

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 1, DAY 4, AFTERNOON
January 21, 2022

On the 21st day of January, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:30 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. ROBERTS: Welcome back, everyone. Hope you enjoyed the short lunch break. It is the committee's goal to finish up on issue paper number six and finish issue paper number seven prior to going into our public comment period today, beginning at 4:00 p.m. So, with that, Greg, I'm happy to turn it back over to you and the committee, but I do just want to thank everyone, all the negotiators. I want to thank everyone for all their thoughtful comments throughout this week. As you finish up issue paper six, please try to keep comments general in nature with any serious concerns that you want to raise for the Department. Because as always, the expectation is that the Department will take back all your suggestions that you've been emailing and putting them in the chat prior to week number two. So the goal here is to move somewhat expeditiously in issue paper number seven. So, with that, Brad, I see your hand, but Greg, is there anything that you want to kick us off with?

MR. MARTIN: The discussion about the elements in E, I believe, is where we left off, and we had a couple of comments related to that. And just to remind everybody, that's if the institution is provisionally certified, the Secretary may apply such

conditions as are determined to be appropriate to the institution, including and there was we went over a list and some discussions there, again reiterating that that list is not an exhaustive list. And so, I'll continue with discussion.

MR. ROBERTS: Great. So Brad, I see your hand. You're welcome to start, but I just want to welcome back into the table on behalf of two-year public institutions. Brad, please go ahead. We can't hear you right now, Brad.

MR. ADAMS: Thank you. Thank you. Real quick, Section 32 E, paragraph one, risk of closure. The comment is that an institution at risk of closure may need the ability to make necessary changes to ensure it does not close, which might include new or revised programs or arrangements with other institutions. So how is the Department going to determine that an institution is at a risk of closure. Proposal that the Department would have the authority to place a wide range of restrictions on the institution at the risk of closure, but that concept is wide open. I think we need a lot more detail regarding how that decision will be made and what metrics and criteria would be used to be comfortable with the list of the proposed restriction.

MR. MARTIN: Thank you. I will take

that back, I would say that where we have placed an institution on provisional certification, we do have cause to believe that there are problems with the institution that we need to be aware of. And again, we have a specific concern about precipitous closure because of how that affected students in the past. So, we do take special care to consider that possibility, but we'll take back the consideration. If you have language that you would like us to consider, let us know.

MR. ADAMS: We also care about the students. We just want to make sure we understand the criteria. On number eight, the Department here is proposing to require clearance of marketing materials that the institution has been alleged to have engaged in a misrepresentation and the school is on a provisional PPA. Let me remind you that a school is automatically on a provisional PPA when a change of control occurs. if one student makes a claim and that claim is unwarranted. Basic due process demands that the Department give institutions time to respond to allegations. I don't see anything like this built into the proposal. And then on timing, I think all institutions that are subject to this requirement would fear that if they send marketing materials to the Department to be reviewed, that it will

go to a black hole and they wouldn't hear back for months. For example, on Tuesday, we were talking about how several states had submitted applications for the ATB to the Department. Those applications were automatically approved because the Department couldn't process them within six months. My question is, is the Department really going to hire additional staff to conduct reviews of these marketing materials, all these equity disbursements and lawsuits we discussed yesterday? To be crystal clear, the Department needs a process in place to ensure timely review of those materials. The largest school in the country is a nonprofit in the Northeast. It spends 144 million dollars a year in marketing. Yet I don't believe anyone in the Department is reviewing their marketing materials. Thank you.

MR. ROBERTS: Thank you, Brad. Ernest, please.

MR. EZEUGO: Yes, thank you. Yeah, I'd like to focus in on part one romanette three here around holds on student transcripts over a de minimis amount, I presume prior obviously to a school's closure in the Secretary Secretary's [inaudible]. And I'd like to consider recommending that the Department cross out the amount of over a de minimis amount or a particular

amount and just consider releasing holds on transcripts once the Secretary deems that a school may be at risk of closure at all or any circumstances here. You know, thinking from a student perspective, if I was at an institution that I had, awareness was even being considered as a risk for closure, I would want to transfer. As I know the Department knows, it's kind of highlighted by announcements made by Secretary [inaudible] as well as the [inaudible] this week. Transcript holds for certain amounts have kind of a precipitous effect on a student's ability who may owe money to an institution to transfer to another institution. I think this is particularly the case for students from historically disadvantaged and unconsidered backgrounds, particularly black and Latino students, and to the extent that it makes sense where there is no kind of specific line of thought for this consideration of over a certain amount prior to closure. I guess that would just be my recommendation that the Department considers releasing holds altogether once the school is kind of in that category of being at risk for closure.

MR. ROBERTS: Thank you, Yael, please.

MS. SHAVIT: To Ernest's point, just from the experience of an enforcement body, I want to

just provide the context that it has been even for state AGs, unbelievably difficult and is often in many times fruitless effort to get transcripts for students after schools close. So, I agree. I think the Department should prioritize, ensuring that students have access to their transcripts and that they're not held hostage by these institutions. Beyond that, I'm glad to see that there's language here about record retention policies. But in the same vein, I want to note that we have had an unbelievably difficult time getting records from schools after the schools have closed and some instances in the lead up to school closures. And that has a cascading effect for borrowers. Not only does it affect their ability to continue their education in different contexts, but borrowers who may be entitled to relief of different types are just unable to get it because they just they don't have what they need to do it. So, I would suggest, and I'll think if there's language to be proposed here that we consider strengthening the recommendation language to be a little clearer about what's expected from the schools in those [audio].

MR. MARTIN: Thank you.

MR. ROBERTS: Debbie, I see your hand.

MS. COCHRANE: Thank you. I agree with all of Yael's comments, and I think I would also suggest

for both one and two, the one asks institutions to submit the agreement to the institution's recognized accrediting agency. I would ask that state authorizing agencies also be added to that. And I think that the same reporting requirements should apply for two as well with respect to the records retention plan. Again, states and accrediting agencies may be closer to the ground, may be the first line of defense for student questions, and having been in the loop on those would be incredibly helpful and important. Secondly, is there a definition of records retention plan and what exactly would be included in there? And I'm happy to submit some language for consideration but didn't want to start from scratch if you already have something.

MR. MARTIN: We do have a section of record retention, but I don't believe we have any definition of record retention plan. So, if you're suggesting that we define the records retention plan, you can submit language to that effect.

MS. COCHRANE: Would you be able to point me to the record retention? I'm happy again to draft something, but that would be a good starting place.

MR. ROBERTS: Debbie, is it okay if he takes a second to [interposing]

MS. COCHRANE: Absolutely.

[Interposing] make sure we're helping students, it's important we get certain pieces of information.

MR. ROBERTS: Gotcha.

MR. MARTIN: You can move to the next comment

MR. ROBERTS: Yeah, yeah, Amanda, please.

MS. AMANDA MARTINEZ: I may be reading this wrong, but originally so I have two, one question for Ernest's previous comment about making suggestive language changes so that it's more broader and actually addresses the issue of transcript withholdings? So support that and support in whatever comes forward to make that stronger and actually applicable to students in their lives, instead of just kind of making it a mention there. In specific narrowed instances, we don't want those narrowed instances. We want to make sure it's actually solving the problem that's at hand here, which is continuous, it's continuing to be a larger, larger problem. I have a suggestion, a question on I, the submission of a teach out plan or agreement. To me that reads, and like just correct me if I'm wrong, just it's more clarifying purposes. Does this mean that an institution can submit a teach out plan a, but not an

agreement or they could submit an agreement and not a do either? or. I'm just I'm concerned about the teach out plan, is that referencing to other regulations that clarify the details of what should be included in that teach out plan? So I'm concerned about articulation agreements and ensuring that the transfer of credits, whatever can be used by the student because in for-profit colleges, we know that for the most part, when schools close or you know students realize that their credits are actually non-viable when they're trying to transfer or trying to maybe reenroll after trying to get a second chance after they've learned that their school is a fraud or misled them, they try to go back to school. They can't because they're starting from zero. So, I'm just wondering how strong that language needs to be and if there's any holes there on teach out plan. Specifically, then clarifying my understanding of can they submit a plan covers it or is there an agreement with institutions with the Department on how exactly that plan is going to go? Then my suggestion is to add another list point here of ensuring federal civil rights laws are applicable, that they're applied, that if the Secretary-

MR. WAGNER: Thirty seconds remaining, Amanda.

MS. AMANDA MARTINEZ: I could submit more language, but I just want to add a separate additional list to ensure that federal civil rights laws are being monitored at all institutions, and that can be added here in this part.

MR. MARTIN: Yeah, with respect to civil rights laws, we'll take that back. The teach out plan is, as you know, would be the actual plan the school has for teach out, which will differentiate from teach out agreements. So, I'm not sure exactly what you're asking there. We would be requiring from a school the actual plan it has to execute that, teach out is what we're looking for to see that students have some mechanism for completing their program. The records retention citation is 668.24 in the section on records retention.

MR. ROBERTS: You got that Debbie? You heard that? Excellent. Okay, Brad, go ahead.

MR. ADAMS: Thank you. In the convergence section nine, subsection F paragraphs one and two, the wording stating quote other conditions that the Secretary may deem appropriate seems to create a sort of purgatory for institutions that convert from for-profit to nonprofit status. It seems like Department could delay forever on improving an institution's

request to convert to a nonprofit status. Generally speaking, it does not seem like keeping a school in limbo for an extended period is fair to the organization, but I also want to highlight the long-term uncertainty typically stresses organizations because it undermines efforts to plan and use resources most efficiently. This will be bad for schools or students, their employees, and the communities they serve. If the Department has two years of audited financial statements, compliance audits, and they are acceptable and they meet the other metrics here stated for two years, then the Department should agree to let the conversion and let the school move on, approve the conversion, and let the school move on.

MR. ROBERTS: I just want to note in the chat if folks could. I think we're just going to finish up with G before we head off to F. [Inaudible] apologies.

MR. ADAMS: I'm sorry.

MR. ROBERTS: You're good, no that's okay.

MR. ADAMS: But yeah, so my comment was in F.

MR. ROBERTS: Sure. Sure. Oh okay, gotcha. So, Carolyn.

MS. FAST: Thank you, and I just wanted to quickly reiterate that these conditions are things that the Department already has authority to do. They're just providing sort of extra notice through this reg. So, to Brad's point, when he was objecting about the possibility that they could, the Department could impose a condition to review marketing that's already something that exists in the Department's authority. This is just articulating it to provide notice to schools that might be subject to it after they've been found to have potential problems. But anyway, I also just wanted to add for the Department's consideration that there are other conditions that they might consider adding to the list. So, for example, if a school has in a program review or through an investigation by a state or federal agency been found to have significant issues, including, for example, related to student outcomes, it might make sense to include requirements to report on things like graduation and retention rates or other similar metrics, and to even have to improve those if that's if that's a problem, as part of a condition of provisional certification.

MR. MARTIN: Thank you.

MR. ROBERTS: Yael, please.

MS. SHAVIT: Just very briefly. To the

point about marketing, I just want to know that this is maybe like the number one thing that we see institutions, for-profit institutions in particular doing that just results in catastrophic harm to borrowers. I think it's essential the Department maintain the authority that it already has to Carolyn's point to be thoughtful and aware of these issues and play a role where there are real risks to ensure that schools can't defraud students and that particularly schools at risk of precipitous closure, can't use marketing materials in a manner that you know provides material and information to students. That's simply incorrect and that misleads them and deceives them into enrolling in school they shouldn't be enrolling in. To Brad's point about conversions, I think it's worth noting that there are many inherent risks associated with for-profit and nonprofit conversions, and more than that that these transactions can take many different forms and raise unique concerns. The Department should prioritize making sure that it has [audio] possible to have case specific requirements associated with these types of conversions.

MR. ROBERTS: Thank you, Barmak.

MR. NASSIRIAN: Just a quick point that the mere, on teach out plans, it shouldn't be just

a mere submission of a teach out plan, any teach out plan, no matter how science fiction it may be, it has to be a teach out plan that is acceptable to the Secretary, the accreditor, and to the authorizer.

MR. ROBERTS: Thank you. Jessica, please.

MS. RANUCCI: I was just going to add for potential inclusion on the list of [inaudible] prohibition on participating in ATB programs that we're worried about. You know, we want ATB programs to be the best that they can be, I think maybe the Secretary's discretion to prohibit some schools on provisional PPAs who participate would make sense to me.

MR. ROBERTS: Oh, great. Greg, do you want to do a quick, quick temperature check on E and then move right into F?

MR. MARTIN: Sounds good, Brady.

MR. ROBERTS: Excellent. Alright. If people could hold up those thumbs nice and high at the center of their screen. Temperature check on the entirety of section E, as currently read. Thank you. I do see one thumb down. You are more than welcome to come off of mute and add anything new. Alright, great. Thank you. So, moving right along to F. Greg and Aaron, do you want to briefly tee us up for that section?

MR. MARTIN: Yes. Thank you, Aaron.

So, we are moving to section F. If a proprietary institution seeks to convert to nonprofit status following a change in ownership, the following conditions will apply to the institution following the change of ownership, in addition to any other conditions the Secretary may deem appropriate. The institution must continue to meet the requirements under 668.28 A and 668.28 B until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years with passing 90/10 reporting under its new ownership or until the Department approves the institution's request to convert to a nonprofit status, whichever is later. Department must continue, the institution rather must continue to meet the gainful employment requirements of subpart two of this part until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership or until the Department approves the institution's request to convert to nonprofit status, whichever is later. And the institution will be required to submit regular and timely reports on agreements entered with its former

for-profit owner or affiliated or related persons or entities so long as the institution participates as a nonprofit institution. And that's the entirety of F. So, I'll open it up for comment.

MR. ROBERTS: Thank you. Alright. Opening up for any comments. Okay with that and noting that, Brad, we did we did previously hear your comment. Do we want to take a temperature check on this?

MR. MARTIN: Go ahead.

MR. ROBERTS: Excellent. I do just want to note that Johnson is in for legal aid, so I apologize for missing that. Welcome to the table, Johnson. So, if I could again see people's thumbs for section, the entirety of Section F. I see one thumb down. Brad, anything you'd like to add?

MR. ADAMS: It's stated for the committee, but just to be clear, I like that one to three are measurable items to achieve. I haven't opined on whether or not I agree with them, but at least they're measurable. The concern is, in addition to other conditions the Secretary may deem appropriate is an unmeasurable item. I do not know what that means.

MR. MARTIN: Thank you.

MR. ROBERTS: Appreciate that. And so, Greg, I know that we have section G and then I'm sitting

down, we have that one area of the. Do you want to briefly walk us through G, and you want to incorporate the deletion in our discussion?

MR. MARTIN: All I can say about G is we've just re-lettered the paragraphs, we haven't done anything there, so I think we can move on to 668.43.

MR. ROBERTS: Okay. So, Aaron, if you want to share the document 668.43, institutional information.

MR. MARTIN: So here we are in 668.43 A 5, institutional information that the institution must make readily available to enroll the prospective students under this subpart includes but is not limited to the academic program of the institution, including all the romanettes you see there and going down to romanette five, which we have deleted, reminding you that in 668.14 B 32, we proposed to require all programs that lead to occupations requiring programmatic accreditation or state licensure to meet those requirements that renders the disclosure unnecessary. It required disclosures about states in which the institution did not meet, did, did or did not meet the licensing requirements. Thus, we propose to eliminate the language in the disclosure section of the regulations. I will stipulate that we've heard the

comments that there might be other disclosures which we should consider in lieu of this, and we've got that language, those requests. This only has to do with deleting the actual disclosure language that relates to the requiring. Well, what this required was the informing students of whether they met, but if we're going to require that they do, that this specific disclosure would become redundant. So, I'll open the floor for discussion on this, on 668.43.

MR. ROBERTS: Great, Kelli, I see your hand first.

MS. PERRY: Thank you. I don't, I'd actually like to go back, I don't know if I was sleeping and I missed it, but I thought G was new and E was renamed to H. So, where it starts if an institution is initially certified as a nonprofit institution, just two points questions actually clarification. In G, where it talks about the following conditions will apply if an institution upon initial certification or following the change in ownership. And then it goes on to say, in addition to any other conditions that the Secretary may deem appropriate. What, what is the intent there, I guess? And then my second question is in two in that section where it talks about that the institution will submit regular and timely reports as it relates to

taxes. For how long? Is that until the certification is approved?

MR. MARTIN: Right. So the re-lettering, that's just the. Yeah, we re-lettered the paragraphs and just so E became H.

MS. PERRY: But what about G? Because in my document, it's red text, which to me means it's new, right?

MR. ROBERTS: Oh, you know what? You're absolutely right. I elided G, didn't I? I don't think we discussed G, did we?

MR. ROBERTS: We breezed by it, yeah.

MR. MARTIN: Yeah, I am very sorry about that. You're absolutely correct about that. Did you your other comments? I'm sorry. I really apologize for that omission. By the end of the week, my eyes are starting to give way. Did you did you have other did you have any, were your comments related to anything above G? I just want to make sure.

MS. PERRY: No, no. It's it's all in G.

MR. MARTIN: Okay, I'm sorry. My mistake. So, let's go back and review G then.

MR. ROBERTS: Yeah, right, right.

