

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 3, DAY 4, AFTERNOON
March 17, 2022

On the 17th day of March, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

1 PROCEEDINGS

2 MR. ROBERTS: Welcome back to everyone. Hope you
3 enjoyed the lunch hour. My name is Brady Roberts. I'll be
4 facilitating this afternoon. We have a lot more discussion to
5 get to, so let's jump right into it. I think the last hand we
6 had up was Jessica and then Debbie on certification. And so, I
7 would welcome, Jessica, if you wouldn't mind, turn on your on
8 camera, take it away. Oh, and Will Durden is in on behalf of
9 two-year public institutions for the remainder of the
10 afternoon, so welcome, Will.

11 MS. RANUCCI: Thanks. I was just hoping the
12 Department could respond to a question I put in the chat,
13 which is just on this licensure issue, are there any other
14 circumstances in which the Department allows Title IV for
15 part, but not all of a program's published length? I can't
16 think of one, and I think that's what's being proposed here.

17 MR. MARTIN: Generally, no. We do have instances
18 where sometimes, for instance, in a clock hour situation where
19 you've got a given number of clock hours and a given number of
20 weeks in a program and the way clock hours works, it is
21 possible for students to accelerate and finish their clock
22 hours in a shorter period of time. And we are aware of that
23 and understand that. We sometimes will look at an institution
24 where if there's a preponderance of students finishing early
25 all of the time that calls into question the number of hours
26 the number of weeks, we will say that the program really isn't
27 that, that it really isn't that length, but that really isn't
28 anything that's regulatory. I don't think we have anything. I

1 will, I'll just, we have some people monitoring this. I'll get
2 in my, I'll ask my colleagues back at the Department to
3 confirm that. But you are correct. We don't have anything
4 currently in regulations that would where we would fund where
5 a student would be partially funded, if that's what you're
6 asking.

7 MS. RANUCCI: Right.

8 MR. MARTIN: Funded for a certain number of hours.

9 MS. RANUCCI: I just want to reiterate; I think
10 that's a real problematic thing. And I'm glad that we don't
11 have any. And I hope that you decide not to add it here.

12 MR. MARTIN: Thank you.

13 MR. ROBERTS: Thank you. Brad, I see your hand, but I
14 want to make sure we give Debbie a chance to get to what she
15 was going to get to before lunch. So, Debbie, go ahead.

16 MS. COCHRANE: Thanks, Brady. I have a question and a
17 comment related to how this intersects with satisfactory
18 academic progress standards. So those standards typically
19 allow for some amount of wiggle room in terms of eligibility
20 for students who don't pass all their programs, usually 150
21 percent. So, if, my question is whether limiting the HEA
22 eligibility for the program to the minimum number of hours
23 required for training, if that still allows for kind of that
24 SAP buffer or whether it would not. And then my comment
25 related to SAP is, you know, kind of related to Jessica's
26 question. Are there places where students do kind of get cut
27 off from Federal Aid currently? I would say that might

1 actually be an interesting place to look for precedent there.
2 There is some research that shows that SAP policies can
3 negatively impact students' ability to complete because
4 precisely they are cut off from aid midstream. So, again,
5 that's a comment for consideration. I would love a response to
6 the question.

7 MR. MARTIN: Oh, sure. So, it was just confirmed by
8 my colleagues that there are no other areas where we limit the
9 amount of a program that can be covered by Title IV Aid. I
10 want to be careful about using the phrase cutting a student
11 off of aid. It wouldn't be that. It would be limiting the
12 portion of the program that can be funded by Title IV Aid.
13 Some people might argue that's semantics, but I think it's an
14 important distinction. Are there any other areas where we cut
15 students off of Title IV Aid? Obviously, students can lose
16 eligibility for a number of reasons, right? That would have
17 the effect of cutting them off. They could go into default,
18 things like that. The other thing would be as far as SAP goes,
19 yes, it's possible for a student to lose eligibility for aid
20 if they've run afoul of the institution's SAP policy. That has
21 to be constructed within our guidelines. That's, and of
22 course, you know, I want to point out that there are appeal
23 procedures there involved. We have, you know, warnings,
24 probation, things like that to mitigate that. But I don't
25 think you could draw a distinction between SAP and this. Now,
26 is it the question of how would SAP work in conjunction with
27 this? That's a very legitimate question. And as you know, SAP
28 is structured on, in your example, the 150 percent completion
29 is 150 percent of program length. And what would that and I
30 guess your question would be, what that program length be? We

1 would be considering it the total length of the program the
2 school has? Or would it be that would it be based on the
3 number of hours for which the student is eligible for Title IV
4 Aid? I hesitate to go too far. It's certainly something the
5 Department would have to look at in terms of its policy. I
6 think right now, the way SAP rules are written, they are
7 written to program length. And we're not, in this rule,
8 proposing to limit the length of a program. So, our program
9 would still be the number of hours that it is. So, I would
10 imagine, I'm just I'm kind of going off on speculation here
11 that it would be based on, it would still be based on program
12 length. But it's something the Department would have to look
13 at. And I don't know if Steve's back with us. Steve, do you
14 have any comments on that? Steve's an old SAP warrior from way
15 back. So, I'll, not too far back, Steve, but I'll ask if he
16 wants to comment.

17 MR. FINLEY: Actually, I think that's Greg's polite
18 way of calling me a sap, but that's okay. And there's some
19 similarity here. But as Greg notes, satisfactory academic
20 progress is based on a student not making an acceptable rate
21 of progress over based on the length of the program. So, if
22 the suggestion is we would have to look at the interplay there
23 to see if that's one way this could be worked out, I think we
24 would just have to look at it. It's not clear how they would
25 overlay one another.

26 MS. COCHRANE: Okay. So just a clarifying question.
27 So, you're not necessarily intending, if we have 1000-hour
28 program, to strictly to basically eliminate that kind of SAP
29 or SAP flexibility for the students in the thousand-hour

1 program? Basically, they have a strict, they must meet a
2 stricter rate of progress.

3 MR. MARTIN: Go ahead, Steve.

4 MR. FINLEY: Yeah, it's interesting because SAP only
5 comes into play if the student is not progressing at the
6 normal rate of the expected rate of completion within the
7 programs. Right? So that's what happens, all of a sudden, you
8 start talking about 150 percent of the program length and
9 whether the student is going to be able to complete it with a
10 satisfactory grade level during that period. So, it's just not
11 clear how the two are going to work out right now. I mean, the
12 proposal here is, is that for students making normal progress
13 in the program, they would be capped before they reach the
14 enlarged program hours that would be established by the
15 measurement under this proposed regulation.

16 MR. MARTIN: Now, I should point out, too, with SAP
17 that we are talking about Gainful Employment programs here and
18 while, certainly this doesn't apply to every Gainful
19 Employment program. But I do want to point out that for
20 Gainful, for programs that are met that are, if they're non-
21 term in nature, and that would be a lot of these programs,
22 that there is no pace requirement anymore related to SAP for
23 those programs. Remember, that a student cannot be paid in a
24 program such as that in a program structured in that way. And
25 until, unless they've completed one-half the weeks and hours
26 in the academic year. So, a pace requirement for SAP is
27 redundant. So, the only, the only thing you would have would
28 be the GPA requirement, which wouldn't be affected by this.
29 And, and there would still be a maximum there'll still be a

1 maximum timeframe as measured in calendar time. So, it
2 probably wouldn't be as have as big an effect on most of these
3 types of programs as you might think. But that is not to say
4 that we don't we wouldn't have some thinking to do about
5 exactly how the interplay would work, as Steve points out.

6 MR. ROBERTS: Thank you. Brad, you're up.

7 MR. ADAMS: In this comment, does it lend- again, I'm
8 still not supporting as written, but I just want to point out
9 if we truly want to get the states involved, you know, most
10 legislative calendars are already finishing, at least in the
11 states where I operate, and some states operate on an every-
12 other-year basis. So, I would think you need at least a two to
13 three year from effective date language in here if you want
14 the states to have any chance at all to try to comply with
15 whatever you're trying to do.

16 MR. ROBERTS: Adam.

17 MR. WELLE: Yeah. I was just going to say, I do agree
18 with Jessica's concerns. I think having the student not be
19 able to finish the program if it reaches the cap would be
20 harsh and kind of place the risk and the harm on the student
21 as opposed to the institution. It might even be better if the
22 program, and I think Jessica maybe suggested this as the
23 alternative, but if the program just wasn't available or
24 eligible for aid altogether, if it didn't meet the requirement
25 or if it was longer than the maximum, and at the very least, I
26 would think there should be some sort of disclosure
27 requirement at the outset so that the student is aware that
28 they don't have Title IV funding to bring them to the end of

1 the program so that they can be fully aware of that and can be
2 packaged in some other way to be able to complete it.

3 MR. ROBERTS: Alright.

4 MR. MARTIN: Thank you.

5 MR. ROBERTS: Thank you. Jessica.

6 MS. RANUCCI: Thanks. And just to piggyback on what
7 Adam said, I believe that the language in the session two
8 issue paper accomplished precisely that. I understand when
9 Greg spoke that the reason that the language was changed was
10 to allow these programs to continue to operate for non-Title
11 IV purposes. I don't have a problem with that. If people want
12 to do the whole program wholly funded not by Title IV, I think
13 that's completely fine. And I think you could write out an
14 exception. I think the problem is that the way that that
15 problem was solved creates this huge new problem.

16 MR. ROBERTS: Alright. Thank you, Jessica. Johnson.

17 MR. TYLER: Sorry. I'm jumping in really at the spur
18 here. But, you know, if you're not going to fully fund the
19 education, you're just perpetuating transcript withholding
20 because it happens all the time. Students are excited about
21 going to school. They have the funding and then there's some
22 bill at the end that they can't afford to pay that they never
23 budgeted for. And it's very confusing and a lot of students
24 are just going to walk away without their completing or
25 stranding all those credits, and they're going to end up with
26 a debt and they're never go back to school until they pay off
27 the debt. So, I think it's, you, know it's really you've got

1 to address this somehow because you're just creating a huge
2 problem here.

3 MR. ROBERTS: Thank you, Johnson. Greg, not seeing
4 any additional comments on this section. Would you like to
5 move us to the next piece of the issue paper?

6 MR. MARTIN: Yes. So, we'll be discussing 32. And one
7 of the reasons which I think are probably fairly obvious, I
8 will look at 32. No. Yeah. So, we'll. Okay, yeah. Let's just
9 let's just start with 32. So, I'll discuss what I wanted to
10 say later. So, here under 32 we have, we've clarified the
11 provision at the suggestion of negotiators that institutions
12 must comply with consumer protection laws. So, let's review
13 that in each state in which the institution is located or in
14 which the student in which students enrolled by the
15 institution are located. The institution must ensure that, if
16 we go down to let's go down to romanette three, ensure that it
17 complies with all state consumer protection laws, including
18 both generally applicable state laws and those specific to
19 educational institutions, except where state requirements for
20 obtaining authorization are or inapplicable pursuant to state
21 authorization or reciprocity agreements. So, because, we get
22 into transcripts in the next one. Why don't I just, I know I
23 don't usually stop, but let's just stop here at 32 before we
24 get into transcripts and then and clear this, any discussion
25 here first, if you don't mind just bearing with me there. So,
26 I'm going to open it up for discussion on 32 by itself.

27 MR. ROBERTS: Comments and questions for the
28 Department on 32 alone. Just want to welcome Laura to the

1 table on behalf of the credit agencies. Welcome, Dr. King.
2 Barmak, I see your hand first.

3 MR. NASSIRIAN: So, I think all of the negotiators
4 and the public are fully aware of how controversial these
5 provisions are. I was going to suggest that we take this
6 section in two distinct components, one of them having to do
7 with current romanette one and two. Let's work that out if we
8 can, because I think we do have a compromise solution for
9 that. And then address three, which I know is the subject of
10 much consternation and email traffic, and apropos romanettes
11 one and two, and I do this with permission from the folks that
12 I'm calling out, but Carolyn Fast and I, because we were
13 originally involved in submitting some language on this, have
14 been working since the end of the last session with colleagues
15 at WCET and WICHE who have taken the lead in attempting to
16 improve this language together with us to address our mutual
17 concerns. And we did a draft language with them that satisfies
18 both our concerns and theirs. So, I have their permission to
19 say this. We have submitted that. And I think Cindy just
20 recirculated the language with a header. We believe that
21 language accomplishes everything the Department wants to do
22 here at the same time as it addresses some of the operational
23 concerns that our colleagues on the institutional side would
24 have with the current draft. So, if you'd like to I don't know
25 whether folks want to look at that language or do, how do we
26 want to proceed? But that's the effort we engaged in to
27 attempt to come back to the committee with something that the
28 various sides might find agreeable.

1 MS. JEFFRIES: Barmak, just to be clear, I didn't
2 recirculate it with the header because the language had stayed
3 the same. I certainly can if the committee would like to have
4 it with the header on it.

5 MR. NASSIRIAN: Well, the header just references the
6 section of the draft it would go in, which is section 32. What
7 it does is it would add a romanette three to the current
8 subsection and I could go through the provisions one at a
9 time, if you like, or however the committee wishes to proceed.

10 MR. MARTIN: Go ahead, Barmak. You can walk us
11 through it. What, you said it adds, I just to be clear it adds
12 so we have romanette one, two and three. Does this does
13 replace one of the, it still retains that that structure?

14 MR. NASSIRIAN: Yes, it would have. Should I share my
15 screen so people can see the language?

16 MR. ROBERTS: If you wouldn't mind, Barmak.

17 MR. MARTIN: I don't have problem with that.

18 MR. NASSIRIAN: Can I do that?

19 MR. MARTIN: Yeah, go ahead, Barmak. Yeah.

20 MR. NASSIRIAN: Okay. So hopefully you're seeing,
21 unfortunately, I couldn't track changes because of the PDF to
22 Word conversion, but the construct here is intended to address
23 multiple concerns that we heard from our colleagues on the
24 institutional side, one of which has to do again with pegging
25 the requirements for licensure to the location of the of the
26 student. And I want to emphasize here and the Department was

1 kind enough to take an edit from me with regard to high school
2 diplomas in the same vein, that any mandates or requirements
3 should be pegged to the location of the student. I want to be
4 very clear and I hope the Department, should it accept this
5 language, clearly states this in the preamble that by location
6 we don't mean the residence of the student, we mean where the
7 student actually encounters the educational experience. So,
8 it's because the goal here is to address both physical as well
9 as distance ed modalities so that a student who crosses
10 jurisdictions and attends a school physically, say, in another
11 jurisdiction in another state would be located in that second
12 state. We want to make sure physical institutions don't have
13 to go through a requirement to satisfy a 50-state licensure
14 mandate. So, one of the changes that we made was to change the
15 location definition, to tie it to where the student begins
16 their participation. And then the language is the programmatic
17 accreditation, if it is required by the state or federal
18 agency. Romanette two addresses a concern they had about the
19 institution being required to assure that the program
20 necessarily meets the criteria for each state, mainly because
21 they explain that in some states that may not be easily
22 available or available at all. So, we want to make sure that
23 to the extent that such prerequisites are knowable, that the
24 institution has to satisfy them. And then the third romanette
25 is intended to address those cases, because we are not tying
26 it to licensure and pre- and other prerequisites associated
27 with location of the student. We wanted to make sure that we
28 accommodate any individuals who, say, plan to go to another
29 state but are preparing to do so through an online program
30 that may not satisfy the prerequisites for where they are, but

1 that would satisfy the prerequisites for another venue as long
2 as that's done on a case-by-case basis with prior with prior
3 consent. So, those are the modifications we made in response
4 to the concerns we heard from our colleagues who are quite
5 expert in these matters and sort of educated us about how the
6 language could be modified. Thank you.

7 MR. MARTIN: And Barmak, just to confirm, I saw
8 something pop up in the chat that said the current romanette
9 three would be romanette four. Is that correct?

10 MR. NASSIRIAN: Yes, we would. Again, the current
11 romanette three is a whole other ball of wax that we're going
12 to have to discuss. But should the committee accept these
13 changes, the conforming change would be to renumber and
14 include current romanette three as now romanette four.

15 MR. MARTIN: Okay. Thank you.

16 MR. NASSIRIAN: I'm going to stop sharing if I know
17 how.

18 MR. MARTIN: Yes.

19 MR. ROBERTS: Thank you, Barmak. I'm going to presume
20 the Department needs some time to think on that. So, if it's
21 okay with you, I'll move back to the queue, and Laura, I have
22 your hand next.

23 DR. KING: Thanks, Barmak. I'd like to offer a
24 friendly amendment based on what we had talked about at the
25 last, at session two. I was surprised to see that pre-
26 accreditation was not added in after our discussion in session

1 two. So, in the spirit of focusing comments on what might
2 affect a consensus vote, I want to talk about that again. So,
3 the suggested language is programmatically accredited or pre-
4 accredited if such accreditation is required. So just adding
5 those two words, and I'm not sure if it was an oversight or a
6 decision, but I did want to talk about what it means. So,
7 602.16 which is the, those are the accreditation regulations.
8 Accreditor is recognized by the Secretary specifically have
9 pre-accreditation in their scope and it has very specific
10 requirements that are that are assessed when accreditors go
11 through their recognition process. It addresses curriculum,
12 faculty, fiscal viability, all of those things that you would
13 expect. And there's a federally regulated limit on how long a
14 program or institution can stay in pre-accreditation. Also,
15 pre-accreditation status is a pretty there's a lot of scrutiny
16 that goes into it. Oftentimes programs in particular, I'll
17 speak for programs, go through multiple site visits, multiple
18 reporting requirements during that period of time. So, it's
19 actually a time of pretty intense working with the accreditor
20 and pretty intense scrutiny. There's also an obligation for
21 institutions in pre-accreditation status now. This was
22 negotiated in 2019 for the 2020 regs to have a teach out plan
23 in place if they're in pre-accreditation. So, this isn't you
24 know something that is just sort of given willy nilly. I mean,
25 it fits here. And finally, licensing agencies and professions
26 that have pre-accreditation as part of their accreditation
27 process accept students from pre-accredited program to sit for
28 the licensing exam. So, it's not putting students at any
29 disadvantage. So, I'm again, I'm curious about why it wasn't
30 added in here in this draft three.

