DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 2, DAY 2, AFTERNOON

February 15, 2022

On the 15th day of February, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. ROBERTS: Good afternoon and welcome back, everyone, I hope you enjoyed your lunch break. We have a jam-packed afternoon session as we continue discussion on the gainful employment issue paper. I'm going to actually ask Renee from the Department to re-queue the document just so we can we can tee up where we are in the discussion and just as we begin to dive into discussion, I just want to remind the committee as much as possible just because this is a packed agenda, if we can keep your three minutes of speaking time limited to new points and new proposals for the committee and Department to consider. So with that, Greg, did you want to briefly give a synopsis of where we are or are we okay to bring down the document and start taking discussion points from the committee?

MR. MARTIN: I want to point out, we are still considering the comments that were raised by Brad before lunch. The Department's not quite ready to respond to that yet, but we are aware of our need to reply there. Before we get into this, yesterday we had a question about how many institutions use the college financing plan and they gave me a number of 3,287 for 2016. We actually have no way of knowing through like some kind of electronic means, how many users but we queried institutions back in 2016 and that was the number of schools that were using the college financing plan at that time, it was called the shopping sheet, I think. But now the college financing plan. So I just wanted to get that out there, so I didn't forget to do it. So yes, we're still in definitions. I think we had discussed federal agency earnings data and I had gone over that. And so, we want to move down to some other areas. We've made some changes. So if you look at the definition of small program and small program rates so that we see those and want to point out here that we have added definitions of a small program and a small program rate. And as you saw in the cohort period definition, we have set a minimum end size of 30 graduates, either in a two or four-year period before the Department will seek to calculate earnings information. However, in 2014, this left many programs with no data at all. So we are proposing to calculate an additional small program that turns rate, which will calculate the discretionary and annual rates across all small programs within the same credential level of institution. While this small program rate will not be used to determine eligibility for federal aid, we believe will provide more useful information to us and can be considered in the broader context of an institution's performance. So you see that there is the definition there of small program, a GE program for which the number of students completing the program in the two and four-year cohort periods is fewer than 30, and small program rates will be the discretionary earnings rate and annual earnings rate calculated on an aggregate basis for all small programs at an institution within the same credential level, in accordance with 668.404(g). So that carries us through to the end of definitions and so I will open the floor for a discussion on that.

MR. ROBERTS: Alright, Brad, I see your hand. I just want to say that Will is in on behalf of two-year colleges this afternoon. But with that, Brad, please take it away.

MR. ADAMS: Well, I'd like to start by saying thank you to Greg and the Department for continuing to think about my proposal to move the debt to earning disclosure to 668.43, as well as any other metric that might be helpful related to this gainful employment rule to protect students. So I appreciate that. I did have several questions in 668.402. I'll start with my first one and I can get back in line. It's about the CIP code. I think it's the number one document right here. Actually, it's just the definition of a CIP code. You know, my opinion, the Department should be using the full six-digit CIP code to distinguish individual gainful employment programs, not the first four digits. The first four digits merely signal program groupings, which include many different individual programs. For example, the four-digit program grouping 51-38, includes 23 different types of nursing programs, 51-08 Allied Health and Medical Service Medical Assistance Services Group includes Medical Assistant in the same group as Physical Therapy, Occupational Therapy, Respiratory Therapy, Radiology Therapy, Pharmacy, Dental, Veterinarian, Assistant Programs and Anesthesia Assistant programs, all of which have vastly different salary outcomes. Grouping them together, this doesn't make any sense to me whatsoever and really gets away from the value of what we're trying to do here for the students is to determine whether or not their program is gainfully employed. And also, I wanted to point out that it's the six-digit CIP code, not the four-digit program grouping that is tied to the specific recognized occupations and that should be used with any gainful employment measure. The statutory language in Title 20 U.S.C. 1002 requires proprietary institutions to offer programs that prepare students for gainful employment in a recognized occupation. For Title 34 CFR section 600.2, a recognized occupation is identified by a standard occupational classification, also known as a SOC code established by the Office of Management and Budget, or an Occupational Information Network code established by the Department of Labor. The Federal Government CIP SOC Crosswalk matches the six-digit CIP code with the six-digit SOC code based on their descriptions. The underlying practice is that academic programs represented by the six-digit CIP code need to provide the skills and knowledge required to perform in an associated recognized occupation represented by that six-digit SOC code. Finally, we observe that the Department already has the full digit CIP code in its data systems, and in fact, already uses the full six-digit code to distinguish programs in those systems, like the ECAR and NSLDS. So I'd like to ask the Department why we're not using the six-digit CIP code when it comes to looking at whether or not a program leads to gainful employment.