MR. MARTIN: My mistake and I offer

wholehearted apologies for that. So, let's not skip G at all. Not my intention. If an institution initially certified as a nonprofit institution or it has undergone a change of ownership and seeks to convert to nonprofit status, the following conditions will apply to the institution upon initial certification or following the change of ownership in addition to any other conditions the Secretary may deem appropriate. The institution will be required to submit regular and timely reports on a accreditor and state authorization agency actions and any new servicing agreements until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following the initial certification or two complete fiscal years under its new ownership until the Department approves the institution's request to convert to nonprofit status, whichever is later. And the institution will be required to submit regular and timely reports on communications from the Internal Revenue Service or any other state or foreign country related to tax exempt or nonprofit status so long as the institution continues to participate as a nonprofit institution. So in your question related to the required to submit timely, regular and timely reports that would be for the

duration of the time it chooses to, it wants to participate as nonprofit so that there's no time limit on that. And then I'm sorry, I'll go back. And can you review your other comments on G that you had as I've-

MS. PERRY: Yeah, I can. But if we can stick with two just based on your response, I'm not sure I'm following what that means. As far as for the entire time that it wishes to participate as a nonprofit institution. Maybe I'm just not understanding this.

MR. MARTIN: We want, we want to be. So if there's any communications between any between the IRS or the or the Revenue Service of any other country that relates to that tax-exempt status, we want to see it, if it affects the tax relief, if it affects the status of that organization as tax-exempt or nonprofit. So because that could happen at any that could happen. I mean, there are actions we take their actions that those bodies take and if they were to some action that they took could hypothetically affect the status as a nonprofit organization. So we would want to see that [interposing]

MS. PERRY: Specifically as it relates to the nonprofit status. Okay. My other question was in G itself and the last few words in that as it relates to in addition to any other conditions that the Secretary

may deem appropriate. Because I'm reading this as it has to do with upon initial certification or change in ownership. Can you give an example of another condition that might be beyond those two?

MR. ROBERTS: Off the top of my head, I can't think, I'll turn it over to Steve. Maybe he has an example of one or two he could offer.

MR. FINLEY: Sure, some types of restrictions for initial certification there, provisionally certified institutions are required usually to apply for new location approval for new locations or to add new programs beyond the scope of their existing accreditation. In some circumstances, if there were concerns about the application, there might be a prohibition for a certain time period before they would even be allowed to apply to add a new location or a new program. So it really is tied to the specifics of the applications, and this is just to note that there can be additional and that's already done, right? That's already inherent in the authority of the Department to impose limitations on initial approvals or even certifications or changes of ownership.

MS. PERRY: Okay. Thank you.

MR. MARTIN: Again, thank you, Kelli, for pointing out the omission was very important.

MR. ROBERTS: I was sleeping on my role as a facilitator. Greg, I don't see any other hands for G. Do we want to do a quick temperature check on that?

MR. MARTIN: Yes, please. Let's do a temperature check on that since we did not do that earlier.

MR. ROBERTS: Alright. Another one, if people want to put their thumbs right in the center of their screen, just hold them up just so we can take note where the committee is at this point. Alright. Not seeing any thumbs down. So thank you and thank you again, Kelli for pointing that out. Now, Greg, do you want to, I'm going to scroll down on my end to that last section, 668.43.

MR. MARTIN: Yeah, I think we already went over that, and I went and I just wanted to acknowledge, I know we had some comments before where when we went over that in 668.14 B 32. But if somebody else has something additional, they'd like to say, understanding that we do, we have heard the concern about other disclosures which may be necessary.

MR. ROBERTS: Jessica just wanted to note, is back in for legal aid, please.

MS. RANUCCI: Thanks. Yeah, I just

want to I think that's slightly different than what people said earlier, and I think it really goes back to the point Carolyn made. But you know, I think we've talked about requiring licensure for the where the school is located or where it is state authorized or potentially even where it teaches students so [inaudible]. But there are all sorts of circumstances in which, you know, a student is living in Indiana but intends to move to Massachusetts after graduation. And even if they're attending a school in Indiana, actually knowing that they can't get the job in Massachusetts may be relevant. So I would not reflexively cut these. I'm not the world's biggest fan of disclosures. I'm not sure, this is not the best way to get the job done. I think the other part is, but there still may be room here because students move, that's the reality.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank you. And Greg, I'm not seeing anything else that we want to wrap up issue paper number six with a quick check on 668.43.

MR. MARTIN: Yes.

MR. ROBERTS: Okay. Alright. And we all want to do it. We're all very excited. Thumbs right? Middle of the screen, nice and high. I am not seeing any thumbs down. Great, okay. Thank you very much. Greg, do

you want to move us right into number seven, 90/10 rule?

MR. MARTIN: Yes, but just give me like a minute here to pull that up and for Aaron and Vanessa to get that up on the screen.

MR. ROBERTS: Yeah. And as that happens, I just want to let everyone know that Travis is coming to the table on behalf of service members and vets, Jaylon is coming to the table on behalf of consumer advocacy groups. Johnson is back for legal aid organizations and Carney is going to be in for students and student loan borrowers. So welcome to that group for joining us. And, Greg, whenever you are ready, I think Aaron has the document up.

MR. MARTIN: Okay. What better way to close off Friday and the end of our first round of discussions than with 90/10? So we are looking at issue paper number seven again Title IV revenue and nonfederal education assistance funds. You can see that for those of you who are familiar with the current section, the regulation that we have renamed it to accommodate the statutory change, so we provide the applicable statutory citation and the regulatory citation in 668.28. I want to offer up front that for those of you familiar with 90/10, we are not providing an Appendix C at this point. Appendix C is the actual methodology for calculating

90/10, so we will be providing that at the next at the next, at the next session. So let's begin with a summary of the issues. And we referenced section two, 2013 of the American Rescue Plan that amended the applicable statute to require at least 10 percent of a proprietary institution's revenues to be derived from sources other than federal educational assistance funds. This change means that the numerator of the revenue calculation, which formerly consisted only of Title IV funds, will now include federal funds that are disbursed or delivered to or on behalf of a student, which we will define collectively as federal educational assistance funds. We proposed to amend 34 CFR 668.28 to account for the statutory language, statutory change, rather requiring that a proprietary institution's revenue be derived from sources other than federal educational assistance funds. Additionally, we are proposing changes to 34 CFR 668.28 that would close the existing loopholes in the 90/10 calculation and provide clarification on the treatment of revenue. Specifically, those changes would designate as federal educational assistance funds, any educational assistance for students sent directly to the institution by the awarding agency, as well as funds to flow directly to students where the authorizing federal agency provides funding data to the institution.

And we note, as part of our implementation, the Department would create data sharing arrangements with federal agencies to provide student level funding data to institutions, including funds paid directly to students by that awarding agency. We would publish an annual notice in the Federal Register, indicating which agencies have such an arrangement monitoring the current requirement in 34 CFR 668.28(a)(4) with respect to Title IV program funds, federal educational assistance funds disbursed or delivered to or on behalf of a student would be presumed to pay the student's tuition fees or other institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition fees or other charges are satisfied by the sources identified in 668.28(a)(4) romanette I through romanette 4, referred to in the 90/10 calculation as funds received first. This would include those funds paid directly to students by awarding agencies up to the amount of cash payments made to the institution by the student. We proposed to disallow the sale of receivables, including from institutional loans as nonfederal educational assistance revenue. Section 487(d)(1)(b) of the HEA requires that in performing in 90/10 calculation, an institution may

only include revenue as revenue. Those funds generated by the institution from tuition fees and other institutional charges for students enrolled in programs eligible for assistance under the Title IV programs. Activities conducted by the institution that are necessary for the education and training of the institution, students or certain noneligible training programs. Revenue that results from the sale of receivables is not derived from tuition or fees or other institutional charges for students enrolled in the program eligible for federal education assistance and does not indicate a willingness on the part of the student to pay cash for a portion of their programs. We would also require institutions to award, disperse, and request Title IV funds according to established parameters. Loss of eligibility under 90/10 occurs only after two consecutive years of failing rates, because 34 CFR part 668 imposes no timeframe for requesting federal funds. Institutions can avoid a loss of eligibility under 90/10 by deferring drawdowns of Title IV funds from G5, which is the mechanism through which institutions request funds until the subsequent fiscal year. We propose to address this loophole by adding a disbursement rule requiring proprietary institutions to disburse funds to eligible students and request those

funds from G5 prior to the end of the institution's fiscal year. We would also limit the revenues from activities conducted by the institution to those derived from such activities necessary for the education and training of a student under the HEA institutions may count as revenue activities conducted by the institution that are necessary for the education and training of the institution's students. Only funds generated from services provided by students may count as revenue for 90/10 purposes. Such revenue does not include revenue derived from product sales. Proposed changes to 34 CFR 668.28 would require that institutional accounting records clearly identify the service revenue not related to product sales that is unique to the service activities performed by the student in the program and necessary for the education of those students. Finally, we would clarify under what circumstances funds paid by a student or on behalf of a student, by a party other than the institution for an education or training program that is not an eligible program may count as a revenue for 90/10 purposes. We proposed that only the funds generated from non-eligible programs offered at the eligible institution. I'm sorry, offered at the eligible location of the institution where the institution itself provides the education may be counted

as nonfederal educational assistance revenue for the purposes of 90/10. This would preclude revenue from programs where the institution merely provides facilities for test preparation courses, acts as a proctor, or oversees a course of self-study. So with that, I'm going to move into the regulatory text itself, our proposed red lines, and we're looking at 668.28. We see the change there reflecting the statutory, the statutory changes, and we note that here and throughout the paper, we have changed references to non-Title IV revenue from non-Title IV revenue rather to nonfederal revenue. And this does incorporate those statutory changes. So I'll begin with (a)(1), calculating the revenue percentage. The proprietary institution meets the requirements in 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than federal funds by using the formula in Appendix C, which I referenced earlier of this subpart to calculate its revenue percentage for the latest complete fiscal year for purposes of this section for any annual audit submission for a proprietary institution, institution's fiscal year beginning on or after January 1, 2023. Federal funds used to calculate the revenue percentage include Title IV HEA program funds and any other educational assistance funds provided by a federal

agency directly to an institution or student. The Secretary identifies the federal agency and the other educational assistance funds provided by that agency and a notice that will be published in the Federal Register. For any fiscal year beginning prior to January 2023, federal funds are limited to Title IV HEA funds. And I'll because this is a pretty dense [interposing] section, I'm going to pause here and allow discussion on what we just talked about in (a)(1).

MR. ROBERTS: Alright. Any comments or questions from the committee on paragraph A subparagraph one? Bradley, please.

MR. ADAMS: Good afternoon, 90/10 negotiations on a Friday afternoon. I can't imagine a better way to spend our days, an accountant's dream, I must say. But I just got to start with an opening statement, and I'll have various comments. This is a proprietary school issue. So nonetheless, I have to begin, by stating on the record that we are strongly opposed to the entire 90/10 concept. That being said, we understand that 90/10 is statutory. Rule does not protect students or promote institutional excellence. To be clear, there is no demonstrated relationship between the quality of an institution and how students pay for their education. There are, however, numerous

destructive consequences of this rule and incentivizes schools to turn away, tell students that are most in need, and master's and doctoral graduate program students borrowing grad PLUS loans and instead seeks out those who are less likely to need aid or represent a credit risk. It requires institutions and the government to dedicate an extraordinary amount of time and resources to understanding, complying with and enforcing the rule instead of allocating those resources, better programs, and enforcement of quality assurance programs and metrics that are proven to work. That being said, given the [inaudible] proprietary schools, I'll have several comments throughout this agreement, and I'll get back in line. Thank you.

MR. ROBERTS: Thank you. And you just want to make a brief notice on folks who've just joined us and want to welcome Jamie back to the table, as well as Emmanuel on behalf of private nonprofit. So with that, Travis go ahead.

MR. HARR: Hi, thank you. I also wanted to make an opening statement about 90/10 from our perspective of a service member and veterans and who this rule has, this loophole has kind of affected over the years or has affected over the years. First of all, closing the 90/10 loophole has been one of the top

education, if not the top education priority for a large number of service member of organizations that represent service members, veterans and family members and military connect students. And we're very happy that that loophole is closed and that all federal funds will be counted, and we're here to ensure that it's closed, shut tight. You know, the post-9/11 GI Bill is a massively popular program from my organization, Iraq and Afghanistan Veterans of America. Over 90 percent of our members utilize it in some way. It's truly transformational. I wouldn't have gone to school personally without it. I know many veterans that wouldn't have gone to school without this program. And that's just the GI Bill, not to even include DOD tuition assistance, spousal assistance programs, and things like that that really help our community. However, with this loophole was open, it also put a target on the backs of veterans and service members and their families by having these predatory schools really target them for just the GI Bill dollars to not be included and so they could, you know, recruit other non-GI Bill students, which is really a target on the back and victimized many members of our community. You know, this rule was put into place to ensure that schools are being good stewards of taxpayer funds, and we ensure that the money

only goes to schools that pass these market tests. And lastly, I'll just say that Congress intended all federal funds, including the DOD and GI Bill and VA money, to be included. And we're here to ensure that's going to happen and thank you, and I'll get back in line for some more comments.

MR. ROBERTS: Thanks, Travis. Just to clarify the question in chat, we are only, we were trying to limit comments only to section, number one of that first section, so as much as negotiators can, but with that, Jaylon please.

MR. HERBIN: Yes. Thank you, so we are very supportive of closing the loophole to protect the GI Bill recipients and having to see this draft language. However, we are still concerned that opening up the new loopholes related to institutional private loans, which we are, which included later on in the regulation. We also would like to get clarification on how the ABT grants for students coming from foster care systems will be treated as those that are federal funds that are being administered through the throughout the states. So if you guys can just touch about on that part as well, please.

MR. MARTIN: As far as the grants you're referring to, we we're still in the process of

identifying all of the potential sources for federal funds to an institution, and beyond that, as I pointed out before, 90/10, in order to do a 90/10 calculation it is necessary to know what was received at the student level by each individual student. Otherwise, you cannot calculate 90/10 again. It does. It does aggregate, but it can't be calculated on aggregate basis up front. So you can't just know how, the amount of funding an institution received from a source. It must be broken down by student and in many cases, and the institution has to be informed of that. It would have to know that. Certainly the institution would know in any case, where they where the agency providing the funds gave them to the institution to disperse, but where those funds go to the student, the school would not be aware of that unless the agency had a mechanism for that. So we have a we do have a way to go with our identifications and also putting into place protocols through which schools would be notified of those amounts. So I can't speak to any particular any particular funding source right now. You had another part of your question, too. I can't recall what that was. I'm sorry. Could you reiterate that or restate that, please?

MR. ROBERTS: I think you're muted right now, Jaylon, sorry.

MR. HERBIN: I'm sorry. Pretty much the other part of the question was closing this loophole for the GI Bill, which is a great thing, but we're often concerned that it is going to open up more loopholes for, related to institutional private loans as well.

MR. MARTIN: Yes, we do have we do have concerns about obviously that we're, about steering, you know, steering students into private loans. However, I would point out that it's a program violation to, not to allow a student access to all of the Title IV aid to which he or she is entitled. So it's not appropriate for a school to say to us, to a student, you know, we're not going to originate your loan up to the level of eligibility for Title IV in order that we can steer you into a some type of a private instrument. So that would be, I'm not saying that some schools might not try to do that, but it would be a program violation to the extent that we're aware of it. We would we would take action against the institution that did that.

MR. ROBERTS: Thank you. Carney, welcome and please, you have three minutes.

MR. KING: Hi, just really quickly, I want to add on to Travis's opening statement. I'm representing students and student loan borrowers, but I'm also a veteran that used the GI Bill. I'm really

supportive of closing any and all loopholes. These predatory colleges also really take advantage of students that are first generation, a lot of first-generation veteran students and other students that don't really understand the kind of college recruitment process. They think they're being recruited by better colleges than they might actually be. So I really just want to make sure that we're closing the loophole and protecting all students. Thank you.

MR. ROBERTS: Thank you. Brad, please.

MR. ADAMS: And thank you for your service, Carney. You know, I did add just real quickly in the chat that not all veterans service organizations agree with the 90/10 change. There was a veterans education project paper that I put in there for the Department to take a look at. This is kind of section one and section two, so I'll combine it here. The Department seems to be proposing that federal assistance funds pay directly to students would be counted in the 90 without regard to whether the funds were actually provided to the school to pay for tuition fees and other institutional charges, there are basic programs like Montgomery GI Bill benefits post-9/11 GI VAH, which stands for Basic Allowance for Housing, does not have tuition in the word. It provides significant amounts for

housing, cost of living and other expenses that are clearly not tuition fees and institutional charges. Depending on your zip code that can be up to 1,700 dollars per month. It would be completely inappropriate to include these funds in the calculation. It goes against the basic accounting matching principle we all learn in college. Given the cash being used in the calculation may not be associated, would not be associated with the revenue being reported in the denominator. All the funds counted in 90/10 must have been provided to the school by the student for tuition fees and other institutional charges, and the amount must be capped at the cash payments actually received from the student, not what the student received. Also under Title 34 CFR Section 668.28 subsection C paragraph three, institutions are required to report to the Department within 45 days after their fiscal year if they failed the 90/10 rule. The Department isn't proposing changing that reporting requirement as part of this issue paper. After living through gainful employment with the Department, I'm concerned that the Department won't have the ability to get institutions' data timely, and the VA is typically the last federal funds source to clear the ledger [audio]. If the Department doesn't get disbursement data from the VA and

share with institutions in real time, how can the institutions be expected to comply with this 45-day reporting requirement? Does the Department have a master service agreement already in place with the Department guaranteeing they will get this data in time to get it to institutions to complete their 90/10 calculation? Remember, the 90/10 has to be audited as well, so we would really need that before the end of our fiscal year. If institutions did a, get data a month or two after disbursement, we could be in a significant situation where we can't comply with the 90/10 rule until after 45 days of our fiscal year [audio]. Thus, effectively precluding us from completing the reporting requirement. Is the Department planning to address this? Is the Department intent on sharing this disbursement data with institutions in real time? How can the institution plan for their fiscal year if they're not guaranteed to get this data on a real-time basis? This will really hamstring our ability to monitor 90/10 compliance. What's the Department's plan and timing expectation on sharing data with institutions?