1 MR. NASSIRIAN: Unintended oversight. I agree with
2 you.

3 DR. KING: And my comment was, my question was really
4 to the Department, not to Barmak, because I know that Barmak
5 agrees with me. I just didn't know if there was some reason
6 that that was the case.

7 MR. MARTIN: I'm sorry. Could you restate that, if
8 it's directed to us?

9 DR. KING: Yeah. What, why was after the conversation
10 in session two, why was pre-accreditation not added in here.

11 MR. MARTIN: I'm sorry, could you reference the exact
12 part of the where you're where you are in the in 32, please?

13 DR. KING: Sure. It's 32 romanette one.

14 MR. MARTIN: Okay. So, in each state, the institution
15 is located where in which students enrolled by the institution
16 are located. The institution must ensure that it is
17 programmatically, oh, programmatically accredited. And you
18 wanted to know.

19 DR. KING: Or pre-accredited is what-

20 MR. MARTIN: Or pre-accredited. I'm, we had concerns
21 about pre-accreditation status and making certain that the
22 program is actually is actually accredited. So [interposing]
23 that language.

1 DR. KING: Right. But I just what I just said in my,
2 what I just said in my comments actually explained why it
3 should be there. It doesn't seem like you heard it or-

4 MR. MARTIN: We did-

5 DR. KING: I'm just it is a category of accreditation
6 and without it, it really puts programs, accreditors, students
7 between a rock and a hard place. It's addressed in 602.16.
8 It's specific. I'm at a loss to understand. I just want to
9 hear a cogent argument why.

10 MR. MARTIN: Well, you know, we have with pre-
11 accreditation, we have concerns about the prospect of Title IV
12 Aid floating programs, and you know taxpayer money being used
13 to float programs which have yet to receive accreditation. The
14 potential for them not to be accredited is still there.

15 DR. KING: But that's not how it works. And, if, so,
16 let's say that we just go with accreditation and an agency has
17 to give accreditation and not go through the pre-accreditation
18 process, so they get their accreditation withdrawn. I mean,
19 it's the same, they actually get more scrutiny in the pre-
20 accreditation process. I just think there's a lack of
21 understanding and I strongly recommend that that gets added
22 back in because it makes no sense.

23 MR. MARTIN: I'll take it back.

24 MR. ROBERTS: Thank you. Debbie.

25 MS. COCHRANE: So, I have some questions. I'm kind of
26 I'm looking at the proposed amended language. And I think that

1 there are some really good steps in here that I appreciate
2 particularly saying that's clarifying that the location is
3 where the student begins their participation. I know I've
4 heard that concern of students can move across state lines.
5 And, you know, I don't think that's what the Department's
6 trying to get here. I also appreciate the kind of case-by-case
7 exceptions to enroll students and how institutions could
8 handle that. I, I have spent my question is really around this
9 question is the proposed from Barmak and Carolyn 32 romanette
10 two around if you know making sure that it satisfies the, you
11 know, applicable standards if they are available and can be
12 obtained from the state. And my question, I guess I have I
13 have spent a chunk of time trying to understand the concerns
14 in this issue. I've connected directly with about two dozen
15 state licensing entities in California and in other states. I
16 am not understanding the problem. So, it's not that I'm
17 necessarily averse to a solution to it, but I would like to
18 more clearly hear that problem articulated. What I do see is
19 institutions consistently pointing to large online
20 institutions, consistently pointing students to state
21 licensing entities. So, I'm reading it from one website right
22 now. This institution strongly encourages you, the student, to
23 contact the State Licensing Board where you intend to seek
24 licensure to ensure the program will meet the state's
25 licensing requirements. Another one saying students should be
26 assured by their institution that the program actually does
27 meet the requirements of the state in which [audio] practice.
28 So, I feel like even with the disclosures as they exist right
29 now, where we see large institutions pointing students saying,
30 you better go check yourself. You better make sure that the

1 requirements are met. So, if students are supposed to make
2 sure the requirements are met, it feels like that should be
3 something institutions are doing before they enroll students
4 across state lines. And then finally, I would just say so
5 again, I'm not averse to a solution, but I'm having a hard
6 time understanding what the problem is. And I would just
7 finally say that you know we just heard about in the with
8 regards to the hours, the maximum program hours is clearly an
9 effort on the part of the Department to move states in what
10 seems like a more consumer-friendly direction. And I would say
11 that you know I think that the language where states need, or
12 institutions need to confirm that that programs are meeting
13 the requirements could actually have the same impact. If it is
14 true, and this would be horrifying, if it is true that there
15 are some state licensing entities that will not let a student
16 or an institution know what they need to do in their
17 educational program to ultimately gain licensure [30 seconds]
18 that is a huge problem. Like I don't know how students are
19 supposed to navigate this. So, part of these rules are the
20 Department's approach in this paper in particular, is to move
21 states towards a better, clearer, more consumer friendly
22 direction. This, to me, seems like a good opportunity to do
23 so. So again, all that to say, I would love to hear examples
24 of you know Michigan Accounting Board, whatever doesn't tell
25 people or what like just what specifically is the problem
26 here.

27 MR. ROBERTS: Thank you, Debbie. Not seeing an
28 immediate response. I'm going to go to Brad.

1 MR. ADAMS: I'd like to second Laura's position on 32
2 romanette one. I'm really struggling and I'll give you a
3 perfect example, Greg. Our pharmacy school was accredited. We
4 were seeking accreditation. Students had to sign a
5 certification knowing the program wasn't fully accredited. But
6 the program cannot be fully accredited until you actually
7 graduate students and produce outcomes. Students are aware of
8 that. They sign a disclosure certification, understanding
9 that. How in the world could you ever start a new healthcare
10 program, at least at the graduate level, if you have to be
11 fully accredited when you can't be fully accredited till you
12 graduate somebody. It's the chicken before the egg. I don't
13 get why the Department is so strongly against putting some
14 language in there about pre-accreditation or seeking
15 accreditation, because that's not the way programmatic
16 accreditation works. And I just, I'm not sure, I'm still
17 struggling like Laura. Why is that an issue?

18 MR. MARTIN: Well, as I said before, I mean, I
19 understand the process, but pre-accreditation is not
20 accreditation or else there wouldn't be the delineation so the
21 pre-accreditation to get from pre-accreditation to
22 accreditation as you just pointed out that the program has to
23 meet certain thresholds and standards in order for that to in
24 order for that to occur.

25 MR. ADAMS: Would that mean funding would not be
26 available until you reach that? Is that what that means?

27 MR. MARTIN: That is correct. A student would not be
28 Title- there would not be Title IV eligible until the program
29 is accredited.

1 MR. ADAMS: Then you've essentially shut down all new
2 healthcare programs from this point forward if you do that
3 because this isn't just for-profits, this is for all schools.
4 So, I want to make sure the publics and the non-profits hear
5 this, too. You cannot get accreditation in many healthcare
6 programs until you have outcomes and graduate students. And
7 what he just said means you will never be able to start a new
8 program again because that can't happen in this scenario right
9 here. Thank you.

10 MR. MARTIN: I want to for the record state that,
11 we're not saying that you can't start a new program. That's
12 what we said is that it would not-

13 MR. ADAMS: It would not get funding.

14 MR. MARTIN: It wouldn't be eligible until such time
15 as it was accredited.

16 MR. ADAMS: But you killed all new healthcare
17 programs under that.

18 MR. ROBERTS: Barmak, I see your hand, but I just
19 want to note that Emmanuel is at the table for private
20 nonprofits [inaudible]. Barmak, please.

21 MR. NASSIRIAN: I just I'll do my very best to
22 respond to Debbie's concerns. It is my understanding that in a
23 number of states, the final judgment is rendered only after an
24 individual evaluation of, say, transcripts and so in teaching,
25 for example, and nursing in some states, so that it becomes
26 somewhat of a Catch-22 and a real problem for an institution
27 to make representations on the front end about an assessment

1 that is post facto. And this was what the additional sort of
2 flexibility and the language we drafted was supposed to
3 address. I agree with you that it is a really an abominable
4 practice for a state not to be able to articulate a priori
5 what it takes to qualify for a particular licensure exam or
6 for a particular type of license. But to whatever extent that
7 is true, and that's you know that's to be determined after
8 these regs go into effect. To whatever extent it's true, it
9 would not make sense to hold institutions accountable for that
10 kind of practice. And furthermore, to the extent that the
11 criteria are clear in advance, this does mandate that
12 institutions, unlike what you are, you and I are both
13 concerned about the idea of just simply shrugging your
14 shoulders and telling the student to go figure it out. To the
15 extent that the criteria are knowable, I think that mandate
16 would be on the institution to know them, not on the student.
17 So that's the best I can do in explaining why some variability
18 in state licensure practices may justify a little bit of
19 flexibility here.

20 MR. ROBERTS: Thank you, Barmak. Laura.

21 DR. KING: I wanted to again try to explain and
22 clarify because I feel like we're not having a meeting of the
23 minds here. Programmatic accreditors are not Title IV
24 gatekeepers. We don't have, we are not where the Title IV link
25 happens unless it is an institutional accreditor that
26 accredits single purpose programs. But that's not what we're
27 talking about. So, if you think about all of the healthcare
28 professions, those are all located within larger institutions
29 with institutional accreditation that serves as their Title IV

1 gatekeeper. So, are you saying, Greg, then, that if a program
2 is new that you and in a larger institution that has
3 institutional accreditation, that a program would not, that
4 students in that new program would not be able to receive
5 Title IV funding if they're not accredited by the programmatic
6 accreditor? Is that it? And if that's the case, then are you
7 somehow making programmatic accreditors into Title IV
8 gatekeepers?

9 MR. MARTIN: No, we're not making the programmatic
10 accreditor into a Title IV gatekeeper. And in an instance
11 where an institution is accredited, say, by a regional
12 accreditor, yes, I fully understand that that is the
13 accreditor and for Title IV gatekeeping purposes. Here, we're
14 saying that in each state where the institution must ensure
15 that each program that is programmatically accredited is
16 programmatically accredited, these are programs not
17 institutions as programmatically accredited if such
18 accreditation is required by the state so or a federal agency.
19 So, in this case, we're talking about where that program is
20 required to be accredited at a programmatic level so that it
21 actually so that it actually is accredited.

22 DR. KING: Okay. Right. But how would a new program
23 start then? Because basically what pre-accreditation does is
24 it protects the first class of students going through. How
25 would a new program start?

26 MR. MARTIN: Well, as I said, I don't I can't speak
27 to how it would start. It would not be, as the rule is
28 written, would preclude Title IV funding.

1 DR. KING: In an institutionally accredited in an
2 institution that is accredited?

3 MR. MARTIN: Because the program is required to be
4 accredited in this case, which is not which is not our
5 [interposing]

6 DR. KING: So, the institution-

7 MR. MARTIN: It's not our requirement. It's in most
8 cases, a state requirement that the program be accredited.

9 DR. KING: Okay. But here's what I'm saying, is that
10 pre-accreditation is recognized by licensing agencies and
11 states. So. So, it is accredited. So again, I feel like we're
12 not connecting on the words here. This is an important issue.

13 MR. MARTIN: I entirely get that it's important and I
14 understand your concerns, but I've tried to elucidate our
15 concerns as well about the fact that even though you know,
16 that, when you talk about the pre-accreditation status, it is
17 it is not actual accreditation. Otherwise, it would be
18 accredited at the outset.

19 DR. KING: No, it wouldn't, because it doesn't have,
20 programs have to start. They have to develop. And then they
21 have to recruit students and they have to have students going
22 through the program.

23 MR. MARTIN: I understand that. And we have a concern
24 about the students in that developmental portion before that
25 program is fully accredited. I will take it back for
26 discussion, but I don't think there's anything else I could

1 say about it now. Unless Steve wants to add anything to my
2 comments.

3 MR. FINLEY: Yeah. We'll take this back and come back
4 either with a clarifying response or you know, a restatement
5 of our position on this issue.

6 MR. ROBERTS: Okay. Thank you, Emmanuel.

7 MR. GUILLORY: So, I wanted to share that I support
8 what Laura is saying. I understand what she's saying. And I
9 think it is also an issue that the Department should
10 definitely take a closer look at before, ideally before a
11 consensus vote is taken, because it's something that needs to
12 be addressed. But I wanted to talk about this particular
13 section, because we've heard from a number of our members
14 regarding their concerns around the language that the
15 Department has proposed here. And just with the language as
16 written, trying to follow a student where students are going
17 to go and making sure they're complying with state licensing
18 requirements in all 50 states obviously is nearly impossible
19 to do, especially when states are often changing their state
20 licensing requirements and institutions are having to make
21 sure their programs are still meeting those state licensing
22 requirements. But aside from that, there is an example of the
23 state of Louisiana, to be exact. And in this particular state,
24 as it relates to their nursing licensure program, it's very
25 vague text on what it means to actually meet the state
26 licensing requirements for this particular program. And they
27 use the words nursing, which programs meet or exceeds the
28 educational standards for nursing education programs in
29 Louisiana. And that's me not reading the entire thing, but

1 I've picked out just the sentence that's actually very
2 confusing. And when one particular institution reached out to
3 the state of Louisiana to ask clarification on the educational
4 standards that need to be met, the answer from the board was
5 that they review each application individually. And so it's
6 like, okay, so we will send in our application and you will
7 just review it and get back to us and let us know something at
8 some point in time, instead of you having it spelled out
9 exactly what the state licensing requirements are for this
10 particular program. So it could be that other states have
11 outlined licensing requirements for certain programs. It's
12 very clear to understand. It's like, okay, this makes sense.
13 We either meet that or we don't meet that, but not for every
14 single program as it's actually happened, which sometimes
15 leads institutions to then have to say, well, we can't
16 determine whether or not we meet those state licensing
17 requirements, because it's not clear we've reached out. We
18 haven't gotten a clear answer. We don't know when we will get
19 a clear answer. So, we are kind of left in the dark, which is
20 why currently in regulatory text there is that not to be
21 determined aspect, but I know the Department is proposing to
22 get rid of that. But even aside from that here with the
23 language that Barmak and Carolyn have proposed-

24 MR. WAGNER: Emmanuel, 30 seconds.

25 MR. GUILLORY: -this language is much better than and
26 it addresses a lot of the issues that we have been hearing
27 from a number of our member institutions regarding this. So, I
28 will stop there.

29 MR. ROBERTS: Thank you, Emmanuel. Jessica, please.

1 MS. RANUCCI: Thanks. I just want to speak on the
2 pre-accreditation issue. I'm no expert, but I think the real
3 consumer protection issue that I would be very concerned about
4 is if, in fact, under the circumstance where pre-accreditation
5 is not accepted by the state. Right? And so, I think we're
6 talking about two different universes, right? Where the
7 licensing authority, either state or federal, does accept pre-
8 accreditation for licensure or does not accept pre-
9 accreditation for licensure. And if we're in the camp where it
10 does not accept pre-accreditation for licensure, I think the
11 concerns that the Department has are very real. And I'm not
12 I'm not an expert. I don't know how to deal with it. But as I
13 understand, Laura is not talking about that group. I think
14 Laura is talking about the group where, in fact, pre-
15 accreditation is accepted by the state for licensure. And so,
16 these students will be eligible for licensure in the
17 occupation. And I think that that presents fewer consumer
18 protection concerns. And so, I guess I just thought maybe it
19 would be helpful to clarify those two groups. And maybe,
20 Laura, please correct me if I'm wrong, but I think in that
21 group, I think I would be curious to know, it just sounds like
22 the Department's concerns are not withstanding full
23 institutional accreditation, that somehow programmatic pre-
24 accreditation, even if accepted for state licensure, is
25 somehow insufficient. And I, that's fine, but it doesn't
26 really make sense here because this is attached to the state
27 licensure requirements. So, I don't really understand what the
28 point is.

29 MR. ROBERTS: Okay. Thank you. Barmak.

1 MR. NASSIRIAN: Yeah. I was going to raise the same
2 issue as Jessica just addressed. I certainly think to the
3 extent that pre-accreditation does satisfy the licensure
4 requirement, the Department should be quite comfortable
5 accepting it. Because if you look at romanette two, the
6 rationale for all of this now, it doesn't it's not clearly not
7 applicable to romanette one, but the idea is so that a student
8 who completes the program can actually get a job in the field.
9 And if pre-accreditation satisfies that, I really don't see
10 any reason why the Department would want to exclude it. I also
11 want to address Emmanuel's concerns. Those are very much the
12 same concerns that we had heard. And that was the purpose,
13 again, partially addressing Debbie's concern about why the
14 latitude. That was the motivation to ensure that where you
15 really couldn't get a clear answer from the State as to what
16 the requirements are a priori that you could still offer the
17 program because you had done your best and hopefully the State
18 would get its act together. But until then, the institution
19 would be in a no-win position trying to ascertain things that
20 the State refuses to disclose. By the way, we also lock [ph]
21 Emmanuel mentioned the problem of chasing students across
22 state lines. Our proposal is really pegged to the initiation
23 of the program as long as the student remains continuously
24 enrolled, because that's the bulletin year that should
25 articulate the terms and conditions for grant granting the
26 degree so that just the fact of a student moving from one
27 state to another would not suddenly put the institution in the
28 position of having to secure an additional set of approvals.
29 Thank you.

30 MR. ROBERTS: Thank you. Marvin.

1 MR. SMITH: I just also want to go on record that
2 large four-year publics are expressing the same concerns. And
3 I want to thank Barmak and Carolyn for really negotiating with
4 a lot of different stakeholders and have put together, I
5 think, a proposal that I urge the Department to consider.