MR. MARTIN: Well, a couple of things there. First of all, going back to the definition, you'll see that we've retained the language that that indicates that specific programs offered by institutions are classified using six-digit CIP codes. That has not changed. What we did change was for the purposes of this subpart. The Secretary uses the first four digits of the CIP code to identify the gainful employment programs that have comparable content and objectives. So we're not changing the definition of a CIP code, just what portion we're going to use for the purposes of this subpart. And as I said before, we did use the six-digit CIP code previously. We believe that the use of the first four digits are better for the purposes of calculating D/E rates. This is going to allow us a little more flexibility and we'll capture more programs in the calculations this way, and we think it still maintains the degree of privacy of data that we need. As for additional context, I point out here that for the 2019 technical review that we did, the Department was able to calculate that among programs with at least one award conferred in NSLDS, only about 15 percent of four-digit CIP code programs contain more than one six-digit program, and nearly 70 percent of all awards were in a four-digit CIP code program, with only one reported six-digit CIP code. So we believe that this helps the rule to be broader while still maintaining the privacy protections. So that is our position. I understand your concerns with it and we note that.

MR. ROBERTS: Thank you, Greg. So Carolyn, I saw your hand go up and down, did you? Is it okay if I just jump to her? Okay, great. Carolyn, go ahead.

MS. FAST: Thank you. I also wanted to have a quick comment about the CIP codes. We also think that this could be a potentially good change because it would make a significant difference in the number of programs that are captured under the six-digit system. A lot of programs were too small to have the rule apply, so there was just no application of the rule for them and this would address that issue. And I think would be a generally positive change. It does, of course, create some concerns that it's possible that a program at the six-digit level could be a program that might fail could potentially be sort of rolled up into a more successful program, which, you know, leading to potentially an issue or the other way around. I just wondered, has the Department considered any sort of process that would look at it on the six-digit level? And then if it was under 30 students and at the six-digit level, roll it up to the four-digit level? Or was that considered not a doable kind of system?

MR. MARTIN: I don't know that we considered that. I think we just wanted to capture it as you pointed out, to capture more programs that would otherwise not have rates, we determined to use the four-digit CIP code, that's what we came in at. We hadn't considered a bifurcated way of doing it, the way you suggested where we would look at six-digit but then drop to four-digit for less than 30. I can take it back. Think about it. It does introduce another layer of complication. I don't know. Sure, it is doable from a tactical standpoint, but I can say that I don't recall conversations about it - Steve, do you remember where we had that particular conversation?

MR. FINLEY: Not specifically, Greg, but you know, my suggestion for the group is to make suggestions to us about what we should be considering between this meeting and the next.

MR. ROBERTS: Okay. Appreciate it. Johnson, go ahead.

MR. TYLER: Hi. So I just want to say I think it's a good idea to reduce it to the four digits. Having been on the negotiating rulemaking committee for gainful employment in 2017-2018, I was struck by how much data was not being captured because the programs just didn't have enough completers because of that 30 person threshold. So I like that. I also like the idea of using the two-year cohort and the four-year cohort when you get that end number below 30, I think that's a good idea. It makes the data more robust and there was one last thing. So that correlates all the small programs and small program rates. I think these are all very good ideas that are informed by the Department's experience in 2014 and analyzing this data and seeing where there were shortcomings in it.

MR. ROBERTS: Thank you. Thank you, Johnson. Emmanual, please.

MR. GUILLORY: So the 2014 rule used a six-digit CIP code, and I think it was for good reason because you want to look at the actual programs that that students are actually enrolled in. And if those programs are meeting the gainful employment requirements as articulated earlier, the HEA makes it very clear that you're looking at programs and if you go up to the four-digit CIP code, I think that I've heard some of my colleagues say that's good because you capture those programs that are smaller. However, there's already a proposal to capture the small programs here by the Department. So I am finding it hard to understand the reason and rationale for going to four when you already have a proposal to capture small programs, when really it should be at the six-digit CIP code level.