MR. MARTIN: I definitely hear your concerns, that's a lot of questions. I think maybe 20 years ago, I could remember it all in my head. I've tried to address your overriding concern, which is the

first of all. I do want to say that the that the amount that will that will be counted towards 90/10, that is that that is received roughly by students will be capped at the amount of cash the student actually pays. So what we're basically doing here is presuming the amount of cash the student pays to have come from those sources [interposing]. Secondly, with- yes.

MR. ADAMS: I'm just, I'm not following that. So you're saying that you'll know how much money the student paid us out of their 1,700 dollar check.

MR. MARTIN: No, we won't know that. You will.

MR. ADAMS: And how do we know that it came from [audio] and not another job? Sorry-

MR. MARTIN: That is, there is a presumption currently in the regulations that if the student received, if the student received funding from that from that source and was paid and then the student paid cash to the institution, the presumption that that cash payment came from that source up to the amount of that source.

MR. ADAMS: In the core, the cash source is called basic allowance for housing. That's considered a presumption for tuition?

MR. MARTIN: Under the current, under the way, not the current, the way the regulation is currently proposed, yes, there'd be no delineation. You can, if you're making a suggestion that it be that you're making the suggestion that where the where the source is identified as being specific to say housing allowance, that that would be that would be excluded completely?

MR. ADAMS: That would be a good starting point. But there's more than that.

MR. MARTIN: We'll take-.

MR. ADAMS: How about the 45 days?

MR. MARTIN: Yeah, well, I was just going to address that. With respect to the timeliness there, we are not changing that. Our intention is to our intention is not to require schools to be aware of funding sources where they have not been made, where it has not been made known to them, what the amount of the award received by each student is. And that's why we are going to not make a blanket requirement. But rather saying that we will identify in the Federal Register each year those sources that the school is required to be aware of, and we would not do that until we have executed some type of arrangement with that entity to provide data not just to the Department, but to provide

that to the school. So they'd be aware of that. We are aware of the timeliness issues involved with that and the fact that it would not be of use to a school if that information only came, you know, months after the aid was actually dispersed to the student by that entity. But I want to give my counsel Steve an opportunity to expand on that if he wants to.

MR. FINLEY: Yeah, I don't think that needs any expansion right now. You know, input on how these items should be treated is welcome and will be considered.

MR. ROBERTS: Thank you. Johnson, please.

MR. TYLER: Yeah, I have two comments. Jaylon is concerned about you know the private student loan market entering this area is completely valid. Navient just recently settled a case for, I think they, the output was a 1.2 billion dollars worth of private loans that enabled more money to flow to schools, and the value of those loans was so de minimis I think they valued at 50 million afterwards. So there's a whole there's a whole history of the private loans trying to make 90/10 work for profits and having a bad effect on borrowers. So that's one statement. And just to address Brad's concerns. Now, I have a client who could have

gone to FIT, which is the Fashion Institute in New York, which, you know, uses its moniker to imitate MIT. I mean, it's really a great place. And instead she went to the she went to the Art Institute, and she took out all these loans, and she could have taken out all the loans and gone to FIT and maybe taken out less loans. I mean, the marketplace is designed to attract people in certain places. Her degree hasn't really worked out. And the idea that, you know, the that we shouldn't be using these sort of ideas that people are voting with their feet as to where they go to school, and that should have an impact on whether you should continue to receive funding and their pocketbooks. It just seems a little bit of a contradiction.

MR. MARTIN: I want to say just quickly that, you know, the Department is fully aware that what we're proposing here is not going to address every concern about, you know, and the concerns that we share, by the way, about increasing you know private lending or student students seeking those sources as a as a as an alternative to Title IV, I can only reiterate that what is here that if an institution because of these rules decided to try to steer students who were eligible for Title IV funding into other instruments, that would be a that would be a violation. I don't know

what the what the Veterans Administration rules are or DOD. I would assume there would be a grave consequences for a school that purposefully did not enroll veterans in order to avoid the consequences of this. So while that might happen, I'm certain that would be that would be a violation. So I don't think, what I'm trying to say is I don't think these rules that we're proposing here, while they might not fix all the problems being identified, I do not believe they exacerbate them.

MR. ROBERTS: Thanks, Greg. Travis, please.

MR. HERR: Thank you. I wanted to make sure that I read my colleague Barmak's comments that are in the chat for everybody that's watching and can't read the chat. Just to point out that the organization that was cited earlier is an outlier. We've been endorsed by 28 veterans, military, and family member related organizations. And this has broad support within the veteran and military community. And I also wanted to touch on that the housing allowance, that it's incorrect to state that the housing allowance should be excluded, as evidenced by the statutory text inserting federal funds, federal funds that are dispersed or delivered to or on behalf of a student to be used and to attend such institution referred to as paragraph subsection D as

Federal Education Assistance Funds, students are getting the housing allowance to be used only if they attend the institutions, and the exclusion of the housing allowance is not supported by the statute. And then I also would like to mention in romanette one that you know we list Title IV HEA program funds and I think we've already discussed a little bit that the Department is aware of you know large sources of other federal funds that assist students such as the GI Bill and DOD are coming from VA and, VA and DOD, and that it would I think it would be helpful to list those explicitly rather than have them rely on a list that comes out every year from the Department. And just have that explicitly stated and these other federal funds that you've identified, which I think you've already touched on, and that's it for me. Thanks.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank you. Yael, please.

MS. SHAVIT: Thanks, and Travis touched on a point that I wanted to make, only I might make it a little stronger, which is that I think it's cynical to suggest removal of housing assistance that's specifically intended to help students get an education. And I would urge the Department not to take that recommendation. But beyond that, I wanted to just raise

the concern about the notice that the Department is proposing making annually and that my fear about that notice, though, I see that it could be a useful aid to schools, and I'm not opposed to that is that I want it to be clear that that doesn't take away the school's responsibility to do their own [audio]. And in the event that there are changes in the interim and schools are aware of different sources of federal funding that might become available to students and that students are intending to use it is concerning to me the notion that a document that might become static or not be updated in real-time or not be entirely comprehensive for one reason or another may ultimately create a loophole in itself.

MR. MARTIN: Thank you.

MR. ROBERTS: Alright. Greg, shall we take a quick check on just number one, calculating the revenue percentage and then move on to disbursement rule?

MR. ADAMS: Do we need to check them in on every, temperature check on every item we can, but-.

MR. MARTIN: No, I don't think we need to do a temperature check just on that. I just wanted to I wanted to open up discussion for that because I wanted

to just, you know, get some discussion going before we went too far deep into the text. So I didn't want it to be a recitation on my part. I just wanted to get some so we can. We'll move on and we can call for a I think we'll wait a little bit longer before we before we do a.

MR. ROBERTS: I just love temperature checks. Do we want to do, cue Aaron up for disbursement rule?

MR. MARTIN: Yes. Yeah, I like temperature checks as well. Not trying to disparage temperature checks. Great. Thank you, Aaron. So you'll see here in two that, I want to point out that cash basis of accounting is still the method for calculating 90/10. That's statutory, that's not been changed by what you see lined out there. We have proposed this new disbursement rule, and we do say here an institution must use the cash basis of accounting and calculating its revenue percentage. Always a bit of a problem when, you know, I remember my first exposure to 90/10, if you've ever had, well, I'm sure if you have had advanced accounting courses, they talk about cash basis. But in the basic ones you're just always taught, you know, you're taught to think about accrual basis accounting. So it's kind of hard to, at first kind of hard to divorce yourself from that, but we are talking about

cash basis here, so for each eligible student counting the amount of non-Title IV, I should say, rather institution must use the cash basis of accounting in calculating its revenue percentage by for each eligible student counting the amount of non-Title IV federal funds the institution received during its fiscal year, directly from an agency identified in (a)(1) romanette one of the section, which we said we would do annually in the Federal Register, and tuition and fees and other institutional charges paid by a student to whom the federal agency provided funds. For each student for each eligible student counting the amount of Title IV HEA program funds received during the fiscal year. However, before the end of its fiscal year, the institution must request funds under the advanced payment method in 668.162(b)(2) or the heightened cash monitoring method in 668.162(d)(1) that students are eligible to receive and make any disbursements to those students by the end of the fiscal year or make disbursements to those students by the end of the fiscal year, and report as federal funds in the revenue calculations the funds that the students are eligible to receive before requesting those funds under the reimbursement or heightened cash management methods in 668.162(c) or (d)(2). So we note here that for each eligible student, the institution can

count, the institution counts the amount of non-Title IV federal funds received during the fiscal year, including those funds received directly from another agency, as well as those that are received from a student and for each eligible student, the institution count the total Title IV funds received during the fiscal year except that those institutions, except that into an institution on heightened cash management, must first or in advance pay must first must request and disperse Title IV funds by the end of the fiscal year because 34, and the reason for this is because 34 CFR part 668 imposes no timeframe for the requesting of federal funds. Institutions can avoid a loss of eligibility under 90/10 by deferring drawdowns of Title IV funds from (g)(5) until the subsequent fiscal year. And so what we're trying to do in this language is close that loophole, and we have seen several instances of schools using this, this loophole, which is currently does not violate anything regulation to avoid the consequences of 90/10. And again, it's because of, you know, you have to you have to fail 90/10 in two years, each in each of two years, which makes this makes this gaming possible by simply, remember, we're talking about cash basis of accounting here. So you just delay the draw of cash into the next year when the counting starts again. So I hope I've

explained that and I will open the floor for discussion on this disbursement rule.

MR. ROBERTS: Thank you. Thank you, Aaron. Just want to let everyone know that Barmak is back on the table on behalf of service members and groups representing veterans, but Brad, please take us away.

MR. ADAMS: Thank you. And cash basis of accounting. That does bring me back, Greg. Alright, so I apologize, I missed a, one piece in one that I would like to go back to. It's the last sentence in one small romanette one where it says the Secretary identifies the federal agency and the other educational assistance funds [phonetic] provided at the agency in a notice published by the Federal Register. You know, I think it should be appropriate for schools from a planning point of view that they should only be responsible for, including in the 90 federal education assistance funds that were identified in the Federal Register prior to the beginning of the fiscal year. It would be, it would be unfair to schools to notify to notify them halfway through the year or all the way at the end of their fiscal year, and they had not planned accordingly that those funds were going to be part of the 90. That's first a request, and I can submit a

language change for that.

MR. MARTIN: We'll take that back. If you want to provide language, you can go ahead and submit that.

MR. ADAMS: Thank you. And then on the second comment during the 90/10 public comments last year, a commenter specifically asked for the Department to come prepared to the first session with a full list of funding sources that we consider federal education assistance funds. Can I ask why we don't have the list considering Congress passed this law months ago? And the Department has had ample time to compile the list. As you know, this is an important rulemaking with a potentially huge consensus and not having this list impairs us in these decisions. I'd like to have the list for the second session, so I know what we need to be discussing in terms of what is and is not a federal fund.

MR. MARTIN: My response to that would be that there are two parts to that list, and I think in fairness, in fairness to institutions, it's more than simply requiring a list. Remember that we that you still have to be, each school would have to be provided with data about each individual student's award. And certainly you have that if the agency, as with Title IV

funds, you draw down funds and you disperse those funds for us. So you know exactly what students received. That's not the case with all of these benefits. So we don't we don't want to just provide a list of entities with whom there is no protocol for providing the school with a student with student level data. And I respectfully disagree with the assertion that we've had plenty of time to do that. We have been working on it. We continue to work on it and we'll try to provide it at the earliest possible convenience.

MR. ADAMS: Thank you. It's just hard to negotiate on something when you don't know what's in and out.

MR. MARTIN: I understand those constraints and as I said before, we're doing our best to get that, to get that together and identify all these sources and think about what agreements we might we might have.

MR. ROBERTS: Thank you, Jaylon, please.

MR. HERBIN: Yes, thank you. So I want, I want to rewind back, really, Greg, you had mentioned that it was when I talked about the institutional loans that it was that you guys are monitoring that, it's hard to really, you know,

determine that, right? But what I wanted to allude to is that we think that this is something that can be handled right now. It really is our view that the regulations could, in fact exacerbate the problem of predatory institutional lending. And the problem is a widespread that is ongoing, and it's illustrated by yesterday's CFPB's announcement related to these types of loans, simply excluding annual payments from institutional loans that help with this problem. But we do have an opportunity to improve the landscape. Now moving forward to this section that we're at right now, I see that we're using the term fiscal year and I understand that, you know, the way the disbursements are allotted throughout the timeframe, that may be fairly relative in a manner of being able to calculate everything. But what I would like to keep in mind here is the student and making sure that the student is at the forefront and not literally the institution is at the forefront. So in a way that is a measure that we can use that will keep that student in the forefront of the disbursement.

MR. MARTIN: Well, I mean, the reference to a fiscal year is because that's the way 90/10s calculated. So what we were, what we were discussing in the disbursement rule here is a specific mechanism used by I don't want to suggest all schools or

even a majority of schools, but by some schools that that that risk failing, failing 90/10 in a second year. They failed it the first year. If they fail the second year, that will render them ineligible. So because it's done on a cash basis instead of dispersing funds and then requesting the funds immediately, they allow that fiscal year to elapse so that it's gone, so now they're going to draw those funds in the next fiscal year and they haven't failed Title IV they haven't failed eligibility because now they've passed 90/10 in the second year because they didn't include those funds and they rolled the request for those funds into the next year when the accounting for 90/10 begins again. So to that effect, to that effect, I think that this does protect students because it closes a gaming loophole associated with that. Again, I wasn't and I don't didn't mean to suggest in saying that I don't think this rule exacerbates the problem with private loans unless schools intentionally violate Title IV regulations. But but I didn't mean to suggest there's nothing else the Department could do about it with respect to private loans or that we haven't considered any of those avenues, just that that's not on the table here and wasn't germane to 90/10.

MR. HERBIN: Thank you.

MR. ROBERTS: I have Barmak's hand up next.

MR. NASSIRIAN: So first of all, I want to express very strong support for the Department's disbursement rule because we are quite aware of that for a long time some institutions have in fact manipulated their 90/10 calculation by gaming the timing of drawdowns and disbursement. So I think it's a sensible change. I wanted to address the question of identifying the agency. I don't know. You know, I don't know what your success will be in securing agreements with every agency. And I certainly understand that that is the that is the best practice. And the fairest way to the institution is for the agency to directly notify the institution that federal funds were provided to one of its enrolled students. But I don't want to let the school off the hook. If those agreements don't materialize, and the school has other ways of ascertaining the fact they should not be, they should not be allowed to to take a position of sort of studied ignorance where I don't know and I don't want to know. At the very least they ought to ask people, is, are you making this payment for from the receipt of any federal program? I think that's a simple enough thing to ask. It doesn't mean they're going to get it 100 percent, but I

don't want to create a loophole where the agencies don't provide the information and the school knowingly cashes checks that it could easily find out have, in fact, federal sources.

MR. ROBERTS: Thank you.

MR. ROBERTS: Thank you. Okay, Brad.

MR. ADAMS: Thank you, Barmak, but it is tough to do your job when you don't know the rules. Second romanette, drawdown of funds. We understand that the Department does not want schools to defer drawdowns, and we agree that that that is inappropriate to do with students. But this is really problematic. The Department is suggesting that we have time to draw down disbursements to make it a fiscal year. But what if my fiscal year ends in the last week of the semester? I mean, sorry, in the first week of the semester. As you know, there are rules in place regarding how and when funds can be drawn and dispersed, and [inaudible] protocols for ensuring compliance. It's not an easy process working [inaudible] to pull funds. So how do we know what is timely or intentional? This is an operational nightmare in practice. The Department is suggesting that all these other requirements and protocols would be ignored each year, the schools would instead be directed to draw down and disperse right

away. I don't understand how I could bring in all the federal aid for 6,500 students on a semester that starts two days before my fiscal year ends. That's the way I read this.

MR. MARTIN: As written here, the rule doesn't make any and doesn't account for that, the timing you're discussing, I will reiterate again that we feel this is a necessary rule to stop very serious gaming practices that are occurring out there. I do understand how that could be difficult for a lot of schools. I do note that some schools apparently have enough time to figure out how to do this. So and as I said, it's a clear attempt at gaming the 90/10 calculation. If you have a language you want to propose as far as putting parameters around disbursements that occur at the end of the fiscal year where students paying period begins late, then feel free to provide us with that.

MR. ADAMS: So Greg, I'm curious. Now I've heard the word gaming about four times. Do we have documentation or proof that people are gaming? That is, I struggle to agree with that term. I would love the Department to provide documentation, I guess I'll actually make a request for the Department to provide documentation that gaming is occurring in the federal

aid system today when they pull down funds.

MR. MARTIN: We have had reviews regarding 90/10 where that practice has been identified. If I can provide, I don't know the extent to which I'm able to offer specific documentation. With respect to the program reviews, I know the completed program reviews can be requested under FOIA. The extent to which I can provide data, I don't know, but I will certainly look into providing the table with what we have or what we are allowed to release, but I can say unequivocally that, yes, we have identified the practice. It very clear what does take place and although you might disagree with my characterization, characterization of it as gaming, I don't know any other way to describe what's being addressed in this particular regulation.