6 MR. ROBERTS: Thank you. Greg, do you want to move to
7 the next section? I don't see any new hands.

8 MR. MARTIN: Yeah, what I'd like to do is move on to
9 a discussion of romanette three as well. As it stands now and
10 then, if I may call for a break so I can take some of this
11 back to my colleagues at the Department. But I want to do 32
12 in its entirety. So, if there are any comments about, let's
13 yeah, Vanessa's pulling back that back up again so we're
14 talking about 32 romanette three and that, just to restate,
15 complies with all state consumer protection laws, including
16 both generally applicable state laws and those specific to
17 educational institutions, except where state requirements for
18 obtaining authorization are inapplicable pursuant to a state
19 authorization reciprocity agreement. So why don't we continue
20 the discussion there? Going back to what Barmak had asked that
21 we split those up, so I'll take romanette three now.

22 MR. ROBERTS: Comments for romanette three as the
23 Department's written it. Carolyn.

24 MS. FAST: I wanted to offer my strong support for
25 this addition language here. I think it's really important,
26 and it also addresses some of the concerns about how this
27 could affect states that are part of the reciprocity
28 agreement, which is, you know, obviously right now all states

1 except for California. And you know I think it's meant to
2 address this by saying that that that schools really need to
3 be following consumer protection laws wherever they're
4 operating. And the reciprocity agreement you know can preserve
5 its core function of permitting states to operate in multiple
6 states with only having to fill out one application and pay
7 one fee because of the language that the Department has
8 adopted in this provision. So, I think it's a really good
9 addition that will really help consumers in you know in each
10 state and also be good for states and to make sure that they
11 can protect students the way that they want to do.

12 MR. ROBERTS: Thank you. Barmak.

13 MR. NASSIRIAN: So I also would like to voice my
14 strong support for this language with a proviso, and that
15 proviso is that I am certainly aware of the somewhat alarmist
16 concerns that have really escalated over the course of the
17 past few days about this language and the suggestion that
18 somehow the inclusion of this provision will end distance
19 education or subject institutions to absolutely untenable
20 requirements, none of which sort of pans out when you consider
21 the fact that the state of California has opted out and the
22 sky has not fallen in California. I would say that the
23 disagreement that seems to divide some of the consumer
24 advocates from some of the institutional folks has to do with
25 the fact that the institutions, for completely understandable
26 reasons, I don't ascribe any moral failure here, it's mostly
27 an epistemological one. You see the world from your point of
28 view, and it makes perfect sense to me that institutions got
29 together and attempted to construct an arrangement for their

1 maximum convenience without fully grasping the impact of the
2 arrangement and the potential ways in which it could be abused
3 so that we now have a reciprocity arrangement which was
4 supposed to address authorization. It was never intended to
5 address consumer protection. It did not include consumer
6 protection experts. Most of the participants to this
7 arrangement would not have had authority within their own
8 states to argue for what they managed to do together
9 nationally. And that at this at the moment, the reciprocity
10 that dominates is really kind of a textbook example of
11 regulatory capture by the regulated entities. The entities
12 that are being regulated are telling not only the states, but
13 also the Federal Government whose wallet is on the table, how
14 it's going to be. Now, having said all this, we have made a
15 commitment to work with our colleagues on the other side of
16 this proposition to come to some agreement. But I do I do
17 believe that the Federal Government has a compelling interest
18 in making sure that the local cops are on the beat and that
19 they have jurisdiction to protect their residents. So, I want
20 to support this with the understanding that if by some miracle
21 we don't end up with consensus on this language, that we are
22 committed to working with folks who have legitimate concerns
23 to attempt to come back with a constructive alternative at the
24 comments and at the notice and comment period. Thank you.

25 MR. ROBERTS: Thank you, Barmak. I just want to note
26 Emmanuel's returning to the table on behalf of private
27 nonprofits. And Jamie is back to the table on behalf of the
28 accrediting agencies. So, Jessica, please.

1 MS. RANUCCI: Thanks. I really want to say I agree, I
2 echo what other people have said. I strongly support this
3 language is the kind of language that will go a long way
4 towards putting me out of a job in a good way. It allows other
5 people to do their job so people don't have to come to me
6 later. I think that you know some of us at this table were at
7 a different table back in 2019 when the world looked pretty
8 different. And in similar language, I believe was I don't want
9 to say noncontroversial, but relatively non-controversial. And
10 I believe got through, someone correct me, Greg, you were
11 there. So, correct me if I'm wrong, but the subcommittee and
12 the main committee on consensus, including from all sectors of
13 institutions and I guess I would just say that you know if we
14 look at how the world has changed since we were in person in
15 that room in 2019, I think the need for this is even more
16 critical. There's no question the distance that is here to say
17 that it's going to be a large portion of students, a large
18 portion of institutions. And I think it would be a real shame
19 to not have seat protections. I understand from the
20 institution perspective that there is tremendous value in the
21 Interstate Compact in the initial state authorization piece.
22 You know, that's obviously something I don't see in my
23 practice. It's pretty invisible to the students and legal aid.
24 But I heard from you that it's important and I think that this
25 language does a good job of balancing that concern with the
26 concern on the back end of making sure that people are treated
27 fairly. So, I just I appreciate the Department including it. I
28 want to speak in support.

29 MR. ROBERTS: Thank you, Jessica. Adam.

1 MR. WELLE: Thank you. So, this seems to me like a
2 very obvious quality control measure that simply just requires
3 that institutions aren't violating state laws. From the
4 perspective of AGs, I have to say it is not unusual. It is
5 typical for a business that markets and sells its products
6 online or across state lines to comply with the laws of the
7 state where the consumer lives. That's where the transaction
8 is taking place. That is the state in which that has the
9 highest regulatory interest. So, you know the ability to
10 protect consumers, I would say, is, if anything, at its
11 height, when we're talking about one of the most important
12 decisions, a person, consumer decisions a person makes in
13 their life, and that the decision to make an investment in
14 higher education. So if a state believes that there's a
15 necessary consumer protection, for example, that schools have
16 to make certain disclosures or you know a topic that we've
17 talked about a lot, if the state decides it's an unfair debt
18 collection practices practice to withhold transcripts, you
19 know, it really shouldn't be controversial that the state be
20 able to protect its own consumers and enforce those laws. And
21 those are important policy questions that state legislatures
22 can consider and maybe states can decide to exempt those laws
23 when a school is operating under a reciprocity agreement.
24 That's actually what we have in Minnesota to a large degree.
25 And that states subject to the reciprocity agreements can be
26 exempt from those from those statutes. But that's the
27 prerogative of the state. And if they think that and it's
28 their prerogative if they think the consumers are adequately
29 protected under the reciprocity agreements, and you know there
30 are very significant concerns with a lack of consumer

1 protection for schools operating online. And those are
2 detailed in the letters that I circulated last night that come
3 from a bipartisan group of 25 state AGs, where we lay out the
4 concerns, we've had for several years now with a lack of
5 consumer protection for students who are subject to distance
6 learning. So, I think that without this provision, there's a
7 huge risk of impunity for schools that potentially engage in
8 fraud and abuse. And I think it makes complete sense for the
9 Department to make sure that this provision is in there to
10 ensure that programs are complying with state law. Thank you.

11 MR. ROBERTS: Thank you. Emmanuel.

12 MR. GUILLORY: I wanted to share that I agree and
13 respect the comments of my colleagues regarding strong
14 consumer protections for students. I wanted to share kind of
15 what we've been hearing back from our member institutions in
16 our sector, which are who are all very, very concerned about
17 this language because it would pretty much upend the SARA
18 agreement that they are a part of. Reason being is the states
19 basically, often by legislative initiative, agreed to be a
20 part of NC-SARA and it's a, it's a choice the state makes to
21 be a part of that the institution then because the state' a
22 part of NC-SARA then if they want to offer this education
23 programs in other states, then they're able to do so without
24 having to meet 50 different state authorization requirements
25 in order to participate. Now, there are cases where in the
26 memo that was sent by my colleagues that it does create a two-
27 tiered approach where those states that are not a part of NC-
28 SARA, a state could have stronger consumer protections than
29 what's actually in NC-SARA, but I think what we're also not

1 talking about is that there are other states that have weaker
2 consumer protections that actually have to rise up to the
3 minimum standards of consumer protection standards within NC-
4 SARA too, as well. And from what I'm hearing, that's around 30
5 to 40 states or so that don't have the strongest consumer
6 protection laws that have stronger consumer protection laws
7 because of their participation within NC-SARA. So, I think the
8 conversation more would be about how could increase consumer
9 protections happen within the reciprocity agreement versus
10 upending the reciprocity agreement due to this. We and I am
11 articulating all of the many concerns that I'm hearing from
12 our members about this issue and so that seems to be the
13 biggest one. We definitely don't want to have a situation
14 where institutions that are a part of the that are a part of
15 NC-SARA, all of a sudden, there is no reciprocity if you
16 didn't have to comply with many different other state rules
17 and laws and regulations that why are you a part of the
18 reciprocity agreement? It just doesn't even exist really
19 anymore, so.

20 MR. ROBERTS: Thank you, Emmanuel. Brad.

21 MR. ADAMS: I'm going to second what Emmanuel just
22 said. I mean, there's no requirement for states to participate
23 into this reciprocity arrangement, and California is a perfect
24 example. They didn't think that, I'm assuming it's because
25 they didn't think the consumer protection laws were strong
26 enough so they've dropped out and you have to get separate
27 approval in that state. So, any of the states at this table
28 represented at this table could do the same thing. And so, I
29 really struggle with all the finger pointing about SARA's

1 consumer protection laws. I mean, there's no requirement for a
2 state to participate in SARA. It's a complete choice on their
3 behalf. And so, any state can drop out and do what California
4 did, if that's what they choose to do. I do think if that were
5 to happen, it'd be a problem for students. It would be less
6 opportunity for programs to be offered in their state because
7 of the onerous process to get approved in every single state.
8 But again, the Department of Education and states do not have
9 to join SARA. They can do whatever they choose to do. And SARA
10 is a good thing for students because it provides more
11 opportunities for programs to be offered in their states than
12 they would have if we did not have that arrangement. Thank
13 you.

14 MR. ROBERTS: Carolyn.

15 MS. FAST: I just wanted to respond that I think that
16 it's a little bit overblown to consider the language that's
17 been proposed to cause sort of the collapse of SARA. I mean, I
18 think that's a little bit of I don't know, not accurate
19 characterization of what this is doing, because the language
20 is specifically carving out those state laws that relate to
21 obtaining authorization. So, in other words, the application,
22 the licensing fee, those sort of state laws would be
23 preserved. And I think it's important to keep that in mind
24 when we're assessing whether this, you know what is the impact
25 of this of this provision.

26 MR. ROBERTS: Thank you, Carolyn. Debbie.

27 MS. COCHRANE: So, I also am very strongly supportive
28 of this provision. You know, just a minor, potentially minor,

1 clarifying point. California actually was never part of the
2 agreement. It has declined to join. You know, it's not because
3 there haven't been a lot of conversations about it within the
4 state. There's been very significant conversations. Perhaps
5 most notably, I would say there is a state regulatory agency
6 called the California Law Revision Commission that kind of
7 tried to take up the issue a couple of years ago to really
8 look, it's kind of a neutral entity providing guidance to the
9 legislature on where laws might need to change. They looked at
10 this issue for SARA and said, you know, should we look at
11 changing the laws in California to allow the state to join the
12 reciprocity agreement? They ultimately set it aside. But I
13 want to read just a very short excerpt of their paper on this,
14 which is, SARA sets a regulatory ceiling above which member
15 states cannot go. In other words, member states appear to cede
16 their regulatory control to an external policymaking body. So,
17 I think that that's kind of it just in terms of in a nutshell
18 of why California hasn't joined the agreement, I think that
19 that's a relevant argument to put forth. I also do think that,
20 you know, obviously there's a lot of people with a lot of
21 prerogatives in here. There are states who can join. I
22 appreciated Adam's example of how there are state consumer
23 protection laws and the legislature can leave them for certain
24 for certain institutions within the reciprocity agreement. But
25 similar again to the licensure point, it's also the
26 prerogative of the Federal Government to figure out where
27 federal taxpayer dollars should be spent and what types of
28 consumer protections should be available in there. I don't,
29 you know, I don't think anyone looked at the last language
30 with respect to hours associated with various licensure

1 programs, saying, now we're going to eliminate all licensure
2 programs. Right? We said, we looked at those and we said, I
3 think this would force an evolution in these programs at the
4 state level. And it's an evolution that we all understand why,
5 what the goal is there. And it's an evolution that the
6 Department wanted to use its position to try to try to move
7 forward. And I see this at the same thing. I don't see this as
8 I don't see this as undercutting a reciprocity agreement. I
9 see it as furthering the evolution of it in a more consumer
10 protection direction.

11 MR. ROBERTS: Thank you, Debbie. Adam.

12 MR. WELLE: Yes, just wanted to add to push back on
13 you know the I do think it's hyperbole to say that this would
14 upend NC-SARA. This would allow schools to obtain
15 authorization licensing through their portal entity and have
16 it recognized through a reciprocity arrangement. What we're
17 talking about here are substantive consumer protections in the
18 states, and that is what would apply and that is what
19 institutions would have to do. They would have to make sure
20 that they're complying with those substantive consumer
21 protections in those states. I just want to add, I think at
22 bottom, this is a problem of incentives. If only the
23 institutions, the home states as consumer protection laws
24 apply, which is how NC-SARA currently operates, schools will
25 inevitably flock to the states with the lowest level of
26 regulation and the lowest level of resources to be able to
27 enforce those laws and have the least amount of interest in
28 protecting consumers out of that state. If this provision is
29 in there, it's going to change those incentives. It will

1 incentivize NC-SARA to boost potentially their consumer
2 protections and maybe that will lead states to say, well, the
3 consumer protections in NC-SARA, are adequate and sufficient
4 and are protecting our consumers. So maybe we would exempt our
5 laws, those state specific education laws in our state if we
6 think those consumer protections are sufficient. So, I just
7 think this is very much necessary to preserve to change those
8 incentives and really preserve the integrity of these programs
9 ultimately, which is what this is about. Thanks.

10 MR. ROBERTS: Thanks. Greg. I see your hand up. Did
11 you want to weigh in?

12 MR. MARTIN: Yeah. I appreciate all the conversation
13 on this, certainly. I think we have hit all the relevant
14 points. And I want to say for the record, the Department's
15 position on this, we have considered this. We did have some
16 conversations about it last night and this morning. And what
17 it comes down to is our position here does not in any way
18 prejudice the merits of NC-SARA and what it's attempting to
19 do. And in looking at what is in romanette three, noting that
20 except where the state requirements for obtaining
21 authorization are inapplicable pursuant to state authorization
22 reciprocity. So, we're keeping intact everything dealing with
23 reciprocity with authorization. And we feel that that's a
24 very, very noble, noble pursuit there. What we're talking
25 about here mostly is the protection for students and that
26 these institutions who are involved in SARA as any as are any
27 institutions, any entity that provides basically a service to
28 consumers that needs to comply with the state consumer
29 protection laws, that's a basic protection for students who

1 participate in these programs and who benefit from Title IV
2 and who in many cases are taking out loans, obligating
3 themselves to repayment for these programs, that we do not see
4 that requiring an institution to adhere to applicable state
5 consumer laws in any way prejudices SARA or makes a judgment
6 on that or it's quite the opposite it's simply there to
7 protect students and I just want to reiterate that's where we
8 stand. I think if people still have some relevant comments
9 where we haven't gone yet, I'm fine with that. We do need to
10 move on at a certain point because I'd like to get through the
11 paper. Thank you, all.

12 MR. ROBERTS: Any new discussion on this that Jamie
13 or Kelli you'd like to add?

14 MS. STUDLEY: I would, and I can be very brief. Go
15 ahead?

16 MR. ROBERTS: Go ahead.

17 MS. STUDLEY: Okay. I've spent more time thinking
18 about the ramifications of this particular issue than any
19 other provision and about the theory of change. Greg kind of
20 stole some of my points so I can collapse them. California
21 institutions, including both publics and small nonprofits,
22 eagerly seek the benefits of a strong reciprocity agreement.
23 This provision could help move reciprocity in the direction of
24 achieving its potential. And like Barmak and some others
25 who've mentioned it, I stand ready to participate in
26 discussions about constructive strategies that can get the
27 boat the best of the advantages of reciprocity while

1 satisfying these consumer protection requirements. So, I, I
2 support that position all around.

3 MR. ROBERTS: Thank you, Jamie. Kelli, would you like
4 to add anything?

5 MS. PERRY: Yeah, I'll be very brief because I'm
6 clearly not an expert in this and have learned a lot about it
7 in the last few days and talking with everyone that we've
8 talked to as far as our constituency. But the thing that I've
9 kind of come to after listening to all of this and listening
10 to what we heard was that you know there are a lot of states
11 out there that have consumer protection laws that would
12 benefit students tremendously. But as evidenced and I think
13 Adam's, I think it was Adam who submitted a letter where 25 of
14 the state AGs signed it, but there's 25 states that didn't.
15 And my understanding is that there's, you know, 25 plus states
16 out there whose consumer protection laws either don't exist or
17 are much less than what SARA has in place currently. So it
18 seems to me if we're trying to protect students, which is
19 obviously the ultimate goal here, that, you know, maybe the
20 course of action is to, you know, work with SARA in order to
21 come up with consumer protection that would apply to all
22 states so that students are being protected equally across all
23 states, as opposed to some being protected more because their
24 states have consumer protection laws where there's other
25 states out there that don't have them and those students are
26 not are not benefiting from this language.

27 MR. ROBERTS: Thank you, Kelli and the rest of the
28 committee. Greg, do you want to do want to move to the next
29 section?

