Ernest Ezeugo (P), Students & Loan Borrowers to Everyone:

+1 Carolyn re: "including" language and the addition of 'o'

From Jamiene Studley (P) Accrediting agencies to Everyone:

This would leave to the Secretary whether the action is significant in terms of what it means for the institution's admin capacity

From Jamiene Studley (P) Accrediting agencies to Everyone:

Greg: what is the process for an institution to rebut if the Sec determines it is not administratively capable?

From Bradley Adams (P - Proprietary Institutions) to Everyone:

(3) A former director, officer, executive, or principal of an institution who exercised substantial control over the institution, was employed by the institution at the time the misconduct or closure occurred, whose misconduct or closure resulted in liabilities to the federal government in excess of 5 percent of its title IV, HEA program funds and those liabilities remain outstanding.

From Emmanuel Guillory (A-PNPs) to Everyone:

Suggested language for 668.16(m): For an institution that offers gainful employment programs subject to the requirements in subpart Q of this part, receives at least half of its title IV revenue in its eligible programs from such programs that are "passing" under subpart Q, or has at least half of its regular enrolled students, who are enrolled in such eligible programs, enrolled in programs that are "passing" under subpart Q.

From Beverly Hogan Primary/MSI to Everyone:

I am returning to the table.

From Bradley Adams (P - Proprietary Institutions) to Everyone:

under 1 romanette i - I would like to add in the words if the high school is open and then add in a new subsection A that states "(A) A copy of the diploma or other official record confirming that the high school conferred a diploma to the student" as a valid document a school can obtain.

From Beverly Hogan Primary/MSI to Everyone:

+1 to Barmak's comment about diploma

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

+1 to Barmak's comment about diplomas

From Anne Kress (P) Comm Colleges to Everyone:

+1 Barmak—the diploma is decorative, not demonstrative of college completion

From Beverly Hogan Primary/MSI to Everyone:

You are correct, Barmak!

From Beverly Hogan Primary/MSI to Everyone:

Clear the noise

From Jamiene Studley (P) Accrediting agencies to Everyone:

Was "completion," the term the Dept used in the first place, the better term v diploma?

From Anne Kress (P) Comm Colleges to Everyone:

+1 Jamie

From Emmanuel Guillory (A-PNPs) to Everyone:

Is the Department responsible for determining whether or not a high school diploma is valid in all of 668.16(v) (2)?

From Anne Kress (P) Comm Colleges to Everyone:

Think "completion" is the accurate term here, and this is validated by the HS transcript, most frequently.

From Kelli Perry - (P) Private Non-Profit Institutions to Everyone:

+1 Jamie and Anne on "completion" being the accurate term

From Bradley Adams (P - Proprietary Institutions) to Everyone:

does business relationship mean financial relationship?

From Barmak Nassirian (A) Servicemembers & Vets to Everyone:

Yes, B is needed for A

From Debbie Cochrane (P), State agencies to Everyone:

I will put my comment in the chat. It is not clear to me how one would confirm the validity of a diploma if the high school has closed.

From Bradley Adams (P - Proprietary Institutions) to Everyone:

+1 to Debbie. I think we need to add if the high school is open to 1 romanette 1

From Jamiene Studley (P) Accrediting agencies to Everyone:

In addition, I believe the Department took comment between the time it announced the neg reg and the time it developed its proposals that are before us.