MR. ADAMS: I would say it's either compliant or not. Gaming is not an appropriate word, in my opinion.

MR. MARTIN: I respectfully disagree, but you do have, you know, you have a valid opinion. The Department's position is that this is an example of gaming.

MR. ROBERTS: Thank you. Barmak, please.

MR. NASSIRIAN: I will not name the

institutions, Brad, but there are two very large, publicly traded institutions, household names. I'm sure, we have examples of ways in which they intentionally delay the drawdown and disbursement of aid to which the students are entitled. Now can I prove causality? I don't know that I can prove, I'm not solving trig problems here, but it sure looks like, had they drawn the funds down in a timelier manner that they would have tripped the 90/10 wire. So, I don't know, is that gaming, is that manipulation? Is that compliance avoidance? I don't know what you want to call it, but it's a problem for the vets who end up enrolled at places that probably were not ideal venues for them.

MR. ADAMS: Barmak, I'm curious, what's your definition of timely?

MR. NASSIRIAN: As long as the institution, I am not unsympathetic to your concern, I don't know that your reading of the language is really fair to the Department because the Department is not suggesting that institutions ignore cash management rules or ignore the preexisting disbursement rules that it has already meticulously documented. I think what the Department is attempting to do is to say, look, if the student is entitled to the disbursement under existing and/or other existing rules and regulations, you should

not delay that because that delay could be an attempt at circumventing this particular provision.

MR. ROBERTS: Okay. Thank you for that discussion. Greg, I'm not seeing any hands up, and I wonder if now it might be an appropriate time to call for an afternoon break. Do you just want to walk us through briefly point number three? And then what we'll do is we'll have a 15-minute break and then just come back and resume discussion on that. Does that sound alright?

MR. MARTIN: That sounds good. I'll do that. Thank you.

MR. ROBERTS: Aaron if you wouldn't mind bringing up the document.

MR. MARTIN: Thank you, Aaron. We're looking at three revenue generated from programs and activities. This language will clarify that revenue generated from the institution's programs, which is included in the 90/10 calculation, includes only those that are related directly to services performed by students and necessary for the education and training of those students. We have proposed to clarify language related to revenue from funds paid by students to include only ineligible education or training programs that do not include any eligible coursework. The

language also notes that revenue from those programs cannot be included unless it provided it at an approved location of the institution that such revenue must not be from a program where the institution solely provides the facilities for test prep courses, acts as a proctor, or oversees a self-study course, and that the program must be approved by the state and accredited and lead to an industry-recognized credential. So with that, I'll walk through the language itself. So in three the institution must consider as revenue only those funds it generates from tuition fees, other institutional charges for students enrolled in eligible programs as defined in 668.8 or activities conducted by the institution that are necessary for the education and training of its students, provided those activities are: (A) conducted on campus or at a facility under the institution's control, (B) performed under the supervision of a member of the institution's faculty, (C), required to be performed by all students in a specified educational program at the institution and here we have the addition of (D) related directly to services performed by the institution. And finally, three, funds paid, romanette three rather, funds paid by the student or on behalf of a student by a party unrelated to the institution, its owners or affiliates for an education or training

program that is not eligible under 668.8 and does not include any courses or coursework offered in an ineligible program. The non-eligible education program or training must be provided by the institution at one of its approved locations. The institution may not count revenue from a non-negligible education or training program where it merely provides facilities for test preparation, acts as a proctor, or oversees a course of self-study, be approved by a licensed appropriate state agency and is accredited by an accreditation agency recognized by the accrediting agency recognized by the Secretary under 34 CFR part 602 or provides an industry-related credential or certification. And we've tightened up that language somewhat as you can see. And that is everything in three, revenue generated from programs and activities. So, we'll pick up a discussion there when we come back from the break.

MR. ROBERTS: Sounds good. And Jaylon, I see your hand up and Brad, I see your comment, so we'll pick up with Jaylon and Brad once we come back. But it is 2:26, let's say, 2:40. Would that work for the committee, 14 minutes?

MR. MARTIN: That sounds good to me.

MR. ROBERTS: Alright. See everyone then. Thank you so much. Welcome back, everyone, hope

you enjoyed the break, we can jump right back into number three. Revenue generated from programs and activities. I had Jaylon's hand up first before we went on break. So, Jaylon please.

MR. HERBIN: Yes, thank you. So real quick question, I see that the Department has made some changes to the definition of industry-recognized credentials or certification. My question is really, can we go a little bit more into detail in that definition? For one, it also proposed that the regulation include a reference to the certification requirement that was discussed this morning to replace the requirement and ensures credentials are not just recognized by potential employers, but accepted by them in practice as well.

MR. MARTIN: Okay. Yeah, I can clarify that a little bit for you, so these are again, we're talking about starting under romanette three, funds paid by a student on behalf of a party loan-related for an education program or training program that is not an eligible program. This is a statutory provision that Congress gave to count revenue that's not an eligible program. So, we have no jurisdiction over what an eligible, a noneligible program does. So it doesn't really relate to what we were talking about earlier. So the change that we made here, these are all the

stipulations for would be provided by the institution, [inaudible] approved locations. And then we went down through the other requirements there. And then under what is now D, it used to be provide an industry-recognized credential certification or prepare students to take an examination and an industry recognized credential or certification issued by an independent third party. We've proposed to eliminate that, to tighten this up so that the only type of program that would be one that actually provides a credential because we did not feel it was appropriate to include just offering training for an examination or offering an examination. So that's why we took the action we did there with respect to that language.

MR. HERBIN: Alright. Thank you [interposing].

MR. MARTIN: I hope that clarifies it for you.

MR. HERBIN: It does, thank you.

MR. ROBERTS: Okay, thanks, Brad, go ahead.

MR. ADAMS: I'm good to let Anne go unless you want me to go. I'll go ahead. So on the non-Title IV program funding, the Department's proposing that a school can't count funds from non-Title IV

programs if the non-Title program includes any courses or coursework offered in an eligible program. This is usually problematic. Both schools are going to offer non-Title IV programs that have some relationship to their Title IV programs they offer because that's what they qualified to teach. That's what they have teachers employed to teach. So this would effectively preclude schools from counting the revenue from all these programs. Also, what is the policy justification for this restriction? Why, is the school able to generate revenue from a non-Title IV program that's unrelated to my core programming and the mark of the quality of the institution, while generating revenue from a non-Title IV program that is related to my core program that may be bad? The Department also proposes that revenue from a non-Title IV program can only be counted if it's offered in an approved location. This is another huge issue as well. Lots of schools offer non-Title programs on site for employers, other partners at facilities or locations of the institution that are not approved by the Department. It's worth reminding everyone that institutional locations only have to be approved by the Department if they offer more than 50 percent of the Title IV program. There's nothing wrong or unusual about having locations that are not approved, and you would

expect that if the primary purpose of a location is to facilitate non-Title IV training programs, there is also a good policy reason for this restriction. Again. Why am I able to generate revenue from a Title IV program offered at an approved location and marks a good mark of a quality of institution while generating revenue from a non-Title program offered across the street at a non-approved location is bad? Many government agencies send their employees for-profit training programs. Finally, the Department eliminates several categories of non-Title IV programs that have been around for many years. This space for deletions is completely unclear. For example, I would be grateful if the Department could explain why revenue generated from a non-Title IV program that provides an industry recognized credential or certification is good and the mark of a quality institution while revenue generated from non-Title IV program that provides training needed for students to maintain state licensing is now bad.

MR. MARTIN: I will let Steve jump in if he wants to here, but first, I'll just say that this again reflects our concern about institutions of eligible institutions subject to 90/10 entering into arrangements whereby the school isn't really, truly providing that education or really, it's not really a

true training program, and we feel the need to tighten that up. We're not making any assertions about whether a program is a good or bad, [inaudible] where is it appropriate to [inaudible] revenue? And I'll leave it to Steve if he wants to add to that.

MR. FINLEY: I'll just add to that that for purposes of the Title IV program, an institution is its is the sum of its main location and its approved additional locations. And that's why we're only going to propose to count revenue from programs offered at those locations because that is the institution as far as the Title IV programs are concerned. It's, it, it's to bring parity with the definition of the institution and the sources of the revenue.

MR. ADAMS: So then a non-Title IV program taught in an approved location is now okay?

MR. FINLEY: Only if it meets the other requirements in these regulations for purposes of counting the revenue in the 90/10.

MR. ADAMS: We'll submit comments on that.

MR. ROBERTS: Thank you. Appreciate it. Anne, go ahead.

DR. KRESS: Sure, and so this is just,

I think, a straightforward clarification question. So in romanette (2) (d), and Greg, when you read this, you even read it differently than what's written because it says related directly to services performed by students. Is that really services performed by students or are you talking about by institutions or for students?

MR. MARTIN: No, we're talking about related directly to services provided performed by students. An example of that would be frequently if I could use a cosmetology example. Cosmetology programs have clinics in which students work and people can go to get, you know, their hair done there, and the students and the school can count the revenue from that. That's permissible for statute. But we are concerned that that revenue only be those services directly related to the services performed by the student. In other words, in this example I gave, the revenue derived from the cosmetology service or haircut or something like that, or coloring or whatever is being done, and specifically that we do not allow the sale of products to be counted as revenue. We have had policy to that effect for some time that, but we are now codifying that it must be actually a service performed by the instit-, by the student and cannot be ancillary. In other words, the whole idea here is as this was set up, because obviously

and to use my example of cosmetology, it's necessary for students to practice that skill to become a licensed cosmetologist, that's what we're seeing here, activities conducted by the institution necessary for the education and training of its students. So an example I gave that was just a very easy one where I made a delineation between what would be allowable, the revenue for the actual haircuts and what would not be allowable, the student sells a certain amount of product. That's probably a pretty easy one, but I think one that serves the purpose here.

DR. KRESS: Okay, thank you.

MR. ROBERTS: Great, thank you.

Barmak, please.

MR. NASSIRIAN: I just want to say that we strongly support the Department's restrictions on noneligible programs. Now I want to remind people. You know, don't count a gift horse in the mouth is the proverb. The purpose of 90/10 was to test the market viability of programs being funded with federal dollars. The fact that Congress decided in its wisdom to allow institutions to count completely unrelated programs they may be offering is a gift that you should accept without pushing your luck too much. Because it seems to me that it's very difficult to argue that those revenues, no

matter what they are, have, provide any indication of the mar- it's not a matter of quality, Brad, it's a matter of market viability. Is anybody else except the federal government willing to reach into their pocket to put a dime on the dollar into this program? The fact that noneligible programs under any set of restrictions count is a freebie. I wouldn't push it too far. I think what the Department is doing here is quite reasonable.

MR. ROBERTS: Brad.

MR. ADAMS: Thank you, thank you, Barmak. You know, I'll just give you an easy example here just for the committee to think about. So we have an accounting program that has a Becker course within that program, and we offer that course to someone outside of our institution, a non-student already teaching the course, I read that as that's not included. Another example, a CPR course is required for nursing students. They offer a CPR course to the public. As part of that, students can attend. The public portion not included. So again, these are not things that are being taught by students. Here we have a dental clinic that they're taught by students. I get that piece. There are other fundamental things that I would disagree with when saying completely different from the institution. So that's where I think we need better definitions.

MR. ROBERTS: Okay, thank you. Greg, do you want to walk us through section four? I'm not seeing any other hands raised. So, application of funds if the Department's ready.

MR. MARTIN: Sure. Application of funds. You can see here again that we have revised Title IV funds to instead read federal funds. So just as an overview here, the institution must presume that federal funds it disburses or delivers to or on behalf of a student will be used to pay tuition fees or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the student or pays the funds directly to the student. Except to the extent that the student's tuition, fees, or other charges are satisfied by grant funds provided by nonfederal agencies, provided that those funds do not include federal or institutional funds. And we've added, that where this is existing language, where it's provided by nonfederal public agencies. Just want to make it clear here that that does not as long as those funds do not include federal or institutional funds and private sources unrelated to the institution, its owners, or its affiliates. The changes here provide some technical clarification related to grant funds provided by nonfederal agencies. Excuse me.

Or private entities. Under these revisions, federal funds are applied to the student's tuition fees or institutional charges, except where those charges are covered by nonfederal public grant dollars that do not include federal or institutional funds. Private grants from an entity unrelated to the institution under a contractual arrangement between the institution and a state federal local agency to provide job training. Funds from educational savings funds eligible for IRS benefits, 529 plans, institutional scholarships that meet other requirements. So I'll stop there and entertain comments.

MR. ROBERTS: Alright, comments or questions for the Department? Yes, Emmanuel.

MR. GUILLORY: Actually, I had a question for the Department. I didn't see it in this issue paper, but has the Department thought about adding a definition in section 668.2(a) at the end to define federal funds. I know here in this language that would be defined in the Federal Register or something like at least the agencies that would be held liable under this new 90/10 would be in the Federal Register whenever the Federal Register would come out. What I was curious is if a definition would be applied in regulation. Since the statute that this comes from used the term federal

education assistance program, I just was curious.

MR. MARTIN: Well, you know, we probably could provide a definition, but I think that definition would largely just you know mirror what's in statute. We at the beginning here talk about federal education assistance funds, and I think to offer a complete and holistic definition would require listing every, source, I'm not sure how we would do it other than to say that federal and anything from the federal government and federal education assistance, I think that that's a pretty broad, that paints with a pretty broad brush as it is. The register is simply to inform schools of where we have identified those sources going directly to students and have developed a protocol for schools to be informed of that. So I'm not I mean, if you have something you want to propose, I think that we would like to keep it broad because it does include all federal education assistance funds. And there's no I don't perceive a need to narrow that in any way. So I would entertain text if someone has it. As it is, I would suggest that it's fairly self-explaining the way it's written currently.

MR. ROBERTS: Brad, go ahead.

MR. ADAMS: The Department here is an application of funds is proposing that any funds

received from a nonfederal public agency that includes some federal funds should be included. Note the word some. That means if federal has a state matching component, for example, what if the split was 25 percent federal, 75 percent state, all of the state funds associated in those dollars would count towards the 90? That's just wrong. [Inaudible] program that is run by the Department comes to mind. Many states participated in this program and are required to use state funds to participate to provide scholarships to these students. Are the state funds going to be deemed federal education benefits for the purposes of this program? I've got a second question after you respond.

MR. MARTIN: We did have discussions about this, I don't think that this regulation maybe doesn't reflect all of that. It is not our intention to call state funds federal funds, but on the other hand, we would not allow the inclusion of anything in this state grant that included the portion that was federal funds. We certainly could consider if there needs to be more language here about the extent this institution is able to break down what portion of that grant is, federal and state. In some cases, it's not possible to do that. That information is not provided. We were aware of that. Steve, do you have any comments on that?

MR. FINLEY: Thanks, Greg, I think that's an area where we would welcome suggestions, including a suggestion that if there was a way to allocate the funds between the federal and the nonfederal sources that be considered. It's a question of whether it's administratively feasible and ascertainable.

MR. MARTIN: But certainly, if we went in that direction and had language to that effect, it would be incumbent upon the institution to be able to demonstrate how they performed that calculation and that no federal funds were included.

MR. ADAMS: So, second question here. The Department of Labor works with states in running a Workforce Initiative and Opportunity Act called WIOA. The Labor Department works with states to implement this program and provide states with funding to help students enroll in vocational programs. State manages the programs and actually distributes the funds to students, not the Department of Labor. Would the Department of Labor suggestion of all WIOA funds now be included as federal education assistance funds?

MR. MARTIN: We do note that the changes related to grant funds provided by nonfederal agencies are applied first. Under these revisions,

federal funds are applied first, except where those charges are covered by nonfederal grant dollars, private grants and under contractual agreements between the institution and federal local government agencies to provide job training for low-income individuals. Those are still considered to be, we didn't make any changes to funds provided first. Correct, Steve?

MR. FINLEY: I think that's right.

MR. ADAMS: I just think there's a strong argument that WIOA contract funds should not apply under paragraph four romanette two which exempts funds from federal, state, or local governments to provide job training to low-income individuals in need of that training. That's exactly what WIOA does when the state contracts with an institution to provide that training. I'd like the Department to consider specifically naming these funds as exempt under romanette two.

MR. MARTIN: We will take that. We will take that back.

MR. FINLEY: Thanks, Brad.

MR. ROBERTS: Thank you. Johnson, please.

MR. TYLER: Yeah, I just want to go to paragraph four, romanette one, I just applaud the

Department for including this language so that the educational institution can't essentially make up that private contribution by either through a foundation or some other mechanism that makes it look like the private market is actually motivating people to go to the school. So I think this is great language here. Thank you.

MR. MARTIN: Thank you.

MR. ROBERTS: Barmak.

MR. NASSIRIAN: I want to support Brad's point about co-mingling of some federal dollars, essentially turning the entire pot of money into federal money. You could address that in four romanette (1((a) simply at least to address this issue, you could cover that by saying the nonfederal portion of you know, grants provided by nonfederal public agencies. Now, whether how it can be ascertained is a different pragmatic issue, but at the very least, let's clarify very explicitly that where there is federal money involved in a state grant or scholarship program, the state portion certainly should not count as federal funding.

MR. MARTIN: Point taken, we're definitely going to take back those points and consider them in future language.