MR. MARTIN: The point is taken. I do want to reiterate that the small programs measure does not apply for purposes of the accountability and possible loss of program eligibility.and that the four vs. six is a balancing game. You're looking at, obviously, the six-digit CIP code which takes you to a more granular program level, but four-digit does allow us to produce rates for more programs. And that has been a consideration in the past and something we wanted to address, so we opted to go in this direction. Of course, we'll take any comments back, butwe skewed this towards looking at more programs and being able to offer rates to more students.

MR. GUILLORY: If I can just quickly- can I quickly respond to that?

MR. ROBERTS: Sure.

MR. GUILLORY: Okay, so in section 668.409, so even though the D/E rates calculated for small programs won't actually impact whether or not the institution will be eligible for Title IV based on D/E rates. However, the small program rates are used to consider an institution's program participation agreement and whether or not it's approved or recertified, or if it goes on provisional status. So from this proposal, the small rates do have an impact on an institution's ability to participate in Title IV.

MR. MARTIN: As stipulated. It will be considered as part of that. But what I was trying to say is it doesn't have the same effect that these do in capturing more of the programs, but your point is taken.

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

MR. ADAMS: Emmanual asked pretty much my exact question, but I did have an additional one and then I've got another comment or two within 402. You know, I agree with Emmanual that I thought that's the whole reason why we're adding the small program metric was to capture those programs. But didn't the Department just show us in their presentation that the percentage of completers in programs with less than 30 was 4 percent for two-year cohorts for-profits and 2 percent of the four-year cohorts at for-profits? So I think we're already covering the majority unless this is more directed for the others. But general thoughts?

MR. ROBERTS: [Background talking] I think someone was unmuted, but don't worry about it. It looks like the Department might not have a response.

MR. MARTIN: My response would be, I think that at this point, I have laid out the Department's position as much as I can on this topic, I don't I have anything further to say on it. Certainly, that does not mean I'm cutting off a conversation about it. Certainly willing to take back whatever anybody has to say.

MR. ROBERTS: Barmak, please.

MR. NASSIRIAN: Yeah. Very briefly, I support the use of four-digit CIP codes here. You know, let's not act as if these are vastly dissimilar professions being randomly bunched together, one. Secondly, they're offered by the same institution. And three, one possible technical remedy might be to use the mean earnings and the mean debt levels as opposed to the median. If the if the six-digit CIP codes are sort of clustered in particular patterns, using the median may mislead, whereas the mean may capture a better representation of what the outcomes are. But in general, I don't see what the issue is with six digits. Obviously, if we could get to the individual and make individual judgments, that'd be perfect. It's just that it gets too granular, too complicated, violative of privacy and probably not a good idea.

MR. ROBERTS: Thank you, Barmak. Johnson.

MR. TYLER: Yeah, if I understood Brad's question correctly, I think Chris had answered that, which was that the table was based on where you're looking at a 96 percent was based on the four-digit code, not on the six-digit code. So that's one thing, but I also just want to go back to completers. Completers is a big deal. You're dealing with an already truncated group of people who are going to be measured and you should only be measured, you know, arguably from getting the benefit of the education. But so, the attrition rate within the school system, the schools can be such that it's hard to [inaudible] this number. And I think that's why the Department's correctly looking at a four-digit so.

MR. ROBERTS: Okay. Thank you, Johnson. Oh, Brad, I see your hand, but I just want to make I just want to ask a quick question of Greg while we finish up the 402 conversation. Greg, did you want to withhold temperature checks, those informal checks for the entire document? Or do you want to go section by section?

MR. MARTIN: We can go section by section, I don't think that takes that much time.

MR. ROBERTS: Yeah.

MR. MARTIN: -I'm amenable to go section by section.

MR. ROBERTS: Understood. With that, Brad, go ahead.

MR. ADAMS: Yeah. [Inaudible] put in the chat is, you know, I'd like to Department just to let us know how the 2014 results would have been different using the four-digit CIP versus the six. I think that'd be helpful for this group. And then I can move on to the cohort period if that's okay within section 402?

MR. MARTIN: Go ahead.