1 MR. MARTIN: Yes, I think we need to move on. I thank
2 everybody for the very robust discussion and it was very
3 informative. We are moving on to 33. Just make sure I'm where
4 I want to be. Yes, I am where I want to be. So, let's see.
5 Yes, so we are in 33 and at negotiators' urging, we have added
6 a PPA requirement here that the institutions may not withhold
7 transcripts if those holds were caused by the institution's
8 error in Title IV HEA calculations. Please note we've also
9 expanded the provisional conditions in E related transcript
10 withholding on the next page and I'll read that section. So,
11 the new 33 would read it will not withhold transcripts or take
12 any other negative action against the student related to a
13 balance owed by the student that resulted from an error in the
14 institution's administration of a Title IV HEA programs or any
15 fraud or misconduct by the institution or its personnel,
16 unless the error was a result of fraud on the part of the
17 institution. And I'll also read 34 and then I'll stop there
18 for comment. In 34, we have proposed a PPA condition that
19 addresses the problem in which institutions sometimes act to
20 foreclose the federal funds, aid to which students are
21 entitled to through various inducements, incentives, or
22 coercive tactics. We believe that it's critical that students
23 be able to access all of the aid they need, including to
24 ensure they're able to afford basic necessities like food and
25 housing. This language will allow the Department to ensure it
26 can do so. We have added an exception related to institutional
27 scholarships that at least make up for the difference in
28 student loans, which ensures that the college can be more
29 affordable for those students and leave them less indebted at
30 graduation. So I'll read 34. It will not maintain policies and

1 procedures or condition institutional aid or other student
2 benefits in a manner that induces the student to limit the
3 amount of Federal Student Aid, including Federal Loan funds
4 that the student receives, except that the institution may
5 provide a scholarship on the condition that a student forgo
6 borrowing if the amount of the scholarship provided is equal
7 to or greater than the amount of Federal Loan funds that the
8 student agrees not to borrow. So, with that, I'll open it up
9 the floor up. And what I would like to do is do it
10 sequentially. So, let's start with all comments related to 33
11 first, and then move on to 34.

12 MR. ROBERTS: And Johnson, I just want to note that
13 Johnson's at the table for legal aid and I'm going to ask the
14 committee, try to hold their speaking time to two questions
15 for the Department or concerns that they'd like to surface.
16 So, with that, Amanda.

17 MS. AMANDA MARTINEZ: Sorry. I was misunderstanding.
18 You only want us to ask questions?

19 MR. ROBERTS: Rather than using speaking time to
20 indicate support for the provision. If just in the interest of
21 moving to the document, if you've got questions or concerns
22 for the Department.

23 MS. AMANDA MARTINEZ: Okay. Sorry, I just, I thought
24 you said only questions. Well, for 33, I would like to express
25 my disappointment with the Department's attempt at trying to
26 address the concerns brought by negotiators on this committee.
27 And also, you were lucky to hear from students themselves. You
28 know, a lot of folks on this committee like to say that we're

1 here for students. But I think the best advocates for students
2 are when you actually hear their own words and their own
3 stories. And we were able to hear actually we were privileged
4 to hear students come forward in public comment very quickly
5 to tell their story. For instance, on March 15th of this week,
6 we heard from Kristy and she talked about how transcript
7 withholding ultimately upended her higher education goals.
8 She, I'll quote her and her words are better than mine. She
9 says, "In consequence of this holding, I was unable to finish
10 my educational journey and was set back years of progress.
11 Transcript withholding ultimately delayed in my education, and
12 because of this withholding, I missed out on opportunities
13 that would have presented themselves to me if I had remained
14 on track towards her own personal goals." So, she was
15 derailed. She was unable, she still continues to try to
16 achieve that feat, which is admirable for her. But would've
17 ultimately been able to accomplish it if it wasn't for
18 institutions and the Federal Government not being able to
19 solve this problem for her, which they should have.
20 Institutions should work for students, not against them. And
21 specifically, the Federal Government should also play a part
22 as a separate, larger institution governing other
23 institutions. Also protect students' rights in this in this
24 context. So, we would while this is a great attempt, this is a
25 very specific and limiting scenario, it does not cover what
26 you actually hear from students' stories and personal
27 experiences with this issue. So, we recommend strongly
28 recommend that you take up actually banning withholdings and
29 not slowly attempt and try to make not necessarily a
30 meaningful change here. It's a large problem. So, with large

1 problems, you have to put forward good substantive policy
2 solutions. And this is not that.

3 MR. ROBERTS: Thank you, Amanda. Johnson.

4 MR. TYLER: Yeah. You know, I'm disappointed, but I'm
5 you know I'm not surprised, given the way the conversation is
6 going that we haven't really got anything meaningful here. But
7 I would say I think this is really actually counterproductive.
8 And, you know, I've been litigating with a large institution,
9 a public institution, over their failure to help my client get
10 aid and now they're suing him and administrations are not
11 likely to admit they made a mistake and then give you your
12 transcript. I think that's a useless and, you know,
13 farfetched, especially if, you know, you have to really know
14 your stuff to show where someone made a mistake. And I just
15 don't think that's going to happen. It's not realistic. I'm
16 very concerned that this is the first regulation that would be
17 out there where the Secretary's actually discussing about
18 transcript withholding. And it's essentially saying that the
19 practice you know is acceptable if it wasn't at the fault of
20 the school or the school has that that ability to do this. I'm
21 worried that that's going to discourage the efforts that are
22 going on in my state and in other states to ban transcript
23 withholding that they will somehow be perceived as preempting
24 this field. And you know, if we can't be heard on this I
25 would, I mean I would ask you know that there be some
26 rulemaking on this issue and that it not be addressed in 33,
27 that the language be scrapped. But if the Secretary is going
28 to go forward with it, that they have to say something about

1 this not preempting a state's right to ban the practice. Thank
2 you.

3 MR. ROBERTS: Thank you, Johnson. Ernest, you are
4 next.

5 MR. EZEUGO: Thank you. Yeah, I [inaudible] myself
6 with Amanda's and Johnson's comments here, you know I can
7 acknowledge that in many ways, 33 is, if anything, kind of a
8 tacit acknowledgment that the Department realizes that this is
9 a problem and can act on it. I have to say that the scope of
10 issues related to transcript withholdings covered by the
11 current language is itself de minimis. I just don't think and
12 I would echo again Johnson's concerns about the likelihood
13 that you know institutions kind of stumble over themselves to
14 report their own errors in this in this extent. But also, I
15 think it is clear both from the comments, the public comments
16 we received on this, I even have one to share from a student
17 who reached out to me directly that was waitlisted, that this
18 is just not, the text, what the text I think tries to address
19 in 33 is just not where the concern of the issue is,
20 especially related to students from low income backgrounds.
21 You know, Amanda is right that this is this is a policy
22 practice that has had disparate impact on [inaudible] low-
23 income backgrounds, on black and Latino students. And it
24 requires fixes that go far beyond the scope of what we're
25 seeing here. I don't even think if in just in full disclosure
26 and respect that what we see in 33 here necessarily even
27 covers comments that the Secretary and the CFPB have made on
28 their concern about this issue. I would really, really, really
29 like to see the Department go a little bit harder, to be

1 honest on this and the [inaudible] and I will I'll get back in
2 line. And I'm sure other folks have things to say about this,
3 but I just wanted to add to the course there as a student.

4 MR. ROBERTS: Thank you, Ernest. Adam.

5 MR. WELLE: Thanks. I won't repeat our position on
6 the transcript withholding issue that's been discussed in
7 previous sessions. I think, you know we think it's an
8 important consumer protection that should be in place. Just to
9 add to Johnson's comment, you know, as state AGs, we often
10 face arguments, you know often frivolous and incorrect
11 arguments that state laws are preempted. You know, I've faced
12 arguments that the Higher Education Act preempts certain state
13 consumer protections. I wouldn't want any institution to try
14 to claim that here as a way to you know avoid compliance with
15 a state requirement on a transcript withholding. So, you know
16 it might be helpful, just perhaps some sort of clarifying
17 language in the regulation and the preamble wherever, just
18 making it abundantly clear if it wasn't already that the
19 provision doesn't do anything to disrupt a state's efforts to
20 protect consumers and debt collection around transcript
21 withholding.

22 MR. ROBERTS: Thank you, Adam. Greg, would the
23 Department care to move to the next section?

24 MR. MARTIN: Yes, remember I did ask for a discussion
25 on 34 if there is one. If not, we'll move on, but I want to-

26 MR. FINLEY: Yeah, I would like to address something
27 on 33, Greg, before we move on, if there are no other comments
28 on it.

1 MR. MARTIN: Go ahead, Steve.

2 MR. FINLEY: So, there's a couple of issues here. I
3 mean, basically, the Department oversees the administration of
4 the Federal Student Aid programs, making sure that the
5 institution is meeting its obligations to determine,
6 administer, and properly return unearned Title IV funds on
7 behalf of the student. Separate from that is the student's
8 agreement with the institutions. And that agreement in many in
9 most cases determines the amount of funds the institution is
10 able to charge the students. And that's separate from the
11 Title IV requirements. What we're proposing here are actually
12 touching the areas where we think there is some connection
13 enough connection with the Title IV programs to change that
14 relationship in the contract with between the student and the
15 institutions. Specifically, you might not realize it, but in
16 33, the Department has seen a number of instances where
17 schools awarded too much aid to students through their own
18 improper calculations and determinations of aid and then when
19 they corrected that procedure later in return, the Federal
20 Student Aid funds back to the Department, they billed the
21 student for those amounts. And what we're doing here is to say
22 they can't at least take other actions against the student to
23 withhold a transcript or other negative actions when it's the
24 institution that's made those errors. And those are the cases
25 where the Department hears about this, right? This is brought
26 to Department staff attention sometimes by the students. And
27 in the past, we've had to say you know we don't regulate the
28 charges the institution is able to assess you when they've had
29 to return Federal Student Aid funds, even if they were the
30 ones that improperly overestimated the amount you were

1 entitled to receive. So, this is an area where we're trying to
2 put a little more balance back in favor of the students
3 because there is a Title IV connection. And I would say the
4 same goes for where the Department is determining there's some
5 risk of closure by the institution. Right? There's and so
6 that's why you see what you see here. And I understand and we
7 understand it doesn't go as far as you want it to, but we are
8 concerned that we need a Title IV connection to try to
9 regulate in this area and the proposals in front of you try to
10 strike that balance.

11 MR. ROBERTS: Thank you, Steve. Johnson.

12 MR. TYLER: No, I appreciate that. I see there's a
13 disconnect between the reality of the students and the
14 obligation of the Department of Education to protect
15 taxpayers. I completely get that. But I think it's all the
16 more reason we actually need a meaningful negotiated
17 rulemaking on this issue. Six million people, some studies
18 say, are affected by this. And, you know, my experience in the
19 statistics are that there are low income people, and many of
20 them involve Pell recipients who no fault of their own, they
21 cannot continue, they drop out at the wrong time. If they
22 dropped out 60 days into the semester, they wouldn't have this
23 problem. I think that's the number. But they drop out three
24 weeks in and then they're on the hook for lots of money. I
25 just think this is not what this is not what the Pell Grant
26 was designed to do. It was supposed to open doors, not close
27 doors, and it's having that effect. So, I really, you know I
28 hear what you're saying, Steve, but I think it's all the more
29 reason we have to have some discussion to figure this out. And

1 you know I understand that it wasn't on the agenda and you're
2 only hearing the harm it's causing and the racial impact that
3 it's having. But I think you know there's some way we've got
4 to get together on this. So, thank you.

5 MR. ROBERTS: Okay, Adam.

6 MR. WELLE: Thanks. Just quickly to, just to respond
7 to Steve. I guess, you know, Counsel, I think I just disagree
8 on the on the basis for saying that there's no authority to
9 make this kind of regulation. It seems that the Department has
10 a direct interest in making sure that when it is distributing
11 financial aid and it invests in a student, it should be able
12 to tell the institution that receives that aid that it has to
13 provide proof of that you know that education that was
14 invested in to employers, other schools, etc. If the student
15 can't obtain the transcript, the investment that the
16 Department has made in the student for that past financial aid
17 is lost. It's meaningless. So, I feel there is a direct
18 connection and I think there's, so I think there's plenty of
19 basis for the Department to act here. But I respect that
20 that's the Department's position right now.

21 MR. ROBERTS: Barmak.

22 MR. NASSIRIAN: I want to emphasize that I appreciate
23 the technical nexus that the Department is seeking to apply
24 whatever protections it offers. But I have to tell you, to the
25 extent that the vast majority of unpaid receivables are from
26 low-income people who, as Johnson pointed out, could never
27 have afforded to pay a dime on the front end, were fully
28 packaged because they're so poor that they would not have an

1 expected family contribution. We expose those people to the
2 risk to risks, which, by the way, they're much, much at much
3 greater exposure to. Because when you're poor, there are many
4 different ways in which your education could get disrupted.
5 Right? You could get sick, your mom could get sick, your car
6 breaks down, etc., etc. So, so we're exposing those, we're
7 essentially checkmating those aid recipients who because they
8 were so poor that there were zero [inaudible] fully packaged,
9 who then drop out for various reasons to essentially a
10 complete cessation of any opportunity until they can offer
11 blood from a turnip. I think there is a Federal interest here
12 to the extent that the purpose of these programs is to elevate
13 folks to enable economic mobility. At the very least, even if
14 you don't want to ban transcript withholding across the board
15 it ought to be prohibited for Pell recipients who for whom the
16 balance is a function of having dropped out. Because,
17 remember, some of us are old enough to remember the refund
18 rule in HEA, which was then replaced with Return of Title IV
19 Fund. That bifurcation, when the Federal Government decided it
20 was only going to manage its own refunds and not worry about
21 students, that's at the root of this problem. And I think that
22 the Department of Education has every legal right to assert
23 some jurisdiction with regard to at least that population.
24 Because talk about disparate impact, talk about racial justice
25 and really unequal application of risk. That is the population
26 these programs were designed to help and that is the
27 population that is getting very disproportionately hurt by
28 transcript withholding. We do not want to mitigate the right
29 of institutions to collect. The Department is saying don't
30 collect any debt, don't use the easy way out and hold

1 somebody's education hostage in perpetuity until they can
2 cough up money they simply don't have. If their aid
3 recipients, the Department has jurisdiction.

4 MR. ROBERTS: Thank you, Barmak. I see Ernest and
5 Debbie's hand, hands. And I think we'll take those two
6 comments and then Greg, does Department need a short break?

7 MR. MARTIN: Yes, after that I would, I do want to,
8 but let's take the two comments we have in the in the queue
9 and then I want to, and any that pertain to 34.

10 MR. ROBERTS: Okay. Okay. So, Ernest and Debbie,
11 please.

12 MR. EZEUGO: I can't emphasize or appreciate Adam's
13 or Barmak's comments enough here on this [inaudible] and I
14 want to touch in particular about something that Adam was
15 alluding to here about kind of the Department's consideration
16 of past investments nullified and these agreements, right? And
17 I want to preface by saying, you know, maybe I shouldn't have
18 used de minimis. I can own that. I appreciate and respect, and
19 Steve, I appreciate your kind of clarification on where the
20 Department's thoughts on this are. I appreciate that there's
21 thought in this and again, that kind of tacit acknowledgment.
22 But I do wonder if the Department doesn't have the authority
23 to think about, consider in this process and in this paper in
24 particular, what happens to their investment in students
25 because, I mean, you know, say what facts are about
26 transcripts. Most students who have issues with transcripts
27 withholding, their balances are held usually on account of a
28 semester's work [ph], occurrence or class [ph] who knows what

1 kind of recent charges and their entire transcripts are 100
2 percent of their transcripts are held as a result of that. So
3 I would then wonder, you know, in combination with the
4 comments that Barmak made just about the Department's broad
5 authority and quite frankly, historical you know perspective
6 on standing up for students, particularly from for these
7 subgroups, I would wonder then if that doesn't also come into
8 play, this idea that, you know, it would be one thing entirely
9 if we were talking about partial you know locking, you know
10 locking behind transcripts or partial you know parts of the
11 transcripts under debts owed. But it's I don't know; I'm
12 struck by that. And I really I have a hard time accepting that
13 you know under these circumstances you know where students you
14 know can't get these transcripts or, in the worst case, the
15 worst instances, you know their entire degrees and proof that
16 they completed college because of balances held and can't use
17 those transcripts to go and transfer out to other institutions
18 to continue their education or apply for jobs in many cases. I
19 just kind of wondered then if there's not additional steps the
20 Department can take on this. And in this part, in this section
21 subsection, I'm sorry, in particular.

22 MR. ROBERTS: Debbie, and then we'll move on to
23 section 34.

24 MS. COCHRANE: Thank you. I will be very brief. I
25 think if I am understanding the Department's comments related
26 to authority, it would seem to me like another way of
27 approaching the issue would be to prohibit the withholding of
28 transcripts for any student who had previously received Title
29 IV regardless of what the debt was attributable to. Those seem

1 like those are the students that the Department has invested
2 in and where the Department should be most concerned about
3 that investment paying off.

4 MR. MARTIN: Thank you.

5 MR. ROBERTS: Anything new for the Department's
6 consideration on section 34? I know we had, yeah, Will,
7 please.

8 MR. DURDEN: I want to just clarify in reading in
9 this section that it's not the Department's intent to suggest
10 that if an institution isn't participating in the loan
11 program, that that itself constitutes a policy that induces
12 the student to limit the amount of student aid that they
13 receive. It doesn't seem like that would be the intent, but
14 you could read that in that language.

15 MR. MARTIN: No, that's not the intent. As I say, we
16 just want to be certain that there is the student that the
17 institution not doing anything that will has any policies to
18 limit the amount of Federal Student Aid, including Federal
19 Loan Funds the student receives. And that includes practices
20 such as limiting the amount of student can borrow, even if the
21 reasons for that are in the view of the institution
22 altruistic, such as controlling the amount of debt students
23 receive, trying to have some type of a default management
24 plan. Loan amounts under a Direct Loan program or statutory
25 entitlement. So, any of those things where we've seen
26 instances where institutions will make students fill out forms
27 as to why they need that money, the only reason why they need
28 it is cost of attendance, minus EFC, minus EFA provides a

1 number, and that is where you figure out where students are
2 eligible for. So, we are just want to preclude all those all
3 those types of all those types of practice and any anything
4 else that would any other way a school might be inducing a
5 student or coercing or any way not to take aid. Now, there's
6 nothing wrong with an institution counseling a student saying,
7 you know, you don't you don't have to borrow the full amount
8 that you're eligible for. It may be wise or judicious to
9 borrow less if you don't need to borrow more. We have no
10 problem with that. But these are policies or other types of
11 conditions on a student receiving aid that he or she is
12 eligible for.