MR. ROBERTS: And Dave, I see your hand, and I just want to note that Ashley is joining us on behalf of minorities serving institutions. So welcome, Ashley. Dave, please take away.

MR. MCCLINTOCK: Yeah, thanks, Brady. I think this ties to Barmak's comments and some others that people made. Just as an auditor, the need to clarify some of these regulations, they're not specifically identifying types of funds, and we're talking about non-cash basis revenue in order to audit and attest to the accuracy of a calculation. We would need a lot more specific guidance on when do funds become eligible if they haven't been drawn down as written, I don't think it would be possible to perform that task.

MR. MARTIN: Dave, you know, I think in your role as advisor, if you have suggested you think might accomplish that goal or to help implement the reg, we'd be amenable to receiving.

MR. MCCLINTOCK: I would be happy to work with you on that.

MR. ROBERTS: Great. Barmak.

MR. NASSIRIAN: I have a question for Dave. Wouldn't that be a matter of a compliance audit before you're doing a financial audit? In other words,

wouldn't you test to make sure the institution is in fact complying with the requirement that it drawdown and disburse funds in a timely fashion? If it does, it becomes auditable. If it doesn't, that's a compliance issue.

MR. MCCLINTOCK: I guess partially, but I'm not sure it's written clearly enough to determine whether or not it was done timely, and I would say I'm not saying it doesn't happen. I have not seen the timing and some of the terms with schools that we've worked with, that doesn't mean that it doesn't happen, you know, processing financial aid, verifications, and lots of changes. There's timing difference of when funds are drawn down in order to determine if it was done timely. I don't know. I guess accounts are too black and white. I need to know specifically, okay, what are the criteria that make it qualify as it should have been drawn down more clearly.

MR. NASSIRIAN: Can I just follow up, this is an important point, I'm not an auditor, don't know anything about this stuff, but my assumption is that you don't have to test every transaction. My assumption is you would test those transactions that that sort of sit proximate to the end of a fiscal year. My assumption is that to whatever extent you're

attempting to catch gaming, you would do so during time periods when it could make a difference to this particular calculation. Right? I mean, a delay in drawing down funds from January, if you're doing a calendar year audit wouldn't make a difference. But if you're looking at November December, that could make a difference.

MR. MCCLINTOCK: It could, I guess the eligibility is determined on a student-by-student basis, and there are oftentimes drawdowns, including large rosters of students and depending on the delivery method of educational programs, not every student on a roster might be following the same thing. It's based on when they become eligible for the drawdown, so it would still take digging into a roster of drawdown and then looking at individual students applying whatever the guidance is to determine when was this student eligible to be drawn down. I would just specify, I think you're using the term loosely, I get it just compliance audits. To me, the compliance is often a Title IV reviewing the financial aid processing in 90/10 is actually part of the financial statement, audit, and process, but the purpose is the same.

MR. ROBERTS: Greg, go ahead.

MR. MARTIN: Yeah, I don't want to

make light of the discussion here. I find it very interesting and as a 90/10 warrior from way back, I do enjoy the discourse. And I think we've made the points here in the interest of getting through 90/10. We're now at six minutes after three. We have a hard stop for public comments. So as I said before, the Department is willing to take any comments related to this suggestion as to how we can do it, better. And I think at this point, we're going to need to move on to five if that's okay. Alright. So we are at five, revenue generated from institutional aid, and we made a slight change there. The institution may include the following institutional aid as a revenue. For loans made to a student and credited in full to the students account at the institution, just reiterating what these are bonafide, as evidenced by standard loan repayment agreements issued at intervals related to the student institution's enrollment periods, subject to regular loan repayments and collections by the institution and are separate from enrollment contracts. So this remains the same. We have eliminated language that is no longer relevant to loans made on or after July 1, 2008, but before July 1, 2012. So that was no longer relevant, so it has been removed. If we move down again, we've removed irrelevant language related to loans between specific periods which have now

elapsed. And so let's move down to romanette, I believe that's four, no romanette two, for scholarships provided by the institution in the form of monetary aid, the amount disbursed to students during the fiscal year. The scholarship must be disbursed from an established restricted account and may be included as revenue only to the extent that the funds in that account represent designated funds from an outside source that is unrelated to the institution, its owners, or affiliate or income earned on those funds. So what we are doing here is proposing to eliminate tuition discounts from the types of scholarships provided by the institution because tuition discounts are not generally associated with a cash transaction. And stop there and entertain the comments on five before we move on to six.

MR. HERBIN: Any questions or comments for the Department? Jaylon.

MR. HERBIN: Okay, thank you. So, yes, certainly. This goes back to our topic earlier on, that we were discussing. Greg, I'm worried about closing the GI Bill loophole by leaving room for the counting of institutional loan revenue on the 10 side will simply create a new loophole related to privacy loans. And excuse me. This goes to numerate I number one, excuse me, underneath the section. And then also, the draft

language is an improvement on current regulations. But the loan repayments do not reflect a willingness on the part of students to pay cash for a portion of their program, especially because schools sometimes use aggressive debt collection tactics such as transfer withholding. As I mentioned earlier yesterday, the CFPB announced that the new work they were doing to crack down on these types of unscrupulous institutional lending practices. We believe that this will encourage predatory schools to push students into private loans and then strong arm them into repayment using aggressive debt collection tactics. Additionally, we would like to see language excluding not only annual payments from institutional loans, but also from loans issued by owners and/or affiliates, similar to the language we see elsewhere in the proposed regulations.

MR. MARTIN: Okay, we'll take that back, I think, you know, when we look at institutional loans, first of all, the Department's very concerned about a misuse of institutional loans, private loans, and private loans in general. I do want to say that we do not think that all institution loans are bad. They are sometimes a necessary means of funding. This table we're only concerned with 90/10. Not the regulation of institutional loans, we're talking about what portion of

those institutions can count towards it's not nonfederal revenue, and we currently restrict it to only the amount repaid on those loans. So there is already a fairly strict reporting set up there. As far as like those loans not indicating a student's willingness to pay for their education, I could see that point of view.

However, you would have to make the same argument with respect to Title IV loans, that you know that too would be indicative of a student's unwillingness to pay for the education. 90/10 isn't about a student's willingness to pay for the entire education in cash. It's about our people willing to pay for some portion of it. So I think what we have indicates that, but we'll certainly take those concerns under consideration.

MR. HERBIN: I think that's really all we ask is that you can really just go back and look at this and look it from that perspective as well, because in that way we are, as I've been [inaudible] putting the student at the forefront of this [inaudible] as our focal point. But also, we want to make sure that we're not opening up another can of worms by opening up more loopholes that will ultimately add more terrible, predatory lending practices that we like to call it.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank you. I did,

Carney, I saw your hand up, but do you still want to speak or has your question been answered?

MR. KING: No, it was addressed. Thank you.

MR. ROBERTS: Sounds good. Not seeing anything additional on five, revenue generated from institutional aid, do you want to go over the deletion of six or do you want to jump into number six, the funds excluded from revenues?

MR. MARTIN: There's not much to say about six, because again, it's deleted because we no longer have to worry about [inaudible] with respect to loans that were under the FFEL loan program on or after July 1, 2008, but before 2000 July 1, 2011, that's faded well into the past, so we're not too concerned with that.

MR. ROBERTS: Gotcha. Do you want to jump right to the new number six?

MR. MARTIN: How about we jump right to six if it's okay? So six is funds excluded from revenues? And let's take a look at that for the fiscal year. The institution does not include the amount of federal work study wages paid directly to the students. However, if the institution credits the student's account with FWS funds, those funds are included in

revenue. That is not a change. The amount of funds received by the institution from a state under the LEAP, SLEAP, or GAP. Again, that hasn't changed. The amount of institutional funds used to match Title IV HEA program funds. And again, here we have the amount of Title IV HEA funds related to, refunded to students, or returned to the Secretary. And we don't have to worry about it ECASLA again, because that timeframe is no longer relevant. The amount the student is charged for books, supplies, equipment unless the institution includes that amount of books as tuition, fees or other institutional charges, or any amount from the proceeds of the factoring, or sale of accounts receivable or institutional loans, regardless of whether the loans were sold without recourse. So we are. This is an addition here under romanette six, you proposed to clarify that an institution may not include funds received from the factoring or sale of accounts receivable or institutional loans. Revenue that results from the sale of receivables is not derived from tuition fees or other institutional charges for students enrolled in programs eligible for federal education assistance and does not indicate a willingness on the part of students to pay cash for a portion of their program, as is the intent of, which is the intent of

90/10. And so that ends A. So I'll stop there and open the floor for comment.

MR. ROBERTS: Thank you, Greg and Aaron. Barmak, you are first.

MR. NASSIRIAN: So two questions, one of them has to do with the new six romanette two, the reason you are only citing matching funds for Title IV is because you already exclude all tuition discounts in any matching arrangements. Am I right about that? In other words, tuition discounts are not real cash flow, so they don't count under any circumstances.

MR. MARTIN: Correct, but this is not. Remember, this is not the funds, the amount of institutional funds used to match Title IV HEA program funds, this is just saying that it cannot be that those are funds excluded from revenues. And that's not new. That's existing. It's always been the case.

MR. NASSIRIAN: No, I'm curious about, the reason I'm asking the question. The only ones that I can think of right off the top of my head are the campus-based work study matching funds, for example. That's real money. You're excluding that. But I just want to make sure, for example, Yellow Ribbon Program, where the institution does derive additional revenue from the VA in exchange for a matching discount. The

discount doesn't count as part of the 10 percent because tuition discounts are not cash flows. Am I correct about that?

MR. MARTIN: Yes, we're not counting it. We're not.. We propose not to count any discount.

MR. NASSIRIAN: Okay, perfect.

MR. MARTIN: Okay, then you're right. The only matches I can think of, Barmak, currently are the campus-based matches, which would normally be, well, could be cash.

MR. NASSIRIAN: Got it. Second question having to do with romanette six, this has been looming in the back of my mind and I just don't know the answer, so I'm asking. What do you do with private label third party loans when there is an origination or business arrangement or credit enhancement involving the school? Do you treat those as institutional loans?

MR. MARTIN: We, well, if it's by a related party, I'll get Steve to weigh in on this. That would be kind of the same as institutional loans if it's from an entity where there is a recourse associated with the loan, such that if the student doesn't pay back the loan, the institution has to pay recourse to the lender or wherever that lender is. Then we require that though the institution may count as revenue, of the loan, it

must also subtract as revenue any amount that's paid as a matter of recourse, and I'll turn it over to Steve if he wants to elaborate.

MR. FINLEY: Yeah, I don't have anything to add to that.

MR. NASSIRIAN: That's a real problem because remember, the revenues could be booked in a given fiscal year, with the recourse coming due years later. ITT comes to mind, you know, it seems to me that you somewhere in this regulation, you absolutely need to clarify that that third party loans made by another entity with which the institution has either an origination or a business relationship or any kind of a recourse or credit enhancement arrangement will be treated as institutional loans because otherwise you kind of undo the whole cash basis analysis. You know, the lump sum of money seems to come in, but it's a ghost transaction because two years out, the lump sum of money would go out.

MR. ROBERTS: Thank you, Barmak, I just want to note, so Johnson and Jaylon, I see your hands, but Brad, in the chat, did say he would address Barmak's question. So if you're alright, is it okay if we jump to Brad? Okay, yeah, Brad, go ahead.

MR. ADAMS: I've got a longer-winded

answer that I'll address this question in, so I'll just wait my turn.

MR. ROBERTS: Sounds good. Alright. Johnson, go ahead.

MR. TYLER: Thanks. You know, I just wanted to support the romanette six. I represented clients who've been sued on institutional debt, who's been sold to debt buyers. It's very attractive. I mean, it's just prospecting, basically. There's no guarantee of return. It doesn't have a lot of street value, but it definitely happens. And so to count those revenues, it just seems speculation. So, I appreciate that.

MR. ROBERTS: Thank you, Jaylon, go ahead.

MR. HERBIN: Yeah, just want to sort of go back to what Barmak was speaking on. I think we are happy to see that the sale of receivables, such as institutional loans, will not count as revenue. But it is important to reiterate, however, that this provision effectiveness is negated by allowing schools to count institutional loans as revenue. Additionally, the term institutional loans should be clarified to also include owners and affiliates as well.

MR. MARTIN: Thank you. I do want to clarify, and maybe everybody already knows that with

institutional loans, we can only count the amount that's repaid on those loans. So, if an institution is giving students loans, it never, they have to be true loan instruments, you know, with expectation of repayment and promissory note. And so if it's only the extent to which they repay which forces them to be true loans, but you're suggesting that we disallow revenue from any institutional loans? Okay.

MR. HERBIN: Yeah. Correct. So I think what we really would like to do is that and just specify that language a little bit, adding in the owners or affiliates to [inaudible].

MR. MARTIN: Okay, thank you. We'll take that back.

MR. ROBERTS: Thank you, Brad, go ahead.

MR. ADAMS: Okay, this may be my favorite discussion point on 90/10, my last [inaudible] comment and it is around number six here, wish I had a whiteboard. I can teach my accounting class virtually here. So how does an account receivable or an institutional loan end up on the balance sheet? Very simple. Debit accounts receivable or loan receivable. Credit tuition free revenue. How can the Department propose that this fund source be excluded when the cash

is directly associated with the tuition revenue? So how can you count the revenue in the denominator but exclude the cash from the AR in the numerator? This goes against a basic, clear accounting [inaudible]. Also, the AR and institutional loans are clearly not a federal source. Why are institutional loans that pay during the year any different? Cash is cash. Let me give a little insight to this committee because I'm not sure people understand why an institution might want to sell an institutional loan. It may not be why you think. It may not be to hit the 10. That's not what I've seen. As part of basic accounting, when a receivable or loan is put on the books, a corresponding reserve for bad debts may not realize this, but that bad debt expense is not a tax eligible expense until it's realized. That means the loan has to come off the books to be used against your taxes. Loans with recourse do not come off your books do not count as a tax eligible expense. That is an important difference. But loans that are sold without recourse are. Many proprietary schools sell AR and loans in order to offset their federal tax exposure, which is a completely legal thing to do with, via the IRS. The Department asking all schools to now pay more in taxes than they normally would have by excluding this provision. Maybe we need to loop in the IRS and ask them

that question. I firmly believe that institutions should focus on what they do best, which is providing a quality education to students. Servicing of loans is better left off the businesses that do that for a living. Thank you.

MR. MARTIN: Well, I would respond that. First of all, you know, going back to the spirit of 90/10 is that there's a willingness on the part of students to pay at least some cash for a portion of their program, not the entirety of the program, but some cash for that. With, you know, the difference between the loan, the institutional loan and the sale of the receivable is a direct relationship between the loan and the student paying tuition and fees in as much as the student borrows the loan to pay for expenses at the institution. That's certainly the way it works with Title IV loans and with other types of loans. The sale of a receivable is a secondary source of revenue that is just. You know, and I'm not saying that there might have not, we're not suggesting that it might not be legitimate reasons why a school might want to sell receivables, but in many cases, these receivables represent bad debt that the institution has very little hope of ever recovering as real revenues, so they'll wound up selling it for minimal amounts on the dollar and in some cases, just to and I will agree with you

that not in every case this is done to gain 90/10 or to cover 90/10. But I wouldn't call it gaming because currently it's allowable. But we certainly see the practice. And what we were trying to get at here is that that 10 percent indicates or relates to a willingness on the part of students to pay for a portion of their education. I don't know if Steve has anything to add, but I'll give him an opportunity.

MR. FINLEY: I don't have anything to add, I mean, the point is when the accounts receivable is sold and it's not just institutional loans, it's accounts receivable as well. The person purchasing those to try to make collections on them is not paying the institution for the classes that were provided for that for those dollars. And that's why it doesn't, we would not count for 90/10 under this proposal.

MR. ADAMS: Steve, may I respond? So my question is then why is the revenue counting? The receivable was put on the books because there was an associated revenue, so you're going to count the revenue- [interposing]

MR. FINLEY: Sorry. As long as the institution is collecting those payments from the people that took those classes from the students, it does count. It doesn't count as soon as those things are sold

to an outside party because that outside party is not paying for the education.

MR. ADAMS: So, Steve, I want to say this is a proposed change, so again, that is the way it works today. But there's two things that Greg said I want to comment on. He said number one, that the receivable when sold was not tied to the revenue. That is not accurate. Number two, he said, they get minimal dollars returned on the receivables. That's not true in all instances. And so I'm not sure what data you have on that, but that's not an accurate statement, but I'll move on this. But revenue and cash, if you're going to count it on one side, you've got to count it on the other. Thank you.

MR. ROBERTS: Thank you. Sam, go ahead.

MS. VEEDER: Hi, this is more of a question, and I'm wondering if the Department has put any thought into how students will be assisted if schools lose eligibility in 90/10. How do we how would the Department step in and protect students in that case? And should we be adding something here to address that?

MR. MARTIN: If a school closed, if a school ceased to offer instruction as a result and

became ineligible as a result of two years of failure in 90/10, students would be eligible for the same benefits that they would get in any case, where an institution would lose eligibility. I understand the point. You know, I think it's always a very difficult situation because you know, what we're involved in here is any time that a regulatory requirement or, you know, automatically results in that, such as what would happen here with failure of 90/10 or where the Department takes action against the school. It does, unfortunately, you know, put students in a situation where, you know, the school that they're going to is no longer offering instruction. We don't have anything specific to students where an institution loses eligibility for 90/10 due to 90/10. I will say that it has happened fairly infrequently over the past, at least since 90/10 went to, since 85/15 became 90/10. There have been very few instances I don't know the exact number and maybe Steve does, but so far, under the existing rules, there have not been a lot of institutions actually lose eligibility as a result of 90/10, so there's not much precedent for it.