MR. ADAMS: Item one. So on the cohort period, the current proposal would measure a student's ability to repay their debt using earnings information as little as 18 months following graduation. And so, I'm referencing the 18-19 graduating class, if you graduate June 30 of 2019, we'll look at your income for 2021 calendar year, so that's about 18 months later. So for many programs across many institutions it is often the case that graduates will not be able to fully manage their loan debt in the years immediately following their graduation. The Department's Income Driven Repayment plans were designed specifically with this issue in mind, permitting students to set their monthly student loan payment at an amount that is intended to be affordable based on the student's income. Placing the initial measurement at four years following graduation would afford graduates additional time to establish normal earnings levels and thus better capture whether typical earnings for a program are reasonably relative to the typical debt burden. This would involve revising the Department's proposal so that the two and four-year cohort periods would begin with the fifth year prior to the award year, for which the D/E rate is calculated.

MR. MARTIN: Thank you.

MR. ADAMS: Thoughts on the 18 months as being reasonable for income compared to the cost of a program?

MR. MARTIN: I have none now, but I welcome any comments from the floor.

MR. ROBERTS: Johnson, I see your- just very briefly, I think for a lot of these questions, the Department owes the committee a response so if they don't have something prepared immediately, just know either noted in chat or rest assured they will return to those issues either in between sessions or in a separate email. But go ahead, Johnson.

MR. TYLER: My understanding was that the cohort would look at the third year, but maybe, maybe I'm miscalculating, the third year of earnings after they start calculating. I thought someone said that.

MR. ROBERTS: Emmanual, was that you? Did you want to respond to Johnson or is this a different point? I'm not seeing anyone immediately, Johnson, but okay so with that Emmanual go ahead.

MR. GUILLORY: So I would just say, yes, we were definitely told it'd be a three-year earnings because I talked about that last session, that it should be five, actually not three. But what's proposed here seems a little bit different because, as Brad had indicated for the two-year cohort period, if it is a cohort 2017, 2018, and 2019, then the earnings data will be for calendar year 2020 and 2021. So that's not quite three years there. But I, you know, in looking at shutting down programs that are not going to benefit students, we definitely should we definitely should attack the bad actors, you know, we definitely should get out the bad actors, for sure. I just want to make sure that we're doing that in a way that is fair across the board. And what I mean by that is we don't want to penalize the good actors because a student who graduates in 2018, two years later, they're not going to be making a whole lot of money. That's just not the reality. When I graduated from my master's degree program, I went to Congress and my starting salary was $29,000 a year and I had a master's degree, and I was a staff assistant and I took that job because it was an opportunity and I wanted to get my foot in the door and I wanted to learn. But that was the choice I made. And my goodness, if my program was held accountable for the fact that I went to a really good job, but they paid me $29,000 and that was a thousand-dollar increase, by the way, because it was supposed to be $28,000 and you know my salary looked much different when I had worked in that same job for five years. It didn't look much different in three, to be honest, because I think I was just becoming a legislative assistant. So I just really have concerns about the way the Department has given these examples here. And maybe this was an error. Maybe, you know, maybe there's like a drafting error here, but in general, five years of earnings seems to be a little bit fairer than three.

MR. ROBERTS: Alright, thank you, Emmanual. Brad, go ahead.

MR. ADAMS: I would also support the five years, but I'm curious, can the Department respond? Am I reading this correctly that if you graduate in the year 2018-19, your salary would be in year 21, which means that would be 18 to 30 months post-graduation, depending on when you graduated in that fiscal year, we'd be looking at your salaries. Can you confirm that's the way we're reading that, which is way less than three years on average, weighted average, I guess of two. But am I reading that correctly, Greg?

MR. MARTIN: Yeah, the way it's worded. You mean where we're saying that the just to make sure we have this correct for the two year, the third and fourth year, third and fourth, the third and fourth award years prior to the award for the two two-year cohort period be the third and fourth years prior to the award year, for which D/E rates are calculated pursuant to 668.404 and the example is if D/E rates are calculated for the award year 2021-22, the two-year cohort period for those award years is 17-18 and 18-19. So those are the two award years you'd be looking at completers for and the earnings data would be either for calendar year 2020 or 2021. That is correct.