13 MR. DURDEN: Great. And that makes sense. And we
14 assume that that's the intent. But just wouldn't want any
15 suggestion that an institution somehow must participate in the
16 Federal Student Loan Program.

17 MR. MARTIN: No. No, we don't require participation
18 in the student loan program, no.

19 MR. ROBERTS: Thank you. Brad.

20 MR. ADAMS: Yeah, Greg, I think that mostly answered
21 my question. I was more confused. I thought this was already a
22 rule. So help me, is this just codifying something that
23 already exists? I've always known that you can't limit a
24 student's ability to take the Federal Aid that they're
25 eligible for. And if you have your own loan program that may
26 have a lower interest rate than the Feds, that's okay to
27 present to the student as well. Like get a 0 percent loan,

1 maybe help me understand why we need 34 as a rule is if that's
2 already in place somewhere else.

3 MR. MARTIN: Well, it's I you're absolutely right,
4 Brad. It is in place in various other measures. And certainly
5 it's implicit in the law itself. We just felt the need to make
6 it clear here that, you know actually put it in a regulation
7 so that we can cite to it. In my mind it's always gone without
8 saying that you cannot limit the amount of loans a student
9 might receive in an arbitrary way. But there are schools that
10 do it, and I think a lot of them do it for purposes which they
11 believe to be quite noble. I don't in a lot of cases it isn't
12 done with any type of malice or anything like that. But it's
13 not an acceptable practice. I'm not aware, it's pretty, as far
14 as grants go, it's awfully hard to limit. I mean, the Pell
15 Grant is what the Pell Grant is. We do allow students to turn
16 down his or her Pell Grant due to lifetime eligibility limits
17 if they want to. But I don't think that's so much of an issue.
18 It mostly comes into play, I think with loans. But I don't
19 disagree with you, Brad. I just think that it was necessary
20 here to state this in an actual in an actual regulation.

21 MR. ROBERTS: Okay, thank you. I was unaware that
22 that was even an issue. So, I guess if you need to state it,
23 you can. I was just making sure there wasn't anything else I'm
24 missing around- [interposing]

25 MR. MARTIN: No, I don't think it's-

26 MR. ADAMS: -anything like that.

27 MR. MARTIN: I would say this if institutions are
28 packaging, if institutions are awarding aid in accordance with

1 existing rules and this shouldn't cause any change in what
2 institutions are doing currently.

3 MR. ROBERTS: Okay, Marvin. I just want to note that
4 Jessica is back in for legal aid. But Marvin, take it away.

5 MR. SMITH: Greg, just an observation that, you know,
6 in the GE session we were talking about Parent Loan debt and
7 maybe some bad actors encouraging Parent Loans. And I just
8 didn't know if you wanted to be even more specific on this
9 with parent borrowing. I actually, yeah, so just a question or
10 suggestion.

11 MR. MARTIN: Yeah. You know, that's a good question.
12 And I think when it comes to Parent Loans, it's kind of a
13 great thing because everybody knows that there are plenty of
14 situations where a student would be eligible for, loans, but
15 the parent steps in and says, you know, I want to I want to
16 borrow I'll borrow that amount of money. That's perfectly
17 acceptable. Where the boundary is between that and a school, I
18 think coercion is the strong word. But inducing in some way or
19 heavily suggesting that the burden be leveled on the parents
20 as opposed to the student loan. That is potentially a problem.
21 But I think it's difficult to determine where that occurs. I
22 know that you know in my own situation, you know my own
23 daughter was packaged for unsubsidized loans, which we chose
24 not to borrow because I rightly or wrongly am paying for it.
25 But I think a lot of us are probably in that situation. But
26 I've just decided that I didn't want her to have any debt for
27 undergraduate loans, but undergraduate education. But yeah, I
28 take your point, Marvin. I think it's an interesting one, but
29 I don't I'm not sure it can be addressed in the context of

1 this. This is more like there is that issue of shifting
2 responsibility. But here I think we're dealing with cutting
3 off or in a way precluding a student from borrowing. And that
4 would be, if a school said the student shouldn't borrow this,
5 a parent must borrow it because, you know, we're worried about
6 our default rates that would be covered by this because the
7 student the school would be in some way coercing or inducing a
8 student not to borrow his or her full eligibility.

9 MR. ROBERTS: Greg, would you like to take us to the
10 next section?

11 MR. MARTIN: Can I request a break, please?

12 MR. ROBERTS: Sure. What are you thinking?

13 MR. MARTIN: 15 minutes.

14 MR. ROBERTS: 15?

15 MR. MARTIN: Yes, 15 minutes.

16 MR. ROBERTS: It is 2:40. I'll ask folks to be back
17 on at 2:55.

18 MR. MARTIN: Thank you, everyone.

19 MR. ROBERTS: Welcome back, everyone. We are about 35
20 minutes away from public comments day and indeed our last
21 public comment of this negotiated rulemaking as we will not be
22 having it tomorrow. So, we do urge folks who do have an
23 assigned speaking time to please log on a little bit early
24 just so we can get you all set up and make sure we can
25 transition to that period smoothly. But with that, Greg, I'll

1 turn it back over to you. Do you want to walk us through the
2 next section?

3 MR. MARTIN: I'm going to do that. Before we start
4 with that, though, I'm going to have Vanessa bring up 32 back
5 onto the screen for a brief moment here. And here we have some
6 changes we made. We did, I did take back all of the suggested
7 changes for 32. What you see in front of you here is the only
8 change that is the change that we were able to get approval to
9 put in. We, regarding the suggested changes to romanettes one,
10 two and three that were not associated with programmatic
11 accreditation, the Department has some concerns about the
12 potential for abuse given the case-by-case exception, so we
13 were unable to move there. I will discuss what we did here in
14 32, and you can see that we have made some change to the text
15 in consideration of the discussion we had about programmatic
16 accreditation. So just going back and reviewing each state
17 where the institution is located in which students enrolled by
18 the institution are located, the institution must ensure each
19 program is eligible for Title IV HEA program funds, is
20 programmatically accredited if such accreditation is required
21 by the state or a federal agency, except that programmatic
22 pre-accreditation is sufficient if acceptable according to the
23 state or federal agency. So that was the change that we were
24 able to make in in 32. Vanessa, would you bring up E, please?
25 So, we're going back to 14E. We are on page eight at the very
26 top. The original document. Here we go. Thank you very much.
27 So, in E we're just starting from the stem [ph] there. If an
28 institution is provisionally certified and if an institution
29 is provisionally certified, the Secretary may apply such
30 conditions as are determined to be appropriate to the

1 institution including. And if we move down to two, at the
2 negotiators' urging we have added an additional cases in which
3 transcript withholding may be prohibited. So, we are just
4 incorporating that language and that's if the institution is
5 at risk of closure, if the institution is teaching out its
6 students, whether itself or through a teach out or transfer
7 agreement with another institution, if the institution is not
8 financially responsible or if the institution is not
9 administratively capable. We believe that this will have a
10 real, meaningful impact on students' access to their
11 educational records and cover a wider swath. Again, I don't
12 want to reopen debate. I think we've already explored all of
13 the of the relevant opinion on that topic of transcripts. So,
14 I don't want to open that up. And then I'll move on to, I want
15 to make sure I get this right here. So, we are in E. I'm
16 sorry, we're moving to F. And just to read the stem there for
17 proprietary institution. If a proprietary institution seeks to
18 convert to nonprofit status following a change in ownership,
19 the following conditions will apply to the institution
20 following the change in ownership in addition to any other
21 conditions that the Secretary may deem appropriate. And we
22 have, no, I thought there was a change there, but there is
23 not. I'm sorry. I was wrong. We have there's no change there.
24 The next change I see is to G. So, let's roll down to G,
25 Vanessa. My apologies for squandering your time there. There
26 were no changes. I thought there were, but there are none. So,
27 G, we do have a change. This is if an institution that's
28 initially certified as a nonprofit institution or has
29 undergone a change of ownership and seeks to convert to
30 nonprofit status, the following conditions will apply to the

1 institution upon certification or following the change of
2 ownership in addition to any other conditions that the
3 Secretary may deem appropriate. And we've added some
4 clarifying edits here to this language, including that
5 institutions must submit reports on state accreditor actions
6 and new servicing agreements, both within ten days of
7 receiving the notice of an action or of entering into entering
8 into an agreement. And that is reflected there in G1. The
9 institution that the institution must submit reports to an
10 accreditor and state authorization agency, must submit
11 reports, rather, on accreditor and state authorization agency
12 actions and any new servicing agreements within ten business
13 days of receipt of the notice of an action or of entering into
14 the agreement as applicable until the Department has accepted,
15 reviewed, and approved the institution's financial statements
16 and compliance audits that cover two consecutive fiscal years
17 following the initial certification, or two complete fiscal
18 years after a change of ownership, or until the Department
19 approves the institution's request to convert to nonprofit
20 status, whichever is later. And let's makes certain that, and
21 then we have a change in, nope that is everything that we have
22 for E. So, sorry, everything we have for F. So, I'll open the
23 floor to any comments on what is in what is in F.

24 MR. ROBERTS: New comments and suggestions for the
25 Department on what was just outlined. Yael, who I will note
26 who is sitting in on behalf of state attorneys general,
27 please.

28 MR. MARTIN: I'm sorry. I meant E and F, I'm going to
29 correct myself.

1 MR. ROBERTS: Right, right. E, section E beginning
2 subsection two and below, inclusive of that.

3 MS. SHAVIT: Thanks. And Greg, I took your comment
4 about wanting to move on from transcripts. I do have one
5 comment that I think isn't wasn't covered before and I don't
6 think will invite responses but I wanted to just put it on the
7 record, if that's okay with you, and that I hope would be
8 helpful.

9 MR. MARTIN: Go ahead.

10 MS. SHAVIT: You noted, or Steve noted, the view that
11 the Department may lack the authority to place conditions on
12 the debt collection methods of institutions. And I want to
13 note, you know I think this may be inconsistent with positions
14 the Department has taken in the past. And just as support for
15 the notion that the Department does have this type of
16 authority, I wanted to you know point in the direction of the
17 Department's arguments in its summary judgment briefing and
18 the CAPS [ph] litigation that were that prevailed, but I think
19 are relevant. There, the Department argued, you know, and I'm
20 quoting here, but I'll do this very briefly, you know, the
21 Department stated, "Congress has granted the Department
22 authority to include in its PPAs with institutions such
23 provisions as the Secretary determines are necessary to
24 protect the interest of the United States and to promote the
25 purposes of the Direct Loan program." And in that context,
26 I've made a point of noting that you know Congress can
27 delegate to the executive branch agencies the authority to
28 attach conditions on funding. And while there's a nexus that
29 needs to be met with respect to those conditions in the Title

1 IV program, the relatedness showing that's relevant there is
2 not only this is the Department's language, it's not a
3 difficult hurdle. And in fact, it requires only some
4 relationship between spending conditions and the purpose of
5 the Federal spending. You know, Debbie made the comment here
6 that the Department could put conditions on transcript
7 withholding specifically as to those students who did take out
8 any Federal funds. I think that would more than satisfy the
9 nexus requirement, as the Department has itself previously
10 stated it, and I think you know would certainly go a long way
11 and as the Department noted, protecting the interests of the
12 United States and promoting the purposes of the Direct Loan
13 program. I think in fact it would promote the interest of
14 taxpayers and students. So, I appreciate that you're being
15 thoughtful about this. And I just want to point you in the
16 direction of those previous comments.

17 MR. MARTIN: Thank you.

18 MR. ROBERTS: Kelli.

19 MS. PERRY: I just have a clarifying question about
20 the, and I apologize, it's the one with the transcript
21 question, but it says that an institution not financially
22 responsible. I just want to make sure that, so if an
23 institution falls into a situation where they fail a composite
24 score, but they do post the 50 percent letter of credit which
25 deems them financially responsible, that they wouldn't be
26 subject to this. I think that's the case. But I just wanted to
27 confirm.

28 MR. MARTIN: Steve, do you want to address that?

1 MR. FINLEY: I would agree with that, Kelli.

2 MR. MARTIN: I would as well.

3 MS. PERRY: Thanks.

4 MR. ROBERTS: Thank you. Brad, I see your hand.

5 MR. ADAMS: Thank you. I also had a question on E2 on
6 the risk of closure. And I wanted to find out if this is
7 referencing the six-digit CIP or would this also include any
8 branch campus that was being taught out at the eight-digit
9 OPEID? I think I said CIP, but I meant OPEID if I did. I just,
10 curious, is this at an institutional level, is this also
11 include any teaching out at a branch location, Greg?

12 MR. MARTIN: We've not, I would interpret, I'll ask
13 Steve to step in here if, I would look at this as being any
14 entity that would be subject that would be at risk of closure,
15 whether it's the main institution itself or any additional
16 location. Because the key the key here would be if the student
17 is attending an additional location of an institution that's
18 at risk of closure for any reason that that it that it gives
19 those transcripts to the students there.

20 MR. ADAMS: I'm more referencing- [interposing]

21 MR. MARTIN: Irrespective if the main is, I'm saying
22 if the main would remain open but that additional location
23 would be closing that it would be applicable to that location.

24 MR. ADAMS: So, you believe if you're teaching out at
25 a branch location that you would do you would release all
26 student holds. And this is clarifying for me, I'm, you know,

1 not that I'm saying I agree or disagree on the approach. I
2 read it at the institutional level, is why I'm asking.

3 MR. MARTIN: Go ahead, Steve.

4 MR. FINLEY: Yeah, Brad. Now, I think we would look
5 at that on a location-by-location basis. Would that be your
6 suggestion?

7 MR. ADAMS: Yeah. Well, my question is, is truly
8 like, I read this, this is an institutional rule. But if
9 you're teaching out a location for good reason, do you have to
10 then release all transcript holds from that teach out even if
11 the school itself is financially capable and administratively
12 capable and all the other things associated with what we've
13 been discussing over the past week?

14 MR. MARTIN: If that location is at risk of closing,
15 I think what this is about getting the transcripts to students
16 wherever they are. So, if the question is being phrased, I
17 hope I get it right. We've determined the additional locations
18 at risk of closure for any reason then we would expect the
19 transcripts to be released at that level, even if the main
20 institution was not in danger of closing.

21 MR. FINLEY: Yeah, let me just ask another question.
22 I certainly think it would facially apply if there's a
23 precipitous closure. Right? Even with a teach out, because
24 there's certainly an opportunity for students to apply for
25 closed school loan discharges. Are you trying to describe
26 situations where there's just a planned closure that's
27 provided for you know well in advance and it's an orderly
28 closure? We'd have to look at that. But-

1 MR. ADAMS: That's my question.

2 MR. FINLEY: -that seems different from what we're
3 trying to reach here.

4 MR. ADAMS: Right, and that's my question. And it's
5 not, I mean, the transcripts would be available to those
6 students if needed, you know, so, at the main campus. So yeah,
7 that was my question, Steve. Good orderly closure, is that
8 implicated here on the release of student transcripts?

9 MR. FINLEY: And if you've got students doing a teach
10 out and transferring, it seems like you would, there would
11 have, you would have to be providing the transcripts for those
12 students, right, without limitation?

13 MR. ADAMS: Yeah. So, I'm just really asking is do
14 you have to release the holds on the student transcripts if
15 you go through an orderly teach out and the main is still in
16 operation and good financial condition and everything else.

17 MR. FINLEY: Well, we'll take that back and clarify
18 it for you.

19 MR. ADAMS: Thank you.

20 MR. FINLEY: And for ourselves.

21 MR. ADAMS: Thank you.

22 MR. ROBERTS: Thank you. Jessica, I see your hand.

23 MS. RANUCCI: Brad, my read on this is that it's just
24 preserved as discretion for provisionally certified
25 institutions to imply that condition, which I think is

1 appropriate, because I think it really would depend on the
2 circumstances of the programmatic teach out. And so, to me
3 that makes sense. Maybe I'm misreading it.

4 MR. ADAMS: That's helpful. I actually missed that
5 this is only for provisionally certified institutions. I did
6 miss that. Thank you, Jessica.

7 MR. ROBERTS: Okay. Thank you. Greg, I think I'm not
8 seeing any other hands. Do you want to walk us through the
9 last section, which I believe is 668.43?

10 MR. MARTIN: Yes. We're going to move on to 43. And
11 this is institutional and programmatic information. And if I
12 can just make certain here. We have a change here in A5,
13 romanette five. It's the only one we have. We've just revised
14 the language here to hopefully clarify the intent of the
15 disclosure required here under 668.43. So, in 5, if an
16 educational program is designed to meet educational
17 requirements for a specific professional license or
18 certification that is required for employment in an occupation
19 or is advertised as meeting such requirements, a list of all
20 states where the institution offers the program and where the
21 program does and does not meet such requirements. That is the
22 only, that is the only change that we have in 668.43, so.

23 MR. ROBERTS: Vanessa, if you wouldn't mind bringing
24 down the document. Thank you, Jamie, I see your hand first.

25 MS. STUDLEY: Is the institution able to have
26 essentially a third category, that it has made no
27 determination or it makes no claim that it does need, but it
28 hasn't checked. Is that an option for-? [interposing]

1 MR. MARTIN: Not in this rule. The school, the
2 institution, would have to make a determination in all states
3 where the institution offers the program.

4 MS. STUDLEY: So, it's limited to states where they
5 offer the program-

6 MR. MARTIN: Right.

7 MS. STUDLEY: -and then they have to make one or the
8 other of those determinations?

9 MR. MARTIN: Correct.

10 MS. STUDLEY: If there's a state where they say this,
11 this is not being offered in X and we don't know whether it
12 would meet those.

13 MR. MARTIN: Right if it's not being, if it's not
14 being offered in that state, then it would not be required.

15 MS. STUDLEY: Okay.

16 MR. ROBERTS: Greg, I'm not seeing any hands up for
17 this. Oh, Will, sorry, I spoke too soon.

18 MR. DURDEN: Sorry. I just want to clarify, make
19 sure, it seems like this romanette five at the end here, if
20 32, if paragraph 32 romanette two goes through, isn't this
21 superfluous? Or am I missing something in that?