MR. ROBERTS: Okay, thank you. Barmak.

MR. NASSIRIAN: I want to support the inclusion of this language and respond to Brad a little

bit, Brad, the problem with this notion of including sale of receivables is that the institution would then be double dipping under the rules. You can't have the net present value of the receivable booked as revenue at the same time as you get to count all the cash receipts from previous cohorts of borrowers that you may be collecting on. So, you know, if we're going to go to a cash basis of accounting, you're going to have to limit the extent to which institution institutions can receive lump sum net present value receipts for future receivables that should be booked because they're all commingled now together cohort after cohort. You know, I understand the unfairness. You know, an alternative would be to allow the sale of receivables and then exclude previous cohorts. But you can't have both. You can't count all the previous payments and the net present value of the of the loans you happen to sell in a lump sum transaction.

MR. ROBERTS: Thank you, Barmak.

Johnson, I see your hand, I just want to welcome Kelli back to the table on behalf of private nonprofit institutions, but Johnson go ahead.

MR. TYLER: I'll try to make this quick, but I've seen it with my clients. The 90/10 is premised on the idea that people are putting their own

money, their own skin into the game. When you stop making your payments on your promissory note, it's usually because you don't feel like there was any value in what you got, and you feel like you're ripped off. And that's why those payments, when they continue to show that people really do think they're getting something of value and they keep doing it. So when it just turns into a debt, it can't be collected and sold on the market. I don't think that reflects what the purpose of the 90/10 is, to try to measure people putting skin in the game.

MR. ROBERTS: Brad, I see your hand and your comment, but is it okay if Dave weighs in very briefly? Okay? Yeah, Dave, go ahead.

MR. MCCLINTOCK: And Greg or Steve, I might need your assistance just to clarify, I think something to what Barmak said. So there was a period of time when schools could use a net present value of loans and count that present value for their 90/10 calculation. But I think that was ended five or six years ago, I think. I just want to make sure that I'm understanding it correctly, so it's stricken from the issue paper, but that's because it's so long ago that nobody has those. Those loans aren't left. Is that correct?

MR. FINLEY: Yeah, that's correct, Dave.

MR. MCCLINTOCK: Okay.

MR. ROBERTS: Brad, still feel free to comment, if you like.

MR. ADAMS: It'd be great. Before I do, since this would be my last comment, I just want to thank the Department for the job they did this week. I think it's done an amazing job and keeping us on track to get through all these issues, possibly early, I think is an amazing task. So thank you all. And just to address Barmak's question or comment. If you wait 10 years on your portfolio and sell it all at once, I understand your point there, sir. But if you are dissolving your loan and receivable portfolio annually, it actually matches better to the revenues booked in that year from a matching principal perspective. I think you can see both sides of that where if you're doing it frequently, it actually works well in terms of the cash matching the revenue.

MR. ROBERTS: Alright. Greg, I'm not seeing any of our hands. Is there anything else the committee would like to add on section six. Otherwise, Greg, I'll have you tee up what you'd like the temperature check, oh Barmak, sorry, I see your hand. I

spoke way too soon.

MR. NASSIRIAN: I just want to remind the Department that they really need to add language on third-party private label loans here without it. All of this is meaningless because you're essentially creating another mechanism for potential gaming.

MR. MARTIN: I'm sorry, Barmak, you said third-party related loans?

MR. NASSIRIAN: Yeah, third-party private label loans where there is an origination business relationship or other form of credit enhancement arrangements with the institution. Those are, somewhere you ought to declare that those will be treated the same way as institutional loans. You know, my unemployed Cousin Vinny may be available to make loans, right? I mean, you know, and-

MR. MARTIN: If he is, I might need some money. I mean, he's not going to strong arm me too much when I don't pay.

MR. ROBERTS: [Audio] temperature check [inaudible] how they'd like to break down. There was a comment a bit earlier about how folks might want to break this up, but I'll defer to the Department on what's most helpful.

MR. MARTIN: Well, we had a lot in

section, we just covered all of A which is pretty much what we covered so far. We did break the discussion up into various subparagraphs because there was a lot there so we can take a temperature check on all we've covered through A because B is reserved. So we're going to do that, and C is sanctions and won't take long. But before we do that, let me just go. We as well just do it all holistically because as one in one group, because all we have left are sanctions and there's not much there. So just let me cover sanctions briefly and then we'll go for a temperature check, and we can do it on the entirety paper of what's in 668.28. Sanctions is in C, and we have not changed much here. You can see if an institution does not derive at least 10 percent of its revenue from sources other than federal funds. So we've recognizing the statutory change. I'm not going to read all the language there because it has not changed. We added, four under C, which says it is liable for any Title IV program funds it disperses after the fiscal year it becomes ineligible to participate in the Title IV HEA program under (c)(1) of this section and excluding any funds, the institution was eligible to disburse under 668.26. 668.26 is the regulation that apply to an institution's participation in the Title IV programs rather. So this is just codifying current

practice and clarifying it in the regulations, so if we need to discuss that point, we can certainly do that. But other than that, I would move for a temperature check.

MR. ROBERTS: I do see at least one hand, Greg.

MR. MARTIN: Do we have, let's see, 3:37. I think we have time to entertain them.

MR. ROBERTS: Yeah, we do have a little bit of time, but Carney, please take us away.

MR. KING: Yeah, I just want clarification about the two consecutive fiscal years I know we addressed fiscal years earlier, but I'm concerned that like, I don't know when it kicks in that they're not deriving at least 10 percent because my concern would be if the semester, you know, fall semester kicks off the school year in mid-October, is that not a full consecutive year then? So they might basically have a third additional year to be out of compliance before they start seeing sanctions?

MR. MARTIN: No, it's driven by fiscal year because it's the 90/10 and I'm going to ask Dave to step in and correct me if I'm not getting this right. But the auditor puts it as a footnote to the financial statements if the institution has failed 90/10, but the

institution is required to notify us within 45 days irrespective of that. But the audits and it's all key to the institution's fiscal year here. So in other words, to answer your question, it's by fiscal year, not when semesters occur, or terms occur. So no, there'd be no way to extend it to an additional fiscal year. But I'll ask Dave to comment about exactly what the auditors do with respect to a 90/10 termination.

MR. MCCLINTOCK: Well, unfortunately, I can't talk about that because I've worked with a school that had a 90/10 termination, but just two, it is limited to a two-year period, so most companies have a 12/31 fiscal year. And so I think as written, it talks about beginning January 1, 2023. So it would be two years at the end of that two-year period, it doesn't. It would be regardless of terms that were in process or anything else at the end of that fiscal year that would end the two-year period. Does that make sense, Carney?

MR. KING: You're saying 24 consecutive months of not deriving 90 percent and they're looking at sanctions or do they have to wait until the following like fiscal year ends?

MR. MCCLINTOCK: The, I can answer this or you can, Greg. [Interposing] we measure it annually. So after the first year, you would be

evaluated if you get more than 10 percent or not. If the answer is no, then as currently written, you would start the second year and at the end of that second year, you also did not derive at least 10 percent-.

MR. KING: Okay.

MR. MCCLINTOCK: At that point, you would, you would fail.

MR. MARTIN: Yeah, that's absolutely correct. It's to two distinct fiscal years. So when you don't, you don't view the period as 24 months, view it as one fiscal year. There's either a pass or fail, second fiscal year pass or fail. So two failures would mean a loss of eligibility.

MR. KING: Okay, thank you.

MR. MCCLINTOCK: Sure.

MR. KING: Also, I just was curious the Secretary has to be notified if they don't meet the fiscal year. But are there requirements to notify the students that are affected specifically people using a GI Bill or anything like that?

MR. MARTIN: I don't know that we have specific requirements related to 90/10, but I see Steve has his hand up, so I'll defer to Steve.

MR. FINLEY: Well, so when you fail, when an institution fails 90/10 for two consecutive

years, it loses eligibility with the very next day, right? So there are procedures in place where accrediting agencies and states and students are all notified about institutions that lose eligibility. So that happens separate from the 90/10 issue. It's actually triggered by the loss of institutional eligibility.

MR. ROBERTS: I mean, I would like to see like a maybe after the first year requiring that they let students know that, you know, they're in danger at least of losing funds so they can plan ahead.

MR. MARTIN: Thank you. We'll take that back.

MR. ROBERTS: Thank you. With that, Greg, is the Department ready for a temperature check on the entirety of issue paper seven on the 90/10 rule?

MR. MARTIN: I think so.

MR. ROBERTS: Alright, so ending the hour Friday the right way with a temperature check, everyone could just hold their thumbs middle of their screen, nice and clearly. Alright. Seeing one thumb down. Brad, more than welcome to come off of mute if you want to add anything else to the Department's consideration into week two.

MR. ADAMS: TGIF. Good job.

MR. ROBERTS: Yeah. Alright, thank you, guys, so much for all your hard work today. With that, Greg, I know that we're about 20 minutes out from public comment. So if folks have a sign in link for that, I would welcome them to sign on a little bit early just so we can get set up for that period of our afternoon. But Greg, is there anything that the Department would like to close out week one with?

MR. MARTIN: Yes, I'll think I'll read some of my personal poetry, no, I will not do that, but I would, just want to say to everybody that it's been a pleasure working with you this week. I'm really impressed with the level of professionalism and the knowledge evidenced by everybody on this on this panel. It's been my privilege to serve as the federal negotiator, and I look forward to working with all of you in the upcoming two weeks. I do look forward to taking a break from it for a couple of days, but over the weekend, but certainly look forward to coming back and working with all of you as we as we move forward to try to get the best reg, the best package we can for, for students and for institutions and for the for the taxpayer. That's about all I have to say. I don't know, and I'll turn it back over to the facilitators to determine what we do between now and four o'clock.

MR. ROBERTS: But I see, I will turn it over to Cindy momentarily, but I do want to just note that Johnson, you've got your hand up, please.

MR. TYLER: Well, I want to thank everyone on the panel for this robust discussion the last week. It's a lot more exhausting than I thought it would be just in terms of brain power and sustaining. But I do have a substantive question here. It's come up a few times in looking at the proposed regulations. The issue of transcript withholding which is something that's really central to the work I do. People may not be familiar with this, but if you owe an institution money because your federal aid didn't come through or often because people drop out of school due to life events that happen, you incur a tuition debt and that really stops your education from going forward. You basically can't go anywhere because you can't get your transcript and you can't take out new loans. And we've been studying this in New York, and data shows that 9 out of 10 people who this impacts are people of color, and that doesn't make complete sense when you just think of assets. These debts are often pretty low. But people of color just don't have acquired due to institutional rates, and they haven't acquired the funds or assets to pay off something for a rainy day like a \$2000 debt, and

that basically ends their educational trajectory at a young age. They can file for bankruptcy, but that's really the only legal way to deal with the debt other than paying the entire thing off, which is often unaccountable. So I'm just wondering whether the Department of Education would entertain adding something to this negotiated rulemaking. Secretary Cardona has already talked about this and how he thinks it's a racial justice issue, but it's left up largely to states, and it seems like it could be a condition related to Title IV funding, and that is within the purview of the negotiated rulemaking that's going on right now.

MR. MARTIN: I would say anything we would add would have to be under the issues that we've discussed so far, we're not adding additional issues to the table, but it could fit into what we're doing. I'm not precluding that. There are, as we're all aware. I believe that is correct. There are equity issues involved. There are potentially some legal issues as to Department's authority there. We have thought about it, and we are very concerned about the fact that there are students who don't get transcripts and or the continuing of their education is limited by that. I don't want to make any promises on the part of the Department for that

and to say any more than that, we do feel it's a problem. However, if you want to suggest that to us, feel free to do that, I will take it back. I will discuss with senior leadership, and we'll see, you know what we might be able to do there, but again, not making any promises one way or the other, but we will entertain it.

MR. MARTIN: Anne.

DR. KRESS: I just certainly echo Johnson's concerns about sort of the stranded credits, but really want to underscore that this is right now, it varies dramatically based on state. So in Virginia, for example, there's been some legislation that's being introduced in the current session around stranded credits because as a Virginia higher education institution where actually a state agency treated just as though we were the Department of Motor Vehicles, for example. And so we're subject to all of the laws of the state, including some fairly strict regulations around the bad debts that are owed to state agencies. So I think that would be one thing I would put out there is we want to be very mindful of differences across various states, and I know that this has come up as a federal issue as well.

MR. MARTIN: Thank you.

MR. ROBERTS: Yael.

MS. SHAVIT: I want to echo Johnson's comment and say as well that I do think that there's room for this in the context of the issues on the table, particularly potentially in the context of program participation agreements. So hopefully we can do something meaningful for students there because this is a major issue that our offices see constantly.

MR. MARTIN: Thank you.

MR. ROBERTS: Jamie.

MS. STUDLEY: I agree that this is a critical issue, and it would be wonderful if the Department could think of some creative and bold solutions. I speak on this more as a person who, as an ED employee and independently worked with Beyond 12 and [inaudible] when they counseled students from a large institution that closed. Given the state of technology, it might be possible at the point of closure to do things like universal transcript distribution by a closed closing institution. Let's just leap ahead. I will share with you the [inaudible] guidelines for what an institution should do a teach out in terms of availability of transcripts, but this may be a moment that we can go beyond.

MR. MARTIN: Okay, thank you very

much.

MR. ROBERTS: And Barmak.

MR. NASSIRIAN: Yeah, I also share the sentiments that have been expressed around this. There are a couple of creative things this committee could do under its existing jurisdiction and on the basis of the agenda at hand. Certainly and I believe it was suggested earlier with regard to institutions that are either at risk of closure, on provisional certification or otherwise subject to some authority of the Department to preclude those institutions from having holds on transcripts and to mandate that they make arrangements while they're still alive with a state agency to serve as a repository for transcript. In addition, I want to suggest what was it like six or seven years ago, a public institution that I won't name ended up disenrolling 30 percent of its students because it had allowed multiple years of enrollment with debts just, you know, with unpaid bills. So I would say that no institution should be allowed to withhold even for purposes of collection of debts any more than the last term of attendance. If you allow the student to enroll again and again without having paid their bills, that's on you. That's a form of financial irresponsibility and you certainly shouldn't be able to withhold the

transcript. You know, I don't know of any other arrangement where the student already paid for everything else. Just because one term's tuition may have a balance on the student account should not allow the institution to basically take the entirety of the transcript hostage. So we could always sort of come up with a creative solution around that. Even with institutions that don't have any other adverse conditions.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank all of you. Not seeing any more hands. I am more than happy to turn it over to the FMCS lead facilitator, Cindy, who I know has a few remarks that should carry us to public comment. Cindy, please thank you.

MS. JEFFRIES: I'm not so sure I can talk for nine minutes, but I'll say what I have to say. We, too, from FMCS. I want to thank and commend each and every one of you for your hard work this week and the dedication that you are exhibiting to this process. We also greatly appreciate all the kind feedback that we've received from a number of you directly to FMCS and vocally to the Department. So that is greatly appreciated. Just a few housekeeping items as we prepare for this break between sessions, a number of you have

stated that you will submit text on various issues that have been discussed for the Department to consider them between sessions so that they can really give it the time and effort to consider that and draft any amended text. And in the case of GE, the initial text, their goal, the Department's goal is to send out the amended text a week before the sessions, okay, so that you have the ability to look them over. Okay? That being said, they need to have your proposals to them before that. So you know it takes them time to prepare the text as it does you to write your proposals to them. So we ask that you send that text to them as soon as you have it, so it gives them ample time to give it the due consideration it deserves. Okay? Just a reminder, as we progress into the second week and move closer to the actual consensus taking process. Just a reminder on consensus. Okay? This is an issue-by-issue consensus process. So there will not be packaging for consensus and there will not be a consensus taken on the overall rule as a whole. We will stick to the issue by issue. Dissents on the consensus process per protocol should be based on serious reservations. And if you have those serious reservations and you are thumbs down, just know that you will be asked to state what changes you would need to get you to one of the two consensus levels, either here or here.

That is all that I have to say. In addition, I forgot I did forget to remind you that your proposals, your proposed text that you have or any information request, please send them directly to me and I will forward them on behalf of you to the Department. If you want anything also disseminated to the committee as a whole, if you don't send it yourself and you're expecting me to send your proposals and things, you need to tell me that you want me to do that. Okay? We encourage you to work together during this week. If you are so inclined to meet and discuss and see, you know, sometimes a lot of times collaboration is a pathway to agreement. So we do encourage you to do that if FMCS can be of assistance to you in any manner, any time during this process, including the time between breaks, please feel free to reach out to us. And we still have five minutes. Does anybody need to stretch their legs to just a couple of minutes or we do have two people in the waiting room at some point we may have lags, anyway, waiting for people to sign in. Again, I'm going to ask the public commenters that have time slots to please sign in so that we can make the best use of the time. Feel free to go ahead and sign in, even if you have a later time slot.

MR. ROBERTS: If I can just provide a

few clarifying notes to the public commenters. So when you do log in and we've been asking, but if you are listening to the live stream, it does create a bit of an echo with you still have it open once you're in the Zoom meeting. So if you wouldn't mind pausing that before admittance and just FMCS, you'll have three minutes to speak and FMCS will give you just an audible warning when you have 30 seconds left and the idea there is not to interrupt the flow of your comment. It's just to let you know that we do try to fill the time as robustly as possible. So that's the only reason we do that. And I'm seeing Brad's comments. If the Department has an answer to the data request or the turnaround time, feel free to provide it. But I'm personally not able to answer that, Brad, regarding response to data requests.