MR. ADAMS: And if I recall in the previous rule, we didn't have separate calendar years for salary, if I recall. The two-year cohort period was lumped together and then you had one salary year you were looking at. Now you're breaking out a salary, depending on when you graduated to either 2020 or 2021. Am I reading that correctly that now you're tying an individual salary year to an individual graduation year, even though there's two years in the cohort? Is that accurate?

MR. MARTIN: Steve, do you remember the previous rules? I'll try to find that in the previous rule to be sure.

MR. ADAMS: That's the way I remember, it was 2016 earnings data off of from what I recall, 12 to 14 graduating, but, Steve?

MR. FINLEY: Yeah, we'll come back with some examples that compare the two, the prior proposal to the current or the prior regulations to the current proposal.

MR. ADAMS: And I think that would be helpful in general. So again, you know, we said we were starting at the 2014 rule and then we've changed a bunch of stuff that is not specifically called out in this document. And that's my main concern. Not only giving us three hours to review this but there's a lot of little tweaks that were made into this document that it needs to be discussed further. And I've got another comment for 402, but I'll get back in line for that.

MR. ROBERTS: Much appreciated. Will, I see you in the queue next.

MR. DURDEN: Thanks. I just wanted to get a clarification on that cohort definition to make sure I'm following. It seems to appear to require colleges to look far back into data to provide earlier cohorts. The government's not providing those. Is that the case? And have we looked at administrative burden for that? I just want to make sure I understand that.

MR. MARTIN: Yes, we still have it in these rules. We still haven't put out yet the number of years retroactively that schools would be required to report, but in the previous rule we did, let's see here. The previous rule, this was the previous rule 14 rule, that it was by July 31st, 2015. Information for the 08. This was in 15 information for the 08-09 award year through the 13-14 year what was required to be reported. And then following that initial reporting, institutions were required to report D/E data annually by October 1 following the end of each year. So the previous rule did require retroactive reporting and institutions were given time to do that. As of this point, we have not laid out exactly how that how that would work here.

MR. DURDEN: Thank you.

MR. ROBERTS: Thank you. Johnson, please. I think you might be muted.

MR. TYLER: Yeah, I think five years would be way too long for the public. There's a lot of damage that could happen and this rule wouldn't even go into effect until 2023. So we're talking about you know no consequences until 2028. I think that would be hurt a lot of my clients. I have many clients who have a lot of debt for, particularly the medical arts field, where they essentially could get a free education at a local resource that actually doesn't charge you anything because they're basically just home attendants. So the degrees really aren't worth that much. So I would be very much against a five-year period here.

MR. ROBERTS: Thank you, Johnson. Barmak.

MR. NASSIRIAN: I just want to encourage colleagues not to go down the rabbit hole of phantasmagorical hypotheticals. You know, all of us can conjure up very unusual circumstances to demonstrate that something could possibly be unfair. These are gainful employment programs, folks. These are not majors in philosophy or political science. Very rarely do these people go on to work on Capitol Hill for low wages, and the idea that somebody who enrolled in a gainful employment program should be given five whole years that we should extend the benefit of the doubt to institutions for five whole years before we can render any kind of a judgment about whether the thing is worth it just strikes me as outlandish. That is not what we're talking about. If they can't get jobs in 18 months, that family is in horrible distress and no notion of fairness should allow that institution to keep on going on the excuse that this could be a down payment on a millionaire's career down the road.

MR. ROBERTS: Thank you, Barmak. Emmanual, I see you next.

MR. GUILLORY: Yeah, I just wanted to share that. I hear my colleagues talking about the fear of doing five over three, which I can understand their rationale behind that. So perhaps you know a compromise could be we go back to the 12 percent of annual and 30 percent of discretionary instead of 8 and 20, if we're going to do three over five. However, I do feel like we have to remember that there are a number of things happening in the labor market. I mentioned this in our first session and it's unfortunate and it's unfair. And it's just the reality that everyone is doesn't have the same opportunity to make the same amount of money, even if they both have the same degree from the same institution. They don't have the same opportunity to get a job. And I hate that, but it's just what we're dealing with here. So if we are going to look at these gainfully employed programs that are at our institutions because, you know, they're at all of our institutions, then we do want to make sure those programs are of quality. But then we also, in my opinion, have to be mindful of the fact that A plus B doesn't equal C necessarily in this equation. Me being a black man with a master's degree, according to the studies in the data that we have, I don't have the same opportunity. I'm not starting from the same starting point when I graduate, and I try to go get a job. I'm just not. I'm starting a couple of steps behind, many steps behind. So then I have to try to really prove myself, get in the door, you know, do whatever I got to do in order to get a job, okay? And then when I do that, then my salary could potentially be different. According to data, it is different than my white peers. And so, we just have to keep that in mind, in my opinion, as we're talking through this. Once again, I do want to get at the programs that are bad, 100 percent. We should do that 100 percent. But we should consider all of the many different factors that come into determining what a bad program is, especially if it's not an institution, if it's just really not a bad program, I guess, so. Thank you.