22 MR. MARTIN: You know, it's funny you should ask
23 that. That was going through my head, sort of. I was thinking
24 about whether that does make this superfluous, if the
25 institution is required to meet the licensure requirements in

1 the state in which they're offering the program, would this be
2 would this be superfluous or redundant? I think it's an
3 excellent question. I can take, Steve, do you have any
4 thoughts on that?

5 MR. FINLEY: Not off the top of my head, sorry.

6 MR. MARTIN: I don't really either, so I think I
7 think that's an excellent point. I don't think it-

8 MS. FAST: Would it be okay for me to respond?

9 MR. MARTIN: Go ahead. Sure.

10 MS. FAST: I was thinking that the reason that that
11 was left in was to address the issue that sometimes students
12 are living somewhere but plan to move somewhere else and we
13 don't need to, this wouldn't create an additional burden on a
14 school because the school would already have to have done the
15 work to figure out whether they meet requirements each state.
16 But this would just make sure that students could find out if
17 they were planning to move where whether they could, you know
18 whether this, you know, I'm in Connecticut, I'm planning to
19 move to New York, whether the program would meet the
20 requirements.

21 MR. MARTIN: You know what? Thank you, Carolyn.
22 That's an excellent point, because I think if you're looking
23 at it from a, I think we have to look at it from not a program
24 eligibility standpoint, but from a strictly consumer
25 information standpoint because this is in 43. So, it's
26 [inaudible] programmatic information just announcing to, you
27 know, or disclosing which states it meets the requirements and

1 which states that does not. Of course, it wouldn't be able to
2 offer the program where it does not. But since it would be
3 known already, it would not list additional burden. So, that's
4 an excellent point. So, I think that does address it. Thank
5 you very much.

6 MR. ROBERTS: I do see Dave, our esteemed advisor, do
7 you want to add anything?

8 MR. MARTIN: Go ahead, Dave.

9 MR. MCCLINTOCK: I just have a question; I don't know
10 if I'm being dense. I feel like when I read this wording, it's
11 different than the response that Jamie got to her question. It
12 says, if you offer any program designed to meet educational
13 requirements. So I'm a school in central PA offering programs
14 to a geographic area and I'm representing that you are meeting
15 licensing that I am meeting number one, then I have to provide
16 a list of all states where the institution offers the program,
17 it seems like it needs to designate that you're providing the
18 program in those other states because that school would have a
19 difficult time knowing what the requirements are in all 50
20 states. They're not operating in that capacity.

21 MR. MARTIN: You're referencing 43 again, Dave?

22 MR. MCCLINTOCK: Yeah.

23 MR. MARTIN: So, yeah. So if an educational program
24 is designed to meet the educational requirements for a
25 specific professional license or certification that is
26 required for employment in an occupation or is advertised as
27 meeting such requirements, a list of all states where the

1 institution offers so it's only the list of states clarifies
2 that there where the institution offers the program and where
3 the program does and does not meet such requirements. So, it's
4 only of those states where it offers a program. But again, it
5 seems that if the school is offering the program in those
6 states-

7 MR. MCCLINTOCK: Maybe adding the wording-

8 MR. MARTIN: -it would have to meet the requirement.
9 But-

10 MR. MCCLINTOCK: If you add wording about in those
11 states or something at the end, as far as what needs to be
12 listed, I think that would clarify some of that.

13 MR. MARTIN: Right. I think that's maybe the language
14 there could use a little bit of, I mean, the intention
15 obviously is as a disclosure to it, to disclose all these you
16 know all these areas. But I do think that if you're listing
17 the states where the, so the school offers the program, it
18 cannot offer the program to students, Title IV for those
19 programs unless it meets those requirements in the state. So,
20 it's only where they offer the programs. And it would then
21 necessarily, I'm not sure that they would be, where it does
22 not meet the requirements, it seems to me it wouldn't be
23 offering the program, but that's-

24 MR. MCCLINTOCK: What you're describing is intended.
25 I understand that. I think it makes sense. I just have trouble
26 connecting the wording as it is to what you are-

1 MR. MARTIN: Yeah, I agree. It is a little awkward,
2 but that certainly is the intent.

3 MR. ROBERTS: Steve, did you want to, did you want to
4 add to this?

5 MR. FINLEY: I just wanted to ask if people thought
6 it would be clearer to put back in the language at the end of
7 that sentence that was struck.

8 MR. MARTIN: That might be clearer because it just
9 says a list of all states where it does not meet such
10 requirements. But again, they wouldn't be offering the program
11 there and in those states. So, if it's, I think this. I mean,
12 I absolutely can convey the intent here, which is as a
13 disclosure because what we're trying to because this is
14 different from the [inaudible] this is actually where the
15 institution's required to disclose this information. So, if
16 they're disclosing where they offer the program, then, they
17 are in, the program is required to meet, must meet those
18 licensure requirements in the state then they wouldn't be
19 offering any states where they don't meet the requirements.
20 And I see the language might be a little awkward as stated.

21 MR. ROBERTS: Okay, Barmak.

22 MR. NASSIRIAN: In a world where the way section 32
23 would read after the changes that the Department has made, I'm
24 not sure the example that Emmanuel gave of a program in
25 Louisiana that can only be opposed post facto on the basis of
26 a transcript review, I'm not sure what the what the
27 institution would do. Would, the institution could certainly
28 not claim that it meets the requirements because those

1 requirements can only be established by the state after the
2 fact on a case-by-case basis. And it would be prohibited from
3 offering it otherwise, it seems to me, because the language is
4 so strict. But leaving that aside, it seems to me that Greg's
5 comment is correct. If you keep that language the way it is so
6 tightly mandatory, then I think what 43 should say is just a
7 list of where the program is offered, because by definition,
8 the program could only be offered where it meets those
9 requirements.

10 MR. MARTIN: I agree with you, Barmak. I think that's
11 just one of those things where it wasn't precisely aligned.
12 So I would be willing to go ahead and make that, I'm just going
13 to ask my, my colleagues to make any comment to me regarding
14 that. But I think I'm I think I'm correct on that.

15 MR. ROBERTS: Kelli, go ahead.

16 MS. PERRY: To me, I agree with Steve's comment or
17 what was struck should in essence be put back in. Because to
18 me, in listening to this, if schools are required to obtain
19 state licensure in the states that they're offering the
20 program, based on what's in 32, then what you would want to be
21 disclosing to students is where the state doesn't meet those
22 requirements. Right? So, if the student were to, say the
23 student were to get their degree or whatever and they were
24 going to move and they were moving to a state that they
25 weren't going to have licensure in and the school doesn't
26 offer that licensure program in, that's what I think that they
27 would want to know.

1 MR. MARTIN: Yeah. I would think it would be easy
2 enough for the school to list. I mean if they don't, it would
3 seem to me to be somewhat redundant to have to list something
4 about a state. If you give a list, if you provide a list of
5 states you don't offer the program in, that might be more
6 instructive. I mean, it seems to me, my apologies for thinking
7 through this as we're going through it, but there can only be
8 two scenarios here. A, the school offers the program in a
9 state, and if they offer the program in a state, then it
10 necessarily meets the licensing requirements of those states
11 for 32, right? It could be no other way. Or they don't offer
12 the program in the state, in which case it makes no difference
13 what any requirements are because they just don't offer the
14 program, a student can't take the program in that state. So, I
15 would probably structure it that way. I don't, if adding a
16 list of states that does not meet requirements, that would get
17 us there, I guess, because we'd basically be saying the school
18 that's tacitly saying the school simply doesn't offer them it
19 doesn't offer it in those states. So, we could I think by
20 adding that back would get there if that would be acceptable
21 to people.

22 MR. ROBERTS: Okay, I see a few hands. We'll go
23 Carolyn first. But I do want to just ask the negotiators if
24 they can keep comments brief so we can finish the day with
25 asking the Department how they'd like to proceed on this
26 issue. Carolyn, go ahead.

27 MS. FAST: Just very briefly that, just want to make
28 sure that it doesn't get lost that we don't want to just have
29 a disclosure be where the program is offered because the more

1 important part is for the student from the student's
2 perspective, is where they're going to be able to get
3 licensure. So just to make sure that doesn't get lost in
4 whatever rewrite happens.

5 MR. MARTIN: Right. Well, they will I think according
6 to our rules, it has to be they can't offer it unless there's
7 licensure. But I think you're right, that should be disclosed.
8 As a student knows, they will be licensed. What I can do is,
9 entertaining more comments we have, so we're coming up on
10 3:25. So if we want to, I could, I don't know if I can feel
11 this on my feet right now because as close to the end of the
12 day as we are. But I can work on the lang- we can work on the
13 language overnight and come back tomorrow morning and just
14 take the consensus for it based on the new unrevised language,
15 hopefully would be a little more instructive here, but I don't
16 think any of us are in disagreement where we what we want it
17 to say, it's just how we convey that. So, if you would allow
18 me to wordsmith that overnight. And we can all sleep on it,
19 well not sleep on it because we're going to change, we're
20 going to make some changes here. But I think we could make
21 some changes toward clarity in this in this disclosure. But I
22 think we have to, you know, the intent is obviously different
23 than what's in 32. This is a disclosure. This is a disclosure
24 requirement in 668.43. But I think the language still needs to
25 still needs to align.

26 MR. ROBERTS: That'll be how we start off tomorrow.
27 But I do want to note Emmanuel is coming to the table to ask a
28 final question on behalf of private nonprofits. So go ahead,
29 Emmanuel.

1 MR. GUILLORY: So, I'm happy the Department is
2 willing to take another look at this and come back to the
3 table tomorrow to look at it because with the unchanged
4 proposals in 32, there's still going to be some major
5 complications there. We did submit proposed language to the
6 Department, you know looked at it and decided not to take. And
7 that's, I respect that decision. But also, some of my other
8 colleagues, Carolyn and Barmak had a proposal too as well that
9 would remedy the situation. And I'm really disappointed that
10 not even that proposal was taken into consideration,
11 considering the support that was offered for that, because
12 that proposal would have been much better for us than the
13 current text that we have here. Requiring institutions to meet
14 all state licensing requirements if they want to offer a
15 program to students where they're located or where they are or
16 where they may seek employment is very, very, very
17 problematic. So, I hope that the Department will think about
18 it once again and just really reconsider the proposed
19 alternative language to 32 and how that relates to what we're
20 talking about here in 5. Thank you.

21 MR. ROBERTS: Okay, thank you. We are coming up right
22 on public comment as it is our last one of a negotiated
23 rulemaking. I don't want to cut into that. So, the plan for
24 tomorrow will be to pick up with certification and then move
25 right into 90/10. And I understand, Johnson, you wanted to
26 address the committee before we move to public comment.

27 MR. TYLER: Yeah, hi. I- [interposing]

28 MS. JEFFRIES: Johnson, hang on one second. I just
29 want to let the committee know, I [audio]-

1 MR. TYLER: You muted yourself.

2 MR. ROBERTS: I think, Cindy, you're muted right now.

3 MS. JEFFRIES: I did it twice. I'm going to go ahead
4 and admit Senator Tom Carper while Johnson addresses the
5 committee because he was having some technical issues. And
6 we're going to try to jump start that in case he does so,
7 unless I hear any objections to that, I'm going to go ahead
8 and admit him now.

9 MR. TYLER: Great, I'm preceding a senator.
10 Excellent. I just wanted to thank everyone. I'm not going to
11 be here tomorrow. And I want to be able to say my goodbyes and
12 how much I've enjoyed working with everyone here, and
13 particularly Greg and the other people, Steve from the
14 Department of Education, Donna. I know you guys are career
15 people and this is your mission and I really appreciate all
16 the work you're doing. Everyone else here, I know we all have
17 students in mind. But the last thing I just want to say, is
18 you know, George Floyd, really, his murder showed so much
19 inequity. And I think when we talk about the students, we
20 really have to think also about racial justice. I think that
21 is what education is, the method by which we can fix this
22 problem. And we really have to make sure that these
23 institutions remedy it rather than perpetuate racial inequity
24 in the country. So anyway, thank you. Thanks for listening to
25 me all this time and good luck tomorrow.

26 MR. ROBERTS: Thank you very much, Johnson, for your
27 comments and for all your hard work and indeed the entire

1 committee's hard work throughout these last few months. Cindy,
2 are we ready to proceed to public comment?

3 MS. JEFFRIES: We are, and it looks like Senator Tom
4 Carper is on video if he, so he should be ready to go as soon
5 as he unmutes himself.

6 MR. ROBERTS: Good afternoon, Senator Carper. Can you
7 hear me?

8 SEN. CARPER: I cannot hear you.

9 MR. ROBERTS: Cannot hear me. What about-
10 [interposing] There we go. Okay, great. You have three minutes
11 for public comment beginning when you start speaking, and the
12 floor is yours.

13 SEN. CARPER: Thanks. Well, good afternoon, everyone.
14 I'm Tom Carper, United States Senator from Delaware, retired
15 Navy Captain, last Vietnam veteran serving in the US Senate
16 and GI Bill recipient. I just want to thank the US Department
17 of Education for giving me the opportunity to take a brief
18 moment to talk a bit about the importance of protecting our
19 nation's military and our veterans, and especially of veteran
20 students, by closing the 90/10 loophole once and for all. One
21 year ago, during floor debate of the American Rescue Plan, the
22 United States Senate unanimously passed a bipartisan
23 amendment. It was offered by Senator Jerry Moran, Republican
24 of Kansas, close friend, and myself, to establish this
25 negotiated rulemaking process. Our amendment for those who may
26 not have heard, was a bipartisan promise, a promised to our
27 nation's veterans to close the 90/10 loophole once and for
28 all. And I'm grateful to the negotiators and to the Department

1 for making good on that promise. I'm also deeply grateful to
2 the many veterans and veteran service organizations that who
3 did the heavy lifting over the last year, not just over the
4 last year, but the last decade, walking the halls of Congress,
5 knocking on doors and stressing the importance of harnessing
6 market forces and harnessing market forces to improve
7 educational opportunities for our nation's military [audio]
8 for too long, far too many bad actors in the for-profit
9 college sector, including the now defunct Corinthian Colleges
10 and along with ITT Tech were able to evade the bipartisan
11 intent of Congress that for-profit schools should receive at
12 least 10 percent of their revenues from non-Federal sources.
13 This rulemaking, this rulemaking process restores the
14 bipartisan intent of Congress, first established by
15 legislation signed by into law by former President George
16 Herbert Walker Bush, Navy veteran and a Republican, and
17 reaffirmed during the amendment to the American Rescue Plan,
18 which was signed into law by President Joe Biden, a Democrat.
19 I want to make clear that not all for-profit schools,
20 underline this, not all for-profit schools are bad actors.
21 Many for-profit schools do a very fine job preparing our
22 military and preparing our veteran students for civilian
23 careers and we should acknowledge that. Closing, having said
24 that, closing the 90/10 loopholes simply about making sure
25 that our veterans get the most out of their hard-earned GI
26 Bill benefits. For me, this is personal. My own father, a
27 World War Two veteran, also served the times in the Korean War
28 and the Vietnam War chief petty officer for over 30 years. He
29 used the original GI Bill at a vocational school in Beckley,
30 West Virginia, where he learned how to fix wrecked cars and

1 went to work at Burleson Oldsmobile, became a claims adjuster
2 for Nationwide Insurance, and ended up teaching the Academy of
3 Training Academy for all Nationwide Insurance claims adjusters
4 and across the country. He did it thanks to the GI Bill. But
5 for myself, after serving three tours of active duty in [30
6 seconds] I used the GI Bill to attend the University of
7 Delaware to earn a master's degree and to go on to be elected
8 as the Treasurer of the State of Delaware and congressman and
9 governor. My dad, as I said, went on to do extraordinary
10 things in his own life. We don't always have time or the
11 opportunity to make a huge change in the lives of people. But
12 this is one instance where we can do that. And I just want to
13 say to those who are involved in this process, I hope you will
14 end up doing the right thing by virtue of our veterans and
15 keep in mind the golden rule to treat other people the way we
16 want to be treated and that's what our legislation does. And I
17 would on that will sign off and say, good luck. God bless.

18 MR. ROBERTS: Same to you. Thank you very much for
19 your comments, Senator Carper.

20 SEN. CARPER: Thank you so much.

21 MR. ROBERTS: [Audio] next, Cindy?

22 MS. JEFFRIES: Next, we have Malcolm Youngren from
23 Pacific College.

24 MR. ROBERTS: Good afternoon, Malcolm, can you hear
25 me?

26 MR. YOUNGREN: This is Malcolm.

1 MR. ROBERTS: Great. Your video and sound are coming
2 in very clearly. So, you have three minutes for public comment
3 beginning when you start speaking and you have the floor now.