MR. ADAMS: The request is if we could get them as they're available and not wait until the very end.

MR. MARTIN: I appreciate it. I'll check on that.

MS. JEFFRIES: Preference committee, do you want three minutes to stretch recognizing we don't want you to leave, or do you want to jump right in with starting with the two people that have signed in already?

MR. MARTIN: I think we could go with the people who signed in.

MS. JEFFRIES: Alright. Brady and Kevin, I'm going to turn it back over to you.

MR. ROBERTS: Kevin who are we admitting first?

MR. WAGNER: We're going to be admitting Gabriel Flores representing Title IV Access to core ELL Instructional Coach, The Los Angeles Unified School District, mouthful. Will let him in.

MR. ROBERTS: Mr. Flores, good afternoon. Can you hear us, Mr. Flores?

MR. FLORES: Yes, I could.

MR. ROBERTS: Good afternoon. You have three minutes for public comment beginning when you start speaking.

MR. FLORES: Alright, thank you so much for having me this afternoon. Thank you for this opportunity to speak. Thanks especially to all of you for your public service. This is hard work and I'm grateful and thankful for your efforts. My hope is that the Biden administration and the Education Department, along with the U.S. Congress, will find a way to bring appropriate levels of accountability to all schools, not simply the private and for-profit colleges and

universities. Now here's why I feel this way. I live in Los Angeles, California. I have worked for the Los Angeles Unified School District for more than 23 years. I completed my undergraduate teaching credential and master's degree at Cal State University Northridge. I earned a graduate certificate from Walden University, a school administration credential at National University, and I completed my doctoral program at University of Phoenix. My dissertation investigated teacher attitudes toward a more balanced multicultural education through the implementation of LGBT themed children's literature in classrooms. I am a published researcher, university faculty member, presenter at national conferences and a transformational leader within my school district. I am asking that this rulemaking committee and its members please take great care with the way it speaks of certain schools and programs, the quality of the education I received at all of my alma maters, public, private, for-profit nonprofit is noteworthy. I hope you'll reinforce that. I do not subscribe to the notion that a nonprofit institution is somehow automatically providing a higher quality education. Not at all. I received an exemplary education at my for-profit schools that I attended. The coursework was meaningful, rigorous, relevant, and immediately applicable to my profession. I believe that

the aspiring college students need to find programs that match wherever they are at in life. That's what I have done. I find it disturbing when regulators exhibit a bias toward one school over another. When you speak of for-profits, please be sure to acknowledge accreditation. This debate should not focus solely on money or how much a graduate earns. I work in public education at LAUSD. I'm grateful for what I earn in my occupation, but to evaluate the quality of all my training based solely on my earned wages. Well, that would be a mistake. Take great care, please, as you write gainful employment standards and other rules. Understand that my wage is based on my chosen profession and where I live. Let us not create a new form of discrimination toward alumni who are creating positive social change and contributing to their society. Just because you may not believe that they should have attended a different college or university, do not speak ill of my hard work and determination because you may not agree where I completed my degree program. [Audio] traditional student working adult with the University of Phoenix. When I attended staff worked very hard to ensure I succeeded and completed my program. Please take great care to recognize our hardworking Americans who keep aspiring toward higher education and new learning.

That's what we need, not a system that prioritizes school type over another. Stop discriminating and undermining people's education. My education. Creating more meaningful, positive educational change for all Americans. I know that's what you're working to do. But please keep in mind that all of us who have already graduated are applying what we have learned in the workplace. I know the committee has good intentions. This is important work. The policy making process-

MR. WAGNER: Your time is up. Thank you.

MR. ROBERTS: Thank you for your comment, Mr. Flores.

MR. FLORES: Thank you.

MR. ROBERTS: Alright. Kevin, who are we hearing from next?

MR. WAGNER: Let's see, here we have Dr. Mary Ann Markey representing themselves.

MR. ROBERTS: Good afternoon, Dr. Markey, can you hear me?

DR. MARKEY: Yes, I can.

MR. ROBERTS: Great. We can hear you. Video is great as well. You have three minutes for public comment, beginning whenever you start speaking.

DR. MARKEY: Very, good. Thank you.

Good afternoon. My name is Dr. Mary Ann Markey and I've been teaching for Grand Canyon University since 2010, along with several other nonprofit and for-profit institutions while facilitating the majority of my classes online. I've noticed that some school administrations engage in practices that hinder students. For example, Grand Canyon requires professors to work 60 to 70 hours a week and reside in the Phoenix, Arizona, area to obtain full-time status, resulting in approximately 92 percent of faculty being classified as part-time employees. I, like others in my position, need to work at other universities to make ends meet on a part-time salary, which can impact the quality of instruction that students receive. Although I'm classified as part-time this semester, I have been teaching four courses, which requires reviewing over 700 student discussion board posts and often multiple writing assignments, taking more than 40 hours of work each week. I want to give my students more individualized instruction, but the current system makes that impossible. If these schools invested more in their professors than in advisors and recruiters, it would lead to better outcomes for the students. As a professor, I'm trying to help all my students reach their professional goals. But Grand Canyon has told me

that it's not a professor's job to advise students about any risks associated with pursuing a graduate level education. As a result, many students pursue extensive degrees that fail to provide a decent return on their investment. I teach capstone courses, which are the final courses required in a student's undergraduate degree plan. I asked my students to do a cost-benefit analysis to consider whether a masters or a Ph.D. is necessary, but many of my students have already been convinced that they must have a more advanced or terminal degree. They're often shocked to learn the reality of the job market they're about to enter, in which an advanced degree may not benefit them and only result in greater debt. If the university's goal is to attract and retain students at any cost, that's unethical. I want them to attend because [Audio] I want them to attend because they'll receive a quality education. I don't want my students to walk away with excessive debt and an inability to function within their chosen career. Unfortunately, the growth of online schools sometimes puts us at a disadvantage by limiting access for students to build quality relationships with professors who truly care about their future. Someone needs to ensure that schools are investing in more long-term instructional teams and offering quality-

MR. WAGNER: Your time is done. Thank you for your time.

DR. MARKEY: Thank you. Appreciate it.

MR. ROBERTS: Thank you for your comment. Kevin, who are we admitting next?

MR. WAGNER: Sorry about that, I was muted. Let's see, we have Charles Riser Jr., representing, he's a co-founder of the Temple, a Paul Mitchell Partner School and the Temple from Annapolis, Maryland.

MR. ROBERTS: Mr. Reiser, can you hear me?

MR. WAGNER: Here he comes.

MR. ROBERTS: I see Mr. Riser, you just got to turn on your audio. Kevin, do you want to admit the next speaker while we work on-.

MR. WAGNER: Sure. Let's see. Let's do, we have Paris Lefttenant [phonetic], representing the Studio Academy of Beauty.

MR. ROBERTS: Thank you. And if you wouldn't mind just messaging Mr. Riser just to see if he's having audio troubles. Ms. Lefttenant, can you hear me? It looks like we're still having a few audio hiccups with our speakers. Kevin, why don't you admit more, and I can also send a message.

MR. WAGNER: Sure. [Interposing] Sure. Next person will be Aaron Shenck, Executive Director of MAACS. Third time's a charm.

MR. ROBERTS: Good afternoon, can you hear us?

MR. SHENCK: Yes.

MR. ROBERTS: Excellent. Would you mind pausing your live stream in the background? We're just getting a bit of an echo. [Background talking] Aaron, would you mind, I think you still have the live stream on in the background, would you mind turning it off because we're getting feedback.

MR. SHENCK: I'll tell you what, can you come back to me-

MR. ROBERTS: Sure, let me mute you real quick. Paris, are you, I think, I have your audio as connected. Are you able to hear us?

MS. LEFTTENANT: Yeah, can you hear me?

MR. ROBERTS: We can. If you're comfortable, feel free to turn on your video, otherwise you have three minutes for public comment beginning whenever you start speaking. There you go, you just got to come off of mute and you're good to go.

MS. LEFTTENANT: Hi, my name is Paris

Leftttenant. I'm a esthetician graduate from the Studio Academy of Beauty in Chandler, Arizona. I know a lot of you often here may think that for-profit schools are bad, but I really enjoyed my experience from beginning to the end. They were very helpful with not only my schooling but helping me get a successful job in the industry. So when I heard about this meeting, they let me know about it and told me that if I enjoyed my experience, I should come on here and make a statement because they weren't only helpful with getting me through my schooling but getting me into a successful job in the industry. And I just wanted people to have the same chance that I did to enjoy their schooling as well. Thank you.

MR. ROBERTS: Thank you for your public comment.

MR. WAGNER: And I'll readmit, Aaron, see if he got everything squared away.

MR. ROBERTS: Sounds good. Alright, Mr. Shenck, welcome back.

MR. SHENCK: Thank you. Can you hear me? Everything good?

MR. ROBERTS: Yeah, sounds great. You have three minutes for public comment, beginning whenever you start speaking.

MR. SHENCK: Well, thank you very much. My name is Aaron Shenck. I'm the director of the Mid-Atlantic Association of Career Schools, which represents about 100 technical colleges and career schools in several states. Our institutions offer diverse programs. Some examples are welding, construction, auto mechanics, aviation maintenance, you know, culinary arts, I.T., cosmetology, nursing, and many, many more. Our graduates literally build your homes, keep your electricity on, fix your cars, keep your planes in the air, and many other essential jobs. Many of our students are ones that prefer not to tend to liberal arts. Or maybe they prefer a shorter-term program. They want to get in the workforce quicker, or they just want a hands-on career. Our membership includes both for-profit and nonprofit schools. However, a vast number of postsecondary current technical schools are considered for-profit under their tax [inaudible]. Sometimes certain groups or media looks at for-profit, and it looks [inaudible] kind of same apples on a tree. Nothing further could be [inaudible]. I have personally visited over 100 campuses of Title IV eligible for-profit schools. What I've seen with my own eyes does not reflect the perception somehow. The diversity of the sector, the high level of education and student

outcomes, the employer satisfaction and so many other positives in the sector have blown me away on my visits. That said, I do not question the previous [inaudible] negative experience that is their personal story, and I trust they're accurate. [Inaudible] question that some schools have let some students down, particularly those who have closed their doors early. However, these cases are not the norm and do not reflect the majority. We continue to try and help tell our story [audio] do that, I would like to make [audio] every member of this committee. My Board of directors meets next week, January 2 [audio] leaders of both many for-profits and nonprofits, and they represent the diverse field of trade. We offer any committee member one at a time to meet with our board. We'd be happy to share any information on our sector. We'd be happy to hear any criticisms you have or any questions you may have on specific issues [audio] not available that date, [audio] welcome [audio] The schools represented by my board [audio] for many years, including one of them [audio] by Forbes magazine as the number one trade school in the country. They take their students, employers, and communities very seriously and would love to have a conversation with any member of this committee. If any of you are interested in accepting this offer, my email

address is Aaron, A-a-r-o-n at M-A-A-C-S dot U-S. Again, that's Aaron, A-a-r-o-n at M-A-A-C-S dot U-S. Thank you very much for the time.

MR. ROBERTS: Thank you, Mr. Shenck, for your comment.

MR. WAGNER: Is Mr. Riser ready to go? He's already in.

MR. ROBERTS: So you just got to come off of mute.

MR. RISER: I am off mute. Can you hear me okay?

MR. ROBERTS: We can hear you great. Perfect. You have three minutes for public comment, beginning whenever you start speaking.

MR. RISER: Alright, thank you. Good afternoon, my name is Charles Riser. 20 ago, I co-founded two career colleges with my wife, Sharon. Our schools enroll approximately 150 students a year, and since founding, we have graduated close to 2,000 students. My mom has been a hairdresser all of my life. The versatility of her career choice allowed my family to have the additional money to supplement my father's income while giving my mom the freedom to stay home and raise my siblings and myself. After studying computer science in college, I made a career change with my

parent's approval and became a hairdresser myself. I have seen firsthand how solid training and a hands-on vocational career can be as rewarding as a degree from a traditional four- or five-year institution. College enrollments across the United States continue to drop as students look for less costly alternatives that will allow them to enter the workplace faster with less debt than they would get from a traditional institution. Personally, I support the idea that the investment of taxpayers' dollars into a student's education needs to see a solid return on investment. I am suggesting that we focus on the fact that a student's income directly out of school is much different from their earnings potential later on in their careers. The cosmetology industry, much like many other industries, requires time and experience to gain a higher income. One of the reasons we have Income Based Repayment programs is to allow graduates to increase their debt payments slowly to match the income levels as they grow in their careers. The government already acknowledges that people make less income initially as they grow and come out of college. Additionally, it would be helpful if we were able to establish GE metrics that account for unreported income as the variance in our industry disproportionately impacts the numbers for our

graduates' income. The IRS has shown that the average of 10 percent of tips in the cosmetology industry go unrecognized. And while our schools recognize this should not happen and we do our part by adjusting our curriculum to educate our students on their financial responsibilities, the reality is that our income in the industry is unreported. Finally, some have suggested that community colleges can fill the needs for career and certificate-based education like our schools offer. However, during the last round of gainful employment, most of our local community colleges reached out to our campus locations because they were exploring removing their certificate-based programs precisely because they didn't feel they would be able to comply with gainful employment regulations. This only harmed student access to vocational programs by reducing the amount of programs available to our students. I wanted to thank you very much for the opportunity to talk today, and I sincerely look forward to the outcome of these negotiations. Thank you.

MR. ROBERTS: Thank you for your comment. Alright, Kevin, I think we are ready for our next speaker.

MR. WAGNER: Jenna Pitocco representing themselves.

MR. ROBERTS: Good afternoon, Jenna, are you able to enable your audio? Good afternoon. Ms. Dowd, are you able to hear us?

MS. DOWD: Yes.

MR. ROBERTS: You have three minutes for public comment beginning whenever you start speaking.

MS. DOWD: Thank you. My name is Cheryl Dowd. I'm the senior director for the WCET State Authorization Network. We're a membership organization of more than 800 institutions nationwide, desiring to provide student protections through meeting state and federal compliance requirements for out-of-state activities of the institutions. We appreciate the Department giving me the opportunity to speak today regarding proposed language for 668.14(b)(32), which addresses institutions programs that lead to professional licensure or certification. We completely agree with the need to develop processes to support students to make informed decisions regarding programs leading to professional licensure certification. However, we wish to raise a few concerns about the proposed language in our interest in the development of regulations for which institutions can clearly comply to protect students. We believe the proposed language is

directing that in each state for which institutions have state approval, complying with 600.9, noting that 600.9(c) does include distance education, that the institutions must ensure that the programmatic accreditation is obtained if required, and ensure that the program satisfies educational requirements in the state. So I have four points to that effect. First, starting with the term, ensure. What does the compliance look like? What are the parameters to the term ensure? Second point, to require that the institution curriculum must meet state educational prerequisites, I urge the consideration that there be input to this committee from state licensing boards to address how state licensing boards can collaborate with institutions to support research so that the institutions can find, review and assess whether the institution's curriculum meets state educational requirements. As we know, requirements vary per state. So when we consider these requirements, the development of a curriculum to meet educational requirements for all states where the institutions meet state institutional approval per 600.9 may be impossible. Examples include perhaps teacher education, for which states may require a state history or state culture course pertaining to the state or, for example, experiential learning requirements which vary state by

state. How should the institution address that curriculum piece for the number of hours and perhaps classifications? And the fourth point, per the discussion this morning among the regulators, excuse me, a bunch regarding the negotiators about institutions not offering programs where the curriculum does not meet educational requirements, we're wondering if there may be a need for consideration for exceptions for certain groups of people who may wish to pursue programs in a particular state but had no interest in remaining in that state to obtain a license. Such groups could consider, you may want to consider are military students and their dependents who are located in a particular state while participating in a program [audio], but intend to pursue a license in another state. Another example could be students desiring the training from a specific institution but desiring to seek a license in a state where there are workforce needs. I thank you very much for considering these concerns raised as you develop a working regulation for which institutions can comply to protect students. Thanks very much.

MR. ROBERTS: Thank you, Ms. Dowd, for your comment. Alright, Kevin, I think we are ready for our next speaker.

MR. WAGNER: Alright, we have Victor

Inzunza representing Swords to Plowshares.

MR. ROBERTS: Mr. Inzunza, can you hear us? Good afternoon, Mr. Inzunza, can you hear us?

MR. INZUNZA: Yes.

MR. ROBERTS: Great. Good afternoon. You have three minutes for public comment, beginning whenever you start speaking.