MR. ROBERTS: Thank you, Emmanual. Brad, I see your hand, but I also see Greg's hand raised. Is it okay if I just jump to him for a quick, quick response? So Greg, go ahead.

MR. MARTIN: If I raised my hand, I didn't mean to. I'm very sorry, that was that was an error on my part.

MR. ROBERTS: Not a problem. Brad, go right ahead.

MR. ADAMS: I 100 percent agree with Emmanual's comment. He hit on three of my points that I'll have coming up for later in this negotiation and to Barmak's point, he is very eloquent in his words and I completely respect his opinion. But that's why we're proposing to require all programs to look at this gainful employment metric. So to his point, exactly, we want to get rid of the bad programs, and we're only looking at a small subset within this rule. But in addition to that, I wanted to go back to the sanctions on this pre-rule data. You know, the Department should not be imposing sanctions for metrics using data from years that precede the effective date of this rule. It is fundamentally unfair to sanction institutions based on the program and pricing decisions that were made prior to the effective date and now cannot be reversed. We also believe it would be extraordinarily inappropriate to hold institutions accountable for earnings data generated during the calendar years 2020 and 2021 when the COVID 19 pandemic caused significant disruptions to enrollment for millions of Americans, including graduates, unemployment rates reached 13 to 14 percent and higher in certain markets, and the debt to earning rates calculated using data from years that precede the effective date of this rule would be should only be for informational purposes only. Also, the Department should not impose these metrics because of record retention issues. In almost all cases now, institutions are not required to maintain student finance and financial aid records beyond five years following a student's graduation. Moreover, federal and state agencies are consistently encouraging institutions to destroy records after the record retention periods have expired in order to prevent data breaches. In some cases, this proposed rule would require institutions to produce data for the sixth, seventh, eighth and ninth award year preceding the award year, for which the D/E rates are being calculated. So thoughts on the sanctions prior to this rule going into effect.

MR. MARTIN: Well, again, I point out that the previous rule, the 14 rule, did require reporting of previous years. There was a transition rate associated with that. But it did require reporting for previous years. I agree that where the rule to be only effective going forward or not include any of those years that it would give schools, I suppose, an opportunity to correct maybe pricing structures or whatever. But we are looking at, I think, the success of the programs. I mean, this rate is looking at the success of these programs as measured by the debt students have taken on against their earnings and in looking at that, it's legitimate to go back and look at what that's been historically. As I said, we don't have in place right now the protocol for reporting. And I mean that will be retroactively. But the Department's position now is that it would be for previous years and if we are not doing that, it would mean that the effectiveness of these rules would be delayed until probably, you know, the late 2020s or, you know, possibly even later if we did not go back and collect rates for the previous years. But I will take back those considerations and I open the floor for any comments on that.

MR. ADAMS: Thank you. And how about the record retention on the five years?

MR. MARTIN: Well, as far as the Department's record retention requirements?

MR. ADAMS: Yes. [Interposing] passed those requirements. Should we change those requirements?

MR. MARTIN: We have had the same record retention requirements in place in I think 668.24 for some time, and they were they were in place when the previous GE protocol went into effect and institutions were able to report the data to us. I don't want to speak to those rules. I mean, yes, generally there's a three-year record retention rule, but that there are there are nuances involved with that, especially as concerns students who have borrowed. So I'll take a look at that. But our position has been that the record retention does not preclude the reporting of this data. It certainly didn't do that in 2015.

MR. ROBERTS: Thank you. Ernest, I see your hand next in the queue, go ahead.