4 MR. YOUNGREN: Okay, great. Thank you. My name is
5 Malcolm Youngren. I'm the president and CEO of Pacific College
6 of Health and Science, founded in 1986. Pacific College is
7 regionally accredited by WASC and currently has 1900 students.
8 Acupuncture is increasingly becoming part of the US healthcare
9 system and is now recognized as safe and effective by the
10 National Institutes of Health, the Center for Disease Control,
11 Medicare, and the Veterans Administration. The CDC recently
12 identified acupuncture as the first line of defense in the
13 opioid crisis. We at Pacific College support an appropriate
14 accountability framework, and Pacific College students are
15 repaying their loans. Our credit default rate is 5.3 percent,
16 and our 2011 repayment rate was 44 percent. The proposed GE
17 ratios do not accurately indicate quality in the field of
18 acupuncture for two reasons. Most acupuncturists seek a
19 flexible work/life balance. The most recent American Society
20 of Acupuncture survey showed over 50 percent of acupuncturists
21 practice part time. Our average acupuncture student is a
22 mature 36 years old and a quarter are married with spousal
23 support. They enter this field for flexibility. Second, it
24 takes five years for graduates to fully build a practice.
25 Measure, measuring earnings in 18 to 36 months is not
26 consistent with its occupation. 5 to 9 years out after
27 graduation, over 60 percent earn more than \$65,000 dollars and
28 25 percent earn more than \$100,000 dollars. Pacific College
29 and other private acupuncture schools provide quality
30 education, leading to higher satisfaction rate among

1 acupuncturists. 87 percent of our graduates become licensed,
2 and 66 percent of all acupuncturists are satisfied with their
3 lifestyle. The GE ratios do not indicate quality of
4 acupuncture colleges. The pass rate on licensure exams are the
5 same for both for-profit and nonprofit schools, and the price
6 of the education is actually 12 percent lower for for-profit
7 schools. The price is relatively consistent because the
8 curriculum is dictated by the state. California requires 3000
9 hours and Florida requires a four- year program. Schools
10 cannot shorten the program and make them significantly less
11 expensive. The proposed GE framework, if adopted, would
12 devastate the acupuncture industry. All 24 colleges that are
13 for-profit would go out of business and there are only 51
14 colleges. There would be no acupuncture schools in cities like
15 San Diego or Chicago or states such as Texas or Ohio. To avoid
16 this disaster, only modest changes need to be made. Proposal
17 one is for doctorate and master's leading to licensure to use
18 a 35 percent repayment rate and a benchmark licensure pass
19 rate of [30 seconds] number two is for an annual appeal
20 process for small industries and there are only 6000
21 acupuncturists in the country where alternative measures such
22 as repayment rates could be used. This would allow small and
23 unique industries to survive. Either measure would give a
24 strong quality framework without injuring acupuncture, which
25 is so needed at this point in the country's recovery from the
26 pandemic and the opioid crisis. Thank you.

27 MR. ROBERTS: Thank you very much for your comment.

28 MS. JEFFRIES: Okay Brady, I am admitting Martin
29 Gaiter who is Solution Wizard USBS.

1 MR. ROBERTS: Alright, Martin, can you hear me? Good
2 afternoon, Martin. Can you hear me?

3 MS. JEFFRIES: Let me go ahead and bring in Tanya
4 Foose from the Ohio Business College while we figure out
5 what's going on with Martin.

6 MR. ROBERTS: Sounds good. Thank you. Good afternoon,
7 Tanya. Are you able to hear me?

8 MS. FOOSE: I can hear you.

9 MR. ROBERTS: Great. You have three minutes for
10 public comment, beginning when you start speaking, and the
11 floor is yours.

12 MS. FOOSE: Hi, my name is Tanya Foose, and I
13 appreciate this opportunity to speak to you today about the
14 career college education sector and our value to the economy.
15 I have worked for over 20 years at several for-profit
16 colleges, and quite frankly, this is where I found my love for
17 education and my passion for the career college sector. As the
18 daughter of a college professor of a state university, I grew
19 up at a college campus. I watched my father deal with the
20 perils of publish or perish and the never-ending research he
21 did for his tenured position. While publishing is great, it
22 does not directly contribute to the local economy. In fact,
23 most of his students had to leave their hometown to find work.
24 Career colleges serve a very important part of our local
25 economy. Having spent four years in career services and now
26 campus director at Ohio Business College, I have been able to
27 maintain over 70 percent placement for each of our programs in
28 medical assisting, HVAC, electrical, and business. Not only do

1 we assist our graduates with resumes, interview skills and
2 maintain weekly communication after graduation, we also work
3 with local businesses to help address their hiring needs.
4 This, along with our personal and accessible approach to
5 admissions and financial aid, we are able to help students
6 easily navigate the enrollment process. On a personal note, as
7 the mother of a community college student, I can't tell you
8 how difficult it was to enroll my son. No one at his school
9 could answer questions about which program would fit him best.
10 No one helped me with the FAFSA, and in fact, no one would
11 even answer the phone. Having been so accustomed to the
12 amazing customer service that we offer our students, I was
13 shocked at how difficult it was to enroll at a public
14 institution. Career colleges make the whole process easy.
15 Students know what they're signing, and they understand their
16 financial aid package when complete. I personally can't
17 understand why public institutions don't mimic the level of
18 service and assistance that we do for our students, because I
19 would imagine they lose a lot of students who become
20 frustrated due to the lack of help. Career colleges must
21 remain a viable option for many students who are looking to
22 level up their opportunities in the world by offering ease of
23 admission, strong skills-based education, and assistance upon
24 graduation. Thank you for your time. We do such amazing work
25 for our students and local businesses and hope to continue to
26 do so for now and years to come. Thank you.

27 MR. ROBERTS: Thank you, Tanya, for your comment.

28 MS. JEFFRIES: Brady, it looks like Martin Gaiter is
29 up and running and with us.

1 MR. ROBERTS: Alright. Good afternoon, Martin. Can
2 you hear me?

3 MR. GAITER: I can.

4 MR. ROBERTS: Great. You have three minutes for
5 public comment that begins when you start speaking.

6 MR. GAITER: Thank you. Good afternoon. My name is
7 Martin Gaiter. 20 years ago, I achieved my MBA in global
8 management. I went on to start my PhD studies in
9 organizational development and leadership. I'm also a US Air
10 Force veteran. Today I serve as a catalyst for change. I
11 respectfully ask for the Education Department to really
12 examine why some people in this country who look like me
13 struggle professionally after graduation with degrees they are
14 encouraged to get. Yes, it's true, I am a graduate of the
15 University of Phoenix. So many other universities copy the
16 model that University of Phoenix has been using for decades.
17 After article after article that I've read, University of
18 Phoenix graduates outpace other university graduates careers
19 advancements year after year. I do notice something is
20 missing. The larger population of minority students is missing
21 in those statistics. We are told consistently to just go out
22 and get a little more educated and then it would be our
23 chance, our turn to develop internally. I ask you to stop
24 looking at the University of Phoenix and its structure for
25 culpability and to investigate the businesses that continue to
26 move the line, and do the minimum or check the box so they
27 don't get flagged. I did not choose the wrong school. There is
28 more to my story. I have founded my own consultancy business
29 that focuses on providing equity and digital access to the

1 largest minority group in our country, the disabled. I also am
2 heavily involved in diversity equity issues in my home state
3 of Oregon. Yes, I am an angry black man, but I'm equally mad
4 for non-black and black friends and colleagues equally because
5 we need to come together. I have seen people in your position
6 turn these issues at stake to personal attacks and make it
7 easier to attack the testimony, the University of Phoenix or
8 even supporters of University of Phoenix. Employers must be
9 held accountable to follow through on the promises. No more
10 carrot and stick. I've made the collective choice in the past
11 and chosen to use my GI Bill to try to advance my military
12 police training and actually could not attend military police
13 training after the military because I was at a for-profit
14 program that didn't qualify. I used my GI Bill for my
15 undergraduate BA Technical Speech, Communication and Conflict
16 Management. These were skills that I developed for employers
17 that no longer had a place for me in my degrees. Reach out to
18 us. We want to tell our stories. I fight for being, I fight
19 being marginalized. Now I have my own business. I respectfully
20 request that you work with us to amplify our voices with the
21 Education Department and other leaders in Washington. Our
22 voices should be heard. Thank you.

23 MR. ROBERTS: Thank you for your comment.

24 MS. JEFFRIES: Hey, Brady, I am admitting Samer
25 Hassan from the Young Invincibles next.

26 MR. ROBERTS: Good afternoon, Samer, can you hear me?
27 How about now? Can you hear me, Samer?

28 MR. HASSAN: Hi. Yes, can you hear me?

1 MR. ROBERTS: Yes. Coming through quite clearly. You
2 have three minutes for public comment that begins when you
3 start addressing the committee.

4 MR. HASSAN: Please allow me to pull up the page,
5 give me one second. Okay. Thank you to the Negotiated
6 Rulemaking Committee for having me today. My name is Samer
7 Hassan. Before I begin, I want to let you know how
8 disappointed I am. I and millions of students are after
9 learning about how institution negotiators voted on Gainful
10 Employment yesterday. To us, your decision has taught us that
11 you are gatekeepers and refuse to be held accountable.
12 Students do not look at you as allies. Remember that. In 2014,
13 I signed up for a career program that would allow me to earn
14 my certificate as a certified nursing assistant. I grew up
15 undocumented in this country, so I did not qualify for
16 financial aid. I saved up every penny I could in order to
17 begin the CNA program. My school had ads on busses, trains,
18 park benches and the radio, all of which advertised the great
19 help you could do for your community while earning a great
20 salary to someone who was renting out a room in a three-
21 bedroom home filled with 12 other people. The CNA certificate
22 represented my way out of poverty and, to be frank, a
23 dangerous living situation. The first day of my program was
24 the first day I had ever entered a college. The instructor
25 told us that a CNA could earn \$50,000 if we played our cards
26 right. I passed all my exams, did every assignment, and took
27 every chance I could in order to absorb knowledge. During the
28 last half of the three-month full-time program, we were sent
29 to nursing homes in order to fulfill our clinical hours. We
30 essentially provided free labor to nursing homes that were

1 extremely understaffed and overworked. I remember bike riding
2 five miles a day in order to get to those inaccessible
3 locations, but we didn't have a choice as to where we could
4 go. But I'm happy to say I passed with all As and glowing
5 recommendations. After I received my CNA license, finding a
6 job proved excruciatingly difficult and long, even though we
7 were constantly told there was a high demand for CNAs all
8 across the state. I had gotten my work permit, so being
9 undocumented was no longer a barrier to employment but it
10 still took me five months to get a job. I beat ten other folks
11 in group interview for a position that paid me \$9 an hour. I
12 figured I was given low pay because of lack of experience, but
13 what I found out just a few days later was that even the CNAs
14 who had been at the nursing facility for 15 years only made
15 \$12 an hour. The way around that low pay, everyone was
16 encouraged to work overtime as that ensured time and a half.
17 Every single CNA at the nursing facility worked an extra 12 to
18 36 hours on top of their full-time hours in order to make ends
19 meet instead of-

20 MR. WAGNER: You have 30 seconds remaining.

21 MR. HASSAN: Thank you. Instead of a culture that
22 pushed you until you could no longer get out of bed, we should
23 never have been told that a CNA certificate could pay us the
24 salaries we worked so hard to earn. My story illustrates why
25 the Department of Education should write strong Gainful
26 Employment rules that prioritize protecting students and hold
27 programs accountable for poor outcomes. If programs falsely
28 advertise post-graduation earnings, they should be held

1 accountable to that, right? Thank you so much for your time
2 and hearing me speak today.

3 MR. ROBERTS: Thank you for your public comment.

4 MS. JEFFRIES: Okay, Brady, I am admitting Lisa Houck
5 representing, she's actually a veteran.

6 MR. ROBERTS: Lisa, are you able to hear me?

7 MS. JEFFRIES: Okay, while I figure out what's going
8 on with Lisa, I'm going to go ahead and admit Cody Hounanian
9 from Student Debt Crisis Center. Oops.

10 MR. ROBERTS: Cody, are you able to hear me? Looks
11 like he's connecting. Hi, Cody. Can you hear me?

12 MR. HOUNANIAN: Yeah, I can. Thank you.

13 MR. ROBERTS: Excellent. You have three minutes for
14 public comment that begins when you start taking.

15 MR. HOUNANIAN: Alright. Thank you so much. Well, I
16 appreciate the opportunity to comment. My name is Cody
17 Hounanian. I am the executive director of the Student Debt
18 Crisis Center. We echo the voices of 2 million supporters
19 across the country, and you know our mission is to center
20 their voices and their needs. And by doing so, I think we can
21 impact public policy and end this crisis. And that's exactly
22 what I'm here to do today. So, I want to share some comments
23 and also an experience from a borrower of ours that has
24 reached out. So, you know, each year we hear from thousands of
25 student loan borrowers and most are reaching out because
26 they're facing unprecedented distress. You know, these are

1 people that are unable to put food on the table, afford rent
2 or cover healthcare costs. All of these issues have been
3 exacerbated during the pandemic. In fact, we recently surveyed
4 over 23,000 borrowers and found that one in three was skimping
5 out on basic needs due to payments resuming in May and the
6 fear of the burden of student loan debt. And you know all of
7 this harm is caused by the basic fact that these people sought
8 out the American dream, and they did so through higher
9 education, which is a pathway to that dream. You know, we hear
10 from women, black, and brown borrowers and others that see the
11 burden of student debt exacerbated by systemic inequities in
12 higher education. And these communities you know for the first
13 time had access to this dream and higher education, but the
14 prosperity that it was supposed to provide has been completely
15 stripped away because of this debt. So, you know it's clear
16 that our system is inherently immoral, but the level of harm
17 caused by purposeful profiteering is especially shameful.
18 Vulnerable students are targeted by for-profit colleges that
19 overpromise and under-deliver. Students are left holding the
20 bag for an overpriced, low-quality education that wastes
21 taxpayer resources and leaves students worse off than when
22 they started. So, reinstating the Gainful Employment rule will
23 ensure that the Department protects students from taking on
24 debt that they are unlikely to be able to repay due to
25 deceptive programs and guarantees that for-profit programs are
26 able to fully prepare students for Gainful Employment. And I
27 want to share a story. Lori in Aurora, Colorado, is an older
28 American who should be retired. Instead, she is forced to
29 continue to work a difficult, exhausting and low-paying job in
30 a field that was completely unrelated to her education. You

1 know, Lori went back to school to skill up. We hear from
2 borrowers every day that, particularly during the Great
3 Recession, thought that education was their way to increase
4 the stability of their finances in the future. But-

5 MR. WAGNER: 30 seconds remaining.

6 MR. HOUNANIAN: Yes. Like many, Lori's goal to
7 improve her job prospects and make her future more secure has
8 resulted in the complete opposite. Instead, her future is less
9 secure, and it's destroyed her ability to retire with dignity.
10 So, you know I encourage you to continue with implementing the
11 Gainful Employment rule again and protect students from these
12 low-quality programs. Thank you.

13 MR. ROBERTS: Thank you for your public comment.

14 MR. HOUNANIAN: I appreciate the opportunity.

15 MR. ROBERTS: Lisa, I believe, can you hear me? You
16 have to unmute, but you have three minutes for public comment
17 that begins when you begin speaking, and the floor is yours.

18 MS. HOUCK: Okay. I'm just going to read my
19 statement. My name is Lisa Houck, and I was once employed in
20 the admissions Department at Hesser College, which was a for-
21 profit school owned by Kaplan that is no longer open. I worked
22 there from 2004 to 2012, and I want to tell you what the
23 school told the admission representatives to do to further the
24 goal of recruiting as many students as possible. The most
25 important thing to the school was numbers. The Admissions
26 Department was completely numbers driven, and the more
27 students we convinced to enroll, the better we were we were

1 graded. We were told to pressure students to enroll on the
2 same day that they came into the school so basically, they
3 couldn't think about it. If they wanted to go home and think
4 about it, we were told to tell them that classes were starting
5 right now and they would miss out. The school did not want
6 admission reps to tell students that we had rolling
7 admissions, which meant that they could really enroll up to a
8 week after the start. So, we really pressured them to enroll
9 as soon as we met them. When I first started, admission reps
10 were under the pressure to promise students anything to get
11 them to enroll, like promising that they would be able to get
12 a job in the field. And that became problematic when the GAO
13 investigated Kaplan for predatory lending and predatory
14 admission practices, which we definitely had. For instance, in
15 the medical assistant program, we were told to tell them they
16 would be able to find a job, even though we knew the market
17 was completely saturated and they probably wouldn't be able to
18 find a job. The same with early childhood education. We knew
19 that we were selling them a very expensive degree, that they
20 would only be paid about 12 or \$13 an hour for. So, we had to
21 undergo retraining and basically were told not to promise
22 those things. But that only lasted about a month before the
23 company then were pressuring us again to get our numbers up.
24 So, we got students to enroll by promising them absolutely
25 anything. I saw instances where the school would fill out
26 their financial aid forms for the student, like the FAFSA,
27 instead of letting the student take their time and do it
28 themselves. The financial process was also very rushed, with
29 the goal of getting the students signed up as quickly as
30 possible. I now work in a different university and it is much

1 better. I don't see these practices at all. So that's my
2 statement. Do you have any questions?

3 MR. ROBERTS: I don't believe so, Lisa, but thank you
4 for offering your comment for the public today.

5 MS. HOUCK: Okay. Thank you.

6 MR. ROBERTS: Have a nice day.

7 MS. HOUCK: You too.

8 MR. ROBERTS: Who are we admitting next?

9 MS. MILLER: I am admitting Tiffany Horne, who is
10 representing herself.

11 MR. ROBERTS: Great. Thank you, Roz. It looks like
12 she's enabling audio. Hi, Tiffany. Can you hear me?

13 MS. HORNE: Yes, I can. Hello.

14 MR. ROBERTS: Hello, good afternoon. You have three
15 minutes for public comment that's going to begin when you
16 start speaking.