MR. INZUNZA: Thank you. So what follows is simply the statement from Swords to Plowshares on the 90/10 loophole. So good afternoon to the officials and staff. Department of Education. My name is Victor Inzunza. I'm a Marine Corps veteran. I serve as a policy analyst at Swords to Plowshares. Our agency was established in 1974 to heal the wounds of war, restore dignity, hope and self-sufficiency to all veterans in need, and prevent and end homelessness and poverty among veterans. We offer employment and job training, supportive housing programs, permanent housing placement, counseling and case management and legal services. One of the most significant life changing opportunities for veterans is their time in college made possible by the benefits earned during their time and service. The policy requirements for Swords to Plowshares has spent over five years researching and advocating on behalf of military connected students. We

have developed partnerships with students and leaders across the country to determine why institutional support systems matter. Institutions must have integrity, and they must make a commitment to support the students who come through their doors to provide quality education and a reputable degree. Our work with military connected students has revealed inconsistencies and support systems, leading many to seek outside resources in their communities, for example, in many of our recent studies, we found that students often struggle with financial issues, causing housing instability and food insecurity. The reality is that our military communities already face multiple challenges in their efforts to assimilate back into society. Predatory colleges exacerbate this unfortunate situation and can derail their futures entirely. Our agency administers VA supportive services for veterans and families, or SSVF, funds that help veterans on the verge of financial disaster and homelessness. Student veterans come to us for help. Meanwhile, the 90/10 loophole allows predatory colleges to rob veteran students of their educational benefits and deny them the promise of future careers, which require a college degree. Today, we ask the Department of Education to ensure strong implementation of the new law to close the 90/10 loophole. As you know,

the 90/10 loophole resulted in the targeting [Audio]
Okay, great. Thank you. By aggressive and deceptive colleges. Countless service members, veterans, family members and survivors were seen as nothing more than dollar signs in uniform and had their lives ruined because of this loophole. We thank bipartisan members of Congress for listening to us and finally closing the 90/10 loophole. Thank you.

MR. ROBERTS: Thank you for your comment, Mr. Inzunza.

MR. INZUNZA: Thank you.

MR. ROBERTS: Alright, Kevin, I think we are ready for our next speaker. I think you're muted.

MR. WAGNER: Yeah, I already announced Jenna, but it was actually Cheryl Dowd who did the speaking, so we are going to hear from the actual Jenna. Jenna Pitocco, I'm letting, representing themselves.

MR. ROBERTS: Good afternoon, Ms. Pitocco, can you hear us?

MS. PITOCCO: Hi, yeah, can you hear me?

MR. ROBERTS: We can. Yes, you have three minutes for public comment, beginning whenever you start speaking.

MS. PITOCCO: Alright, thank you. My

name is Jenna Pitocco, and I've been a cosmetologist for 10 years. My education started at Duquesne University in Pittsburgh, Pennsylvania. I was studying communications and PR. I'm not a student who can learn from books and lectures, so I found myself really fighting to keep my head above the water in classes. And after admitting I was miserable in this traditional learning environment, I dropped out after completing my junior year of college. After doing my research, I enrolled into a Paul Mitchell cosmetology school for the first time in my life. School was fun. I loved learning and the training really connected with me. After getting my license, I started my career like 99 percent of the cosmetologists do, which is as an apprentice making minimum wage. That was nine years ago. Building my book took many years and required a lot of extra days at the salon to build as quickly as I could. I'm now on my own and extremely successful and also have my own salon in New York City. Doing what I love and what I'm successful at meant sacrificing provided health care, paid time off and paid maternity leave. This never made me question do I actually want to do this? I recognized how majority of people fail to even find a passion in life, especially one that creates a salary. I knew it would take time and a lot of effort to make money and reach a salary that

was realistic for affording a life that wasn't paycheck to paycheck. People who find a passion sacrifice the ease of success because they truly love what they do. I think it is unfair that the committee here is putting vocations and education of our trades into gainful employment metrics that are so out of touch with the reality of career growth, especially for this industry. That's all.

MR. ROBERTS: Great, thank you. We appreciate your public comment. Thank you.

MS. PITOCCHO: Sure. Thank you.

MR. ROBERTS: And Kevin, who is our final commenter for today, and in fact, this week?

MR. WAGNER: Last but not least, we have Juan Fernandez representing themselves.

MR. ROBERTS: Good afternoon, Mr. Fernandez, can you hear us? It looks like he needs to enable his audio. Oh, there we go. Can you hear us?

MR. FERNANDEZ: Absolutely.

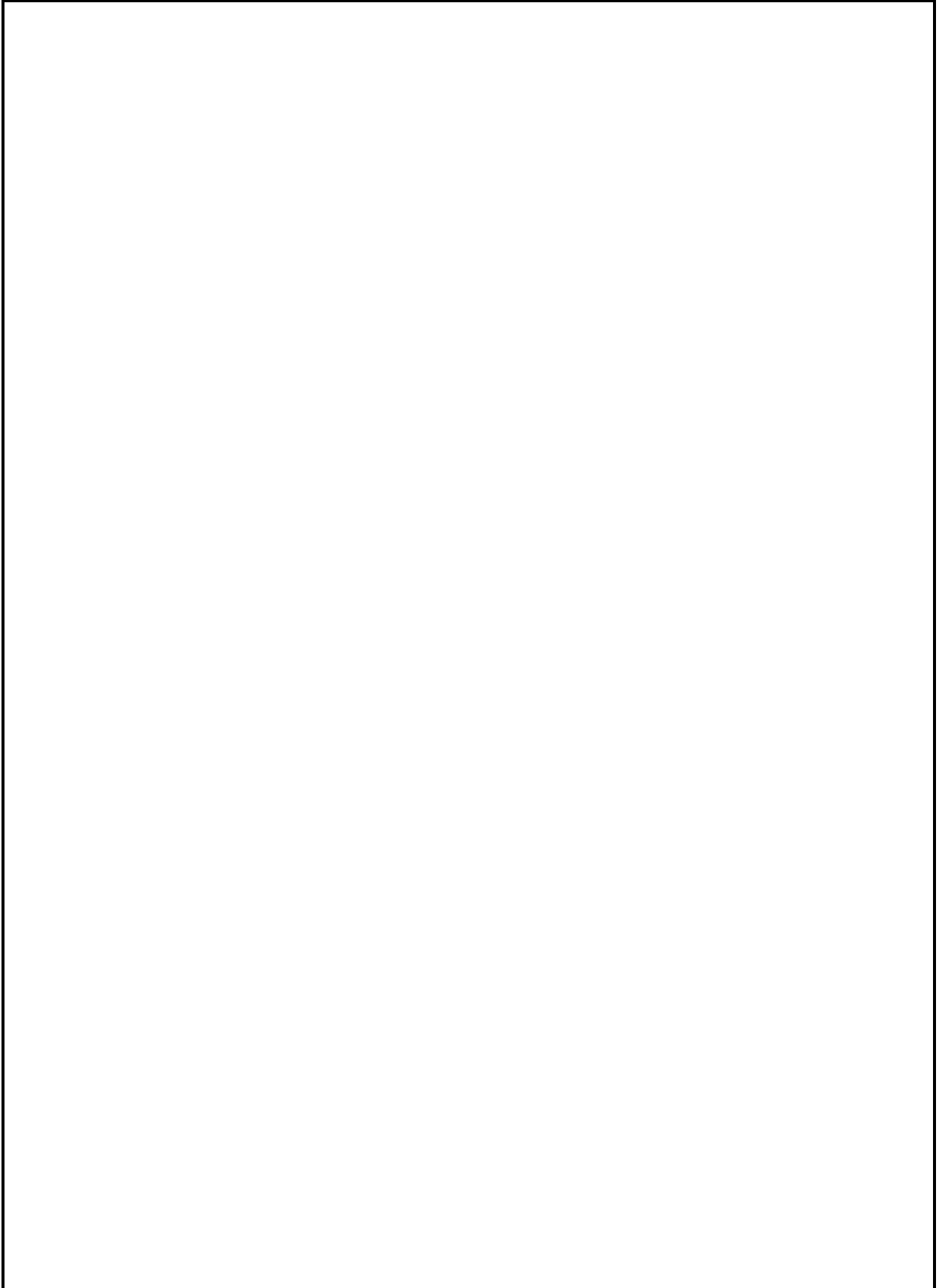
MR. ROBERTS: Great. You have three minutes for public comment, beginning whenever you start speaking.

MR. FERNANDEZ: Excellent. My name is Juan Fernandez, not John K., but that's okay. That is really irrelevant. What really matters is the three

minutes. Thank you for the opportunity to speak to you this afternoon and thank you all for your public service. The work you do is very important. Service to our country has been part of a family makeup. My brother is a retired Air Force guy, and I am a 30-year Army veteran. I used my GI Bill funds to work on a degree at the University of Phoenix. I started in 2004 when I was assigned to Southern Command in Miami. Managing work, family and in school was a challenge and the UOP, or University of Phoenix, had a nontraditional long-distance program, which at that time solves many of the problems that employed students face, especially those in the armed services. I was able to find a flexible option later at the University of Phoenix to work on my doctorate degree. [Audio] policy argument to downgrade what I accomplish at the University of Phoenix. We veterans know how to choose a school based on what we need, and we work hard to finish our coursework and earn our degrees, and the instruction quality was obvious. In fact, the application of lessons from a leadership class that I took before departing to serving in Iraq was instrumental in the success of the course staff [inaudible] I led from 2006 and 2007, actually under the leadership of General Odierno, who passed recently. The university was accredited. Accredited schools should be

held to the same rules all. And then the most important thing is that through it all, the support I receive at the University of Phoenix made it possible for me to succeed in my post-graduate courses. Please, my request is that you engage more students with stories like mine. I know that there are some other students that will present you the counterpoint, but my point is that the university was fun, was engaged [Audio] We need consistency in the rules so that we can all advance in our careers. Thank you very much for allowing me to speak today. I yield the rest of my time.

MR. ROBERTS: Thank you very much and thank you for your public comment. Alright, so with that, I believe we are at time. Thank you to all of our public commenters and thank you to all the work that this committee has accomplished this week. As always, if FMCS can be of service in between sessions, don't hesitate to reach out and we look forward to continued engagement with this committee. Thank you all very much.



Appendix

Department of Education

Office of Postsecondary Education

Zoom Chat Transcript

Institutional and Programmatic Eligibility Committee

Session 1, Day 4, Afternoon, January 21, 2022

From Anne Kress (P) Comm Colleges to Everyone:

Don't know if you want to announce that I am back at the table for community colleges.

From Jamie Studley (P) Accrediting agencies to Everyone:

in e(1), suggest considering adding something to require in this situation that schools arrange a transcript availability process, beyond the specifics now listed on holds and records retention. Will try to provide language

From Anne Kress (P) Comm Colleges to Everyone:

+1 Jamie and +1 Yael on records--this is a very critical issue for students seeking to enroll in CCs post institution closure. A key student protection issue.

From Jamie Studley (P) Accrediting agencies to Everyone:

Now that I hear Yael +1 Yael's comment --my suggestion is directly related to her remarks. I can work with her.

From Johnson Tyler, Brooklyn Legal Services to Everyone:

+1 for Ernest, Yael and Debbie. 9 out of 10 students who cannot access SUNY transcripts (a public) are people of color. Transcript withholding is super destructive b/c it ends ability to enroll in any institution forever barring a filing for bankruptcy or repayment of the entire debt that often is caused by financial aid being clawed back or not awarded.

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

+1 Debbie's push for clarification/definition on strong records retention plans.

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

Are we on to subsection (f)?

From Jamie Studley (P) Accrediting agencies to Everyone:

+1 to Debbie etc. -- to clarify, in addition to retention I'm suggesting that for schools in this situation there be an option for the Sec to require that they have a mechanism in place for processing transcript requests (so beyond retaining records, they also have capacity or service to respond timely to students' requests for transcripts)

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

+1 to Jamie and Debbie- record retention and transcripts are a huge problem at closing schools

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

my issue on marketing point 8 is the word alleged.

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

marketing compliance is extremely important.

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

Johnson is going to come back to the table

From Johnson Tyler, Brooklyn Legal Services to Everyone:

I'm going to switch in on F with Jessica

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

As stated, but for this committee I like that 1-3 are measurable items to achieve. The concern is the following language " in addition to any other conditions that the Secretary may deem appropriate

From Johnson Tyler, Brooklyn Legal Services to Everyone:

I'm switching out and Jessica is coming back

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

+1 to Jessica's point on the need for disclosures re: professional licensure requirements

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

Jaylon Herbin is going to coming to Table for 90/10

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

Johnson is coming back again for 90/10. Sorry for all the back-and-forth announcements

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

Carney King will be coming to the table to represent students/student loan borrowers for 90/10.

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

Jamie Studley is back for Issue #7

From Jamie Studley (P) Accrediting agencies to Everyone:

+ 1 to taking another look at keeping disclosures -- may be needed even with stronger reqts elsewhere

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

Emmanual will be coming to the table for this issue.

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

I apologize. I did not catch where we stopped

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

are we going through 1 or are we on 2 as well?

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

I want to put this in the chat that not all VSOs believe the 90/10 rule is a good proxy for educational quality: <https://veteranseducationproject.org/wp-content/uploads/2021/02/Veterans-Education-Project-Research-Study.pdf>

From Cindy FMCS Facilitator to Everyone:

Brad to answer your question you are on a 1 only at this time.

From Adam Looney (Advisor) to Everyone:

Regarding private loans, I thought there were specific rules about how to account for private loans that potentially limited the scope for abuse?

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

The organization cited by Brad is an outlier within the VSO/MSO community, as evidence by the fact that 28 well-established well-known VSO/MSOs endorsed our nomination, while no one fully understand the organization in question's membership or source of funding

From Carney King (A) Students/Student Loan Borrowers to Everyone:

<https://vetsedsuccess.org/law-enforcement-actions-against-predatory-colleges/>

From Carney King (A) Students/Student Loan Borrowers to Everyone:

Most VSO's are in favor of protecting veterans. Many track predatory colleges.

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

Brad is INCORRECT in claiming that the housing allowance should be excluded, as evidenced in the statutory text: inserting ``Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection

(d) as 'Federal education assistance funds')'' (Students are getting the housing allowance to be used only if they attend the institutions.)

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

Exclusion of the housing allowance is not supported by the statute

From Jaylon Herbin (A) Consumer Advocates Civil Rights & to Everyone:

To follow up with @Adam Looney I was referring to being concerned about institutional loans under the proposed 668.28(a)(5)(i)

From Jaylon Herbin (A) Consumer Advocates Civil Rights & to Everyone:

We are concerned with the proposed language related to the annual payments received by the institutions on the institutional loans in 668.28(a)(5)(I) but we can return to this when we get to that section.

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

Third-party private loans should be treated as institutional loans if there are any origination or business relationships between the school and the lender. including institutional credit enhancement or buy-back agreements

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

Greg is correct. We have no ability to steer students away from their available funding.

From Adam Looney (Advisor) to Everyone:

Yes, I hear your concern. I thought that the potential for abuse may also be addressed by where those loans live in Appendix C's waterfall and the fact that the calculation includes only the NPV of the loan.

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

there is still no proof that those housing funds were ever used at the institution

From Carney King (A) Students/Student Loan Borrowers to Everyone:

To be clear, the GI Bill includes MHA, or Monthly Housing Allowance, and not BAH.

From Travis (P) Servicemembers & veterans to Everyone:

Barmak will be coming back to the table for servicemembers and veterans

From Carney King (A) Students/Student Loan Borrowers to Everyone:

Also concerned with reference to fiscal year

From Yael Shavit (A) -- State AGs to Everyone:

+1 to Barmak

From Jamie Studley (P) Accrediting agencies to Everyone:

I wonder if the Dept has considered a way to avert this danger that does not require the actual drawdown -- by imputing the revenue for a certain period to the relevant fiscal for purposes of calculating 90/10?

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

+1 to Jamie question

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

Perhaps the rule could count funds that were available to be drawn down, but not actually drawn down.

From Jamie Studley (P) Accrediting agencies to Everyone:

+1 -- I believe Debbie and I are making similar suggestions

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Debbie - this seems like a good path

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

I will withhold my question on 3 - iii until after the break.

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

or I can raise my hand if you want to knock it out.

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

Anne can go in front of me

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

I am indifferent

From Jaylon Herbin (A) Consumer Advocates Civil Rights & to Everyone:

+1 Barmak

From Beverly (Primary/MSIs) to Everyone:

I am leaving the table, and Ashley will join the table for the remainder of the afternoon.

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

can we vote on section 4 separate than 5?

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

to be clear only the cash paid on those loans while they are in school count to the 10

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

sorry I meant to say only cash paid. in school is not a factor

From Carney King (A) Students/Student Loan Borrowers to Everyone:

Thank you for clarifying, Barmak

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

Barmak. I will address your question

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

recourse or non-recourse is an important difference.

From Yael Shavit (A) -- State AGs to Everyone:

+1 Barmak

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

students can be sued for default whether or not they are sold. Makes no difference if the loan is in default.

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

may I make a brief response to bBarmak

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

I will be returning to the table.

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

he may answer my question

From Jaylon Herbin (A) Consumer Advocates Civil Rights & to Everyone:

+1 Barmak

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

24 months plus 45 days I believe

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

+1 on Carney's point about disclosure of failing 90/10 to current and prospective students

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

+1 Greg

From Dave McClintock (Advisor) auditor to Everyone:

+1 Greg and Johnson

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

Thanks to all the colleagues involved in this effort, particularly the staff of the Department and FMCS

From Emmanuel Guillory (A)-PNPs to Everyone:

+1 Barmak

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

+1 Johnson's comments here

From Jaylon Herbin (A) Consumer Advocates Civil Rights & to Everyone:

+1 Johnson's comments

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

+1 Johnson's comments on transcript withholding

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

+1 Barmak

From Carney King (A) Students/Student Loan Borrowers to Everyone:

Ernest will be coming back to the table for students/student loan borrowers

From Jamie Studley (P) Accrediting agencies to Everyone:

Yes to Barmak: we urge pre-closure plans to preserve and ideally arrange resource for transcript distribution

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

Do we have an estimate turnaround time on red lines

for week 2? Will it be a week before the session like last time?

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

can we get responses on data requests made this week on a rolling basis?