MR. EZEUGO: Yeah, I'll try and be brief about this, but felt compelled to kind of add to the dialog here respective to comments that Barmak made and then comments that my colleague Emmanual made. I think Emmanual's consideration of labor market discrimination and other factors that kind of lead to disparate outcomes, particularly for people of color, for you know black and Latina people in particular are important. And also, in a way point to a need, I think, to be more judicious rather than less, on the Department's behalf. And I think all of us, as well, need to consider the ways in which these particular programs are this kind of [inaudible] impact on these people even more because I think there is the consideration of not wanting to include schools and programs that may be doing a good job as it was kind of put. I think to some extent, these conversations outside of [inaudible], particularly this one, for example, about like this timing thing on covert rates here do kind of help us get at a more particular point, which is that you know when these institutions, one of these programs in particular, recruit and go after people and communities of color on kind of the premise of bettering their presumably immediate kind of circumstances for employment. We should expect, as they would expect, that it does happen quickly and is not a consideration of five years. I would reup Barmak's comment, recognizing that the public can't see the chat and that, people who attend these programs are, I'm sure, not often, considering kind of the same circumstances, a person who may be willing to take a lower paying job, higher status may pay off in as many years. Thank you. These programs seem to have a particular purpose, and I would consider that as well. And I would just reiterate that while the specific vacuum debt to earnings, we'll be talking about different things you related to three-year, five year, et cetera, et cetera. But in reality and how that plays out, people who enroll in these programs can't wait three years, five years to see significant kind of return on their investment in these programs. That's all.

MR. ROBERTS: Thank you, Ernest. Carolyn, I see your hand next. Go ahead.

MS. FAST: Thank you. I just wanted to add some thoughts to what was discussed in terms of whether retroactive records would be collected from schools to look at, and Brad raised a concern that schools shouldn't be, I think, he said, penalized for making decisions about pricing before the rule went into effect. Well, I really think that is not the way to be looking at this issue. The issue is whether students and taxpayers wasted their money and their time by going to programs that did not let them find jobs to pay their debts. And that's absolutely not something that should be permitted to continue. If schools were not providing enough of a quality program to prepare students to find jobs as soon as possible. So if the Department is considering looking back collecting records from the period between when the 2014 rule was repealed and a new rule, I absolutely think that makes sense. Otherwise, that will result in, if we wait, more students being harmed and taxpayer money being wasted.

MR. ROBERTS: Okay. Thank you, Carolyn. Will, I see your hand next.

MR. DURDEN: With respect to that, I

also think that looking at this and reconstructing the previous year, there should be some explicit flexibility or a safe harbor, and that really comes back to administrative burden for me.

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

MR. ADAMS: To Carolyn and Will's points there, I will talk to this later when we get to it, but that's why we need a transmission rate metric back in this rule that was taken out for some reason. But I'll get back to that in that section. And I wanted to get on the wages. I was going to talk to this in section 404. But since Emmanual and Ernest have brought it up, I think it's a good time now.

MR. ROBERTS: If it's possible, Brad, are you okay to save your comments on 404 [interposing] 402?

MR. ADAMS: It's actually still tied to [interposing] salary piece in 402. [Interposing] several points in here, but the Department really offers no mechanism to account for the impact of wage discrimination on reported earnings as well established that women, minorities and other groups bearing other socioeconomic characteristics are subject to wage discrimination in the United States. For example, our bachelor's level nursing program here, which produces the third most nursing graduates in the state of Tennessee, is 90 percent female and the state of Tennessee FMLA time is unpaid at many companies and is not covered by the state without any mechanism to accommodate for wage discrimination on the earnings of graduates or FMLA. For these programs at schools, there is a material possibility that they'll produce less favorable D/E rates and will be systematically eliminated. Proprietary schools and other nonprofits with GE programs will be encouraged to develop programs and locate them in markets that would attract students who are unlikely to be subject to wage discrimination and thus they would be eliminated from consideration.

MR. ROBERTS: Okay, thank you. Greg, I think we are ready unless you want to re-queue the document back up again to temperature check 402. Brad, I do you see your hand.

MR. ADAMS: I've got one more 402 comment.

MR. ROBERTS: Final comment on this and then we'll move on. Excellent.