17 MS. HORNE: Thank you. Good afternoon, everyone. My
18 name is Tiffany Horne. I'm a 26-year Army veteran and a first-
19 generation college student. I was a single parent of three
20 children when I graduated from the University of Phoenix with
21 a bachelor's degree in business. When I decided to go back to
22 school to earn my bachelor's degree, I was an active-duty
23 military soldier stationed at Fort Bragg, North Carolina. I
24 had young children at home, and other schools that I attended
25 were not conducive nor realistic to the demands of my military

1 lifestyle. I was deployed constantly and I knew that earning a
2 degree was going to be a challenge. I chose the University of
3 Phoenix because it offered a flexible degree program that
4 accommodated and provided the support I needed to meet the
5 demands of my life at that particular time. This meant I could
6 fulfill my duties in the field during the day and at night I
7 could work on my degree and turn my assignments in when my
8 unit came in to take showers, which is where I could get
9 internet service. None of this was easy. The classes were
10 hard. My instructors challenged me daily and I worked full-
11 time and was a full-time parent. But I was dedicated to my
12 educational goals, focused, and I knew how beneficial it would
13 be for my career if I earned this degree. I was able to
14 succeed because of my work ethic and because I chose to attend
15 a school that provided the resources and had the flexibility
16 that would ensure my success. The University of Phoenix is
17 test [ph] the standard when it comes to supporting the
18 students, especially adult students. Obtaining my degree
19 allowed me to set a powerful example for my children and for
20 the other service soldiers that I served with. Upon completion
21 of my degree, I was promoted to the next higher rank. Many of
22 my military colleagues, they also followed in my footsteps
23 once they saw that it was actually possible to complete their
24 education while on active duty. I decided to pursue my
25 educational endeavors elsewhere only because of the senseless,
26 negative stigma surrounding the University of Phoenix and the
27 value of its curriculum. I am currently pursuing my doctoral
28 degree, but all roads began with the University of Phoenix.
29 Aside from my doctorate course, the coursework was much more
30 challenging in my opinion, and the academic advisers were much

1 more hands-on and geared me towards my goals. I continue to
2 use a lot of the tools such as the team skills assessments and
3 inventories, case study data, etc., all which I learned from
4 the University of Phoenix in my current role. Working in teams
5 is extremely challenging. However, the benefit of using the
6 skills that everyone has in order to accomplish objectives is
7 a skillset that continues to serve me well. Please consider my
8 story and the stories of so many other military personnel who
9 pursue a degree while they are actively in the military, for
10 when we retire this uniform, just as I have, we still continue
11 to serve our nation, but just in a different capacity. The
12 military encourages and recognizes education-

13 MR. WAGNER: Tiffany, you have 30 seconds.

14 MS. HORNE: Mary Roach said, "Heroism doesn't always
15 happen in a burst of glory. Sometimes small triumphs and large
16 hearts change the course of history." I belong to several
17 veteran organizations, and we work with delegates on the jill
18 to bring about meaningful change. I hope that you all consider
19 my story, and I hope that you hold all the universities
20 accountable and the rules that they that you have set aside in
21 order to benefit everyone, just keep everything fair. Thank
22 you for your time.

23 MR. ROBERTS: Thank you, Tiffany, for your comment.
24 Okay. Roz, I think we have time for one last speaker. Who are
25 we admitting?

26 MS. MILLER: I'm admitting Brian Black, who's
27 representing himself.

1 MR. ROBERTS: It looks like he's admitted, but he
2 might have stepped away from his computer. Do we want to move
3 to the to the next speaker? Roz, would you mind admitting, I
4 think I see Ethan-

5 MS. MILLER: Ethan Schlat- Schlatlecker, Schaltegger,
6 sorry about that, who is representing Association of Young
7 Americans.

8 MR. ROBERTS: Great. Ethan, are you able to hear me?
9 Ethan, are you able to hear me or did he just leave the
10 meeting? Oh, there he is. Ethan, can you hear me?

11 MR. SCHALTEGGER: I can hear you.

12 MR. ROBERTS: Great.

13 MR. SCHALTEGGER: Yeah.

14 MR. ROBERTS: Fantastic. You have three minutes for
15 public comment, which begins when you start speaking.

16 MR. SCHALTEGGER: So first, just thank you for the
17 opportunity to speak. It was 2018. I was taking my last class
18 over a shortened summer semester, about to graduate with a
19 double major in nutrition and kinesiology, ready to work
20 towards my dream job of becoming a private coach, working with
21 elite level athletes. Unfortunately, I had also accumulated
22 \$100,000 of student debt with an 11.5 percent interest rate
23 after a lifetime of being taught to go to college no matter
24 what. Debt is normal and this is just what you're supposed to
25 do. I remember during that summer, the reality of what I had
26 gotten myself into finally started to dawn. And I was

1 terrified. I was truly terrified. Two weeks before I was
2 scheduled to officially graduate, my physical health started
3 to aggressively decline. I was sent to the emergency room and
4 diagnosed with type one diabetes, a chronic autoimmune disease
5 without a cure, and a laundry list of daily demands,
6 challenges, and symptoms. Not only was I about to graduate
7 with this enormous financial burden, but I now had one of the
8 most, if not the most expensive chronic health conditions in
9 the United States. I have since given up on that dream job,
10 and I'm currently working in corporate America, lucky to be
11 paying my bills, lucky to even have stumbled into a job
12 capable of scraping by. The amount of grief that I feel not
13 only for myself but for my generation and the medical, the
14 medically vulnerable is difficult to describe. The amount of
15 greed, insanity, and dysfunctionality I see in our system is
16 disgusting. And I share this story of mine with the hope and
17 the prayer that the people on this call can recognize that
18 your work has real meaningful power over the lives of others.
19 I pray that the people on this call can feel beyond the
20 statistics and can recognize that the future of this country
21 is more than just a numbers game. I pray that the people on
22 this call have the compassion to recognize that this corrupt
23 system creates real casualties. And these casualties have real
24 consequences individually and collectively for our country.
25 And I pray that we can all take on the resolve to do what
26 needs to be done.

27 MR. WAGNER: Ethan, you have 30 seconds.

28 MR. SCHALTEGGER: As far as tangible action,
29 reinstating Gainful Employment is a good first step, in my

1 view, a step towards creating a larger systemic change. The
2 Department taking responsibility for protecting students from
3 higher education profiteering and protecting students from
4 taking on aggressive debt they're unlikely to pay back and
5 ensuring career programs are available for Gainful Employment
6 is a necessary first step towards addressing this crisis, in
7 my view. That's all I have to say. And thank you for your time
8 and space.

9 MR. ROBERTS: Thank you, Ethan, for your comment. We
10 appreciate it. And thank you to all the members of the public
11 who have taken the time to offer public comment to this
12 committee throughout the last couple of months. Thank you to
13 the committee for all your hard work today. We will pick up
14 for our final day of negotiated rulemaking tomorrow at 10 a.m.
15 Eastern. Thank you very much.

16 Department of Education, Office of Postsecondary
17 Education

18 Zoom Chat Transcript

19 Institutional and Programmatic Eligibility Committee
20 Session 3, Day 4, Afternoon, March 17, 2022

21 From Adam Welle, State AGs (P) to Everyone:

22 I've encountered situations where students have been
23 enrolled in a program where they don't have enough eligible
24 Title IV aid eligibility (because they are approaching the
25 limit) and it is disastrous when they reach their limit and
26 can't finish their program.

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

3 +1 Adam

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

6 +1 Jessica and Adam. Seems cutting off students
7 Title IV mid program is setting them up for failure.

8 From Ernest Ezeugo (P) Students and Student Loan
9 Borrowers to Everyone:

10 +1 Debbie's points on SAP, as well as Jessica and
11 Adam's points.

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

14 +1 Carolyn, Jessica, and Adam. I do not like their
15 aid is cutoff before they finish.

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

18 +1 Adam - disclosure is very important here.

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

20 +1 on idea that program should not be eligible if ED
21 wants to go down this path

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

1 +1 Jessica

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

3 +1 Jessica

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

6 +1 Johnson

7 From Yael Shavit to Everyone:

8 +1 to Jessica and Johnson

9 From Adam Welle, State AGs (P) to Everyone:

10 +1 to Johnson. And in that case the Dept's
11 investment in the student is lost.

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

14 Laura Rasar King is in for Accrediting Agencies

15 From Jamienne Studley--Accrediting Agencies (P)
16 she/her to Everyone:

17 Laura Raser King coming in for accrediting agencies
18 here as noted

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

21 Note, current (32)(iii) would become (iv), not be
22 replaced

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

3 +1 to Laura. (i) needs to have seeking accreditation
4 and pre-accreditation added

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

7 +1 to Laura's edit

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

10 The omission was an oversight and unintended

11 From Adam Welle, State AGs (P) to Everyone:

12 I think it's important that ED ensure that programs
13 meet licensure requirements in states in which they enroll
14 students and I think Barmak's suggested edits accomplish that
15 goal and I support them.

16 From Kelli Perry - (P) Private Non-Profits to
17 Everyone:

18 Emmanual is going to come to the table to address
19 Debbie's comments

20 From Jamiene Studley--Accrediting Agencies (P)
21 she/her to Everyone:

22 + Laura and Brad: the program has met quality
23 requirements to achieve pre-accreditation. It has met
24 standards. It has simply not yet graduated students yet.

1 Recall that this is within an institution that is accredited
2 at the institutional level.

3 From Jamiene Studley--Accrediting Agencies (P)
4 she/her to Everyone:

5 So if the state requirement is for pre-accreditation
6 and accrdetation then would that control?

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

9 I support the idea of adding pre-accreditation
10 language.

11 From Jamiene Studley--Accrediting Agencies (P)
12 she/her to Everyone:

13 It IS recognized by ED as accreditation

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

16 UNDER 600.4, DEFINITION OF INSTITUTION OF HIGHER
17 EDUCATION, AND INSTITUTION CAN RECEIVE TITLE IV IT HAS
18 INSTITUTIONAL PREACCREDITATION OR ACCREDITATION.

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

21 Pardon the caps - unintended

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

1 Thank you very much, Emmanuel, for the specific
2 example.

3 From Jamiene Studley--Accrediting Agencies (P)
4 she/her to Everyone:

5 That's exactly the point if the state accepts pre-
6 accreditation for licensure their judgment should control.

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

9 +1 Jessica - can we clarify the language to link it
10 to acceptance by licensure agencies?

11 From Jamiene Studley--Accrediting Agencies (P)
12 she/her to Everyone:

13 + Barmak -- purpose is to be sure student is
14 eligible for state licensure

15 From Emmanuel Guillory (A) PNPs to Everyone:

16 +1 Barmak

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

19 +1 Barmak

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

22 Strongly support this addition in (iii).

1 From Ernest Ezeugo (P) Students and Student Loan
2 Borrowers to Everyone:

3 +1 Carolyn. I strongly support (iii) in this
4 subpart. Additionally, support and resonate with the proposed
5 text + Laura's addition of pre-accreditation to the text.

6 From Kelli Perry - (P) Private Non-Profits to
7 Everyone:

8 Emmanual will be coming to the able to address
9 32(iii)

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

12 Jamie is back in for Accrediting Agencies

13 From Jamiene Studley--Accrediting Agencies (P)
14 she/her to Everyone:

15 Jessica -- there will always be a role for you !

16 From Jessica Ranucci (A)- Legal Aids to Everyone:

17 I hope so!

18 From Jessica Ranucci (A)- Legal Aids to Everyone:

19 +1 to Adam and Carolyn- this language preserves the
20 institutions' ability to get authorization on the front end,
21 while maintaining the states' ability to address consumer
22 protection issues

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

1 +1 on ED's position

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

4 +1 to ED

5 From Johnson Tyler (p) legal aid to Everyone:

6 +1 on Greg

7 From Yael Shavit to Everyone:

8 +1 to ED's position

9 From Ernest Ezeugo (P) Students and Student Loan
10 Borrowers to Everyone:

11 +1 on ED's position here.

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

14 Agree with Jamie.

15 From Jessica Ranucci (A)- Legal Aids to Everyone:

16 I agree with Kelli- but I think it's not an
17 either/or. I would love if our students in NY have both the
18 protection of NY law and independent protections from a
19 reciprocity agreement.

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

1 To Kelli - this provision just says that NC-SARA
2 isn't the ceiling for consumer protection.

3 From Jessica Ranucci (A)- Legal Aids to Everyone:

4 Johnson is coming back to the table for legal aid

5 From Emmanuel Guillory (A) PNPs to Everyone:

6 To Carolyn - a big part of the SARA agreement is
7 being compliant with consumer protection laws in the state
8 that distance education is being offered. While obtaining
9 state authorization remains intact with your proposal, the
10 concern we are hearing is that the compliance with consumer
11 protection laws is going away. This means that any institution
12 that seeks to offer distance education courses to students
13 would need to meet the varying consumer protection laws across
14 the states. For our smaller institutions that are under-
15 resourced and have capacity issues, this would disincentive
16 them from participating. I hope this better explains the
17 overwhelming concern that we have heard.

18 From Adam Welle, State AGs (P) to Everyone:

19 +1 to Amanda

20 From Ernest Ezeugo (P) Students and Student Loan
21 Borrowers to Everyone:

22 +1 Amanda.

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

25 +1 to Amanda

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

3 +1 on Amanda, Johnson, and Ernest's comments
4 regarding transcripts

5 From David Socolow to Everyone:

6 +1 to Amanda, Johnson, and Ernest on transcript
7 ransom

8 From Jaylon Herbin- (A) Consumer Advocate & Civil
9 Rights to Everyone:

10 +1 to Amanda, Johnson, and Ernest's comments

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

13 +1 to Adam's suggestion.

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

16 my comment is on 34, so I will let Johnson go first

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

19 given the additional hands being raised i will wait
20 on 34

21 From Kelli Perry - (P) Private Non-Profits to
22 Everyone:

1 Thank you Steve - that context was important to
2 hear.

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

5 +1 to Adam on ED's authority to act to preserve its
6 investment of Title IV in the students.

7 From Anne Kress (P) Comm College to Everyone:

8 Do we know how many of these obligations are due to
9 R2T4 requirements—and if so, is the Dept looking at this
10 requirement?

11 From David Socolow to Everyone:

12 +1 to Adam's point about the Department's interest
13 in its investment in students. Also, if students cannot
14 provide prospective employers documentation of the education
15 that the Department financed, the students' opportunities to
16 secure employment will be harmed -- thus reducing their
17 ability to repay their student loans which the Department is
18 interested in collecting.

19 From Adam Welle, State AGs (P) to Everyone:

20 +1 to Debbie's comment

21 From Emmanuel Guillory (A) PNPs to Everyone:

22 We have been told that many institutions won't
23 withhold if an employer is seeking the transcript as part of a
24 job opportunity. If the employer makes the request then the

1 institution will send it along regardless of the student's
2 account status.

3 From Jessica Ranucci (A)- Legal Aids to Everyone:

4 The Department has previously taken a broad view of
5 its authority to regulate school conduct in PPA- from the 2016
6 Final Rule (81 Fed Reg 75,926):

7 From Jessica Ranucci (A)- Legal Aids to Everyone:

8 "[T]he HEA gives the Department the authority to
9 impose conditions on schools that wish to participate in a
10 Federal benefit program. In this regulation, the Department is
11 exercising its broad authority, as provided under the HEA, to
12 impose conditions on schools that wish to participate in the
13 Federal Direct Loan Program. Section 452(b) of the HEA states,
14 "No institution of higher education shall have a right to
15 participate in the [Direct Loan] programs authorized under
16 this part [part D of title IV of the HEA]." 20 U.S.C.
17 1087b(b). If a school chooses to participate in the Direct
18 Loan Program, it must enter into a Direct Loan Program
19 participation agreement (PPA). 20 U.S.C. 1087d. Section
20 454(a)(6) of the HEA authorizes the Department to include in
21 that PPA "provisions that the Secretary determines are
22 necessary to protect the interests of the United States and to
23 promote the purposes of" the Direct Loan Program. 20 U.S.C.
24 1087d(a)(6); 81 FR 39385."

25 From Jessica Ranucci (A)- Legal Aids to Everyone:

26 I'm coming back to the table for legal aids

1 From Ernest Ezeugo (P) Students and Student Loan
2 Borrowers to Everyone:

3 I appreciate Emmanuel's comment and yet know that
4 was not my experience at first, and have heard from students
5 that it wasn't theirs as well. If there is a chance the
6 Department would consider protection on this piece, that's
7 something to be considered.

8 From Ernest Ezeugo (P) Students and Student Loan
9 Borrowers to Everyone:

10 worth considering*

11 From Ernest Ezeugo (P) Students and Student Loan
12 Borrowers to Everyone:

13 Jessica raises a could point. Could we get a
14 response from OGC?

15 From Ernest Ezeugo (P) Students and Student Loan
16 Borrowers to Everyone:

17 a good point*

18 From Jamiene Studley--Accrediting Agencies (P)
19 she/her to Everyone:

20 Laura and I believe that will address the pre-
21 accreditation issue.

22 From Ernest Ezeugo (P) Students and Student Loan
23 Borrowers to Everyone:

24 +1 Yael

1 From Jessica Ranucci (A)- Legal Aids to Everyone:

2 +1 to Yael

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

5 +1 to Yael

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

8 I have a resonse

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

11 +1 Carolyn - disclosure is needed.

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

14 good question Dave

15 From Emmanuel Guillory (A) PNPs to Everyone:

16 But doesn't the program have to meet state licensing
17 requirements by your changed regulatory proposal?

18 From Emmanuel Guillory (A) PNPs to Everyone:

19 Other proposals to allow an institution to offer a
20 program in states that does not meet state licensing
21 requirements was not approved

1 From Jamienne Studley--Accrediting Agencies (P)
2 she/her to Everyone:

3 Perhaps ED could look at this issue that Greg wants
4 to look at, plus a response to Barmak's proposed addition to
5 (32) and return to this tomorrow morning?

6 From Kelli Perry - (P) Private Non-Profits to
7 Everyone:

8 Emmanual also would like to ask a question regarding
9 this and is coming to the table

10 From Jessica Ranucci (A)- Legal Aids to Everyone:

11 And I would ask ED to please take another look at
12 the new language in (26) that would partially fund some
13 students' programs with Title IV

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

16 +1 Jessica

17 From Yael Shavit to Everyone:

18 +1 Jessica

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

21 David Socolow will be closing out the day for state
22 agencies.

23 From Yael Shavit to Everyone:

1 Adam is coming back for State AGs

2 From Ernest Ezeugo (P) Students and Student Loan
3 Borrowers to Everyone:

4 Thank you for your participation and your thoughtful
5 insights the past few months, Johnson.

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

7 Been a pleasure Johnson.

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

10 Thank you for all of your contributions!

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

13 Johnson it was a pleasure meeting and working with
14 you. have a great weekend and stay in touch. I am going to
15 have to drop off during public comment. Mike will fill me in
16 on what i missed later tonight.

17 From Emmanuel Guillory (A) PNPs to Everyone:

18 Thank you Johnson!

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

20 Thank you Johnson! We appreciate your advocacy, your
21 perspective, and work on behalf of students!