MR. ADAMS: It's a lot in 402, but I do think this is my final comment. It goes to the graduate programs, and I'll get to that medical and residency program. But in my opinion, the D/E rates calculated for graduate degree programs, including those offered by proprietary institutions, should be strictly for informational purposes only. The D/E rates are not an appropriate measure of gainful employment for graduate degree programs. In most cases, graduate students already have completed undergraduate degrees and have significant employment experience prior to beginning their graduate program. We also believe that graduate students are sophisticated and able to evaluate cost and benefits of graduate degree programs. Finally, we are confident that when Congress created the statutory definition of proprietary institutions of higher education decades ago, it did not contemplate the proprietary institutions would offer graduate degrees in medicine, education management and other fields. We are unaware of evidence to suggest that Congress intended to apply a gainful employment framework to graduate programs. An example of that would be our physician assistant program here at our institution gets two thousand applications for 85 slots, and we've worked hard for those 85 slots. We're one of the largest PA programs, but to tell me that two thousand students interested in our program would be subject to gainful employment is not the intention of this rule. At a bare minimum, the medical and dental exclusion that was referenced, I believe it was in either A or B, it was, I think it was B or maybe point two. But the Department should include a similar extended cohort period for any graduate healthcare or other program with a similar internship or residency component that extends the time needed for graduates to enter the workforce and achieving representative earnings. Right now, it's limited to just medical, which I perceive as D.O. and dental programs. I can tell you our Doctor of Pharmacy program has residency programs even at our own institution. Our physician assistants who go into residency programs are CRNAs at a program we have here at South can also go into residency program. Same with our Doctor of Physical Therapy. So all programs at the at the medical level that have residencies should be offered the extended six-year look. Any thoughts from the Department on why we limited that to just D.O. and DDS?

MR. MARTIN: Those are the programs that traditionally have these internships and residencies, but we will take back your suggestions for other types of programs.

MR. ROBERTS: Thank you. Johnson. Last comment.

MR. TYLER: Thanks. I just got to push back on this idea of graduate school and not being covered. You can get yourself into so much trouble and you have to rely a little bit on the marketplace to make that investment worthwhile. And that's what gainful employment is measuring. The idea that the graduate students shouldn't be covered by this doesn't make any sense to me. I have many clients who have that sort of problem. They're fairly educated, and they have degrees that have no place in the marketplace. They're not recognized in the marketplace because they come from schools that were sued by the FTC and people like Yael and Adam. I mean, it's preposterous.

MR. ROBERTS: Thank you. [Interposing] response? Yeah.

MR. ADAMS: Yeah, just to briefly respond to Johnson. You know, I give you a perfect example. Our Doctor of Physical Therapy program here in Knoxville, Tennessee, is a $90,000 program. Three miles north of us, there's a program at a private nonprofit at $117,000, which is $27,000 more, 30 percent. There's a program in Southern California, not far from Marvin's School, that costs $200,000 dollars for the same program, but yet none of them are subject to the gainful employment rule. I just don't think that's a fair comparison whatsoever. And I think that's something the Department really needs to look at. That you would consider eliminating a program that is 30 percent less in cost as one of its competitors and more than half the cost of another one in California. Thank you.

MR. ROBERTS: Thank you. Thank you for that discussion. It was a lengthy one, but I appreciated the dialog. Greg, do you want to re-queue up 402 or you just want to take the temperature check now and then queue the documents for 403? What's your preference?

MR. MARTIN: We'll take the temperature check and then queue for 403.

MR. ROBERTS: Excellent. So if folks could just show thumbs for an informal temperature check on section 402 as it currently stands. I see three thumbs down unless I am missing anything. And folks, welcome to come off mute if you'd like to add anything new, I know there has been fairly robust discussion. Anything new that's not been surfaced for the Department or the committee to consider. Alright. Thank you, I appreciate that. With that, Greg, I will turn it back over to you for 403.

MR. MARTIN: Thank you, Brady. So I'll wait for 403 to be queued here, and this is the gainful employment framework. And so, as we look at what's in

403 here, this section lays out some similar framework to the one we find in the 2014 rule, specifically saying that the Department will calculate a discretionary debt to earnings rate and an annual debt to earnings rate. The program will pass the D/E rates if the discretionary rate is 20 percent or less, or the annual rate is 8 percent or less carrying over from the 2014 rules. These are the same thresholds that we applied for those rules. In this case, we have we have eliminated the zone to streamline and simplify the rule. The program will become ineligible for Title IV if it fails the D/E rate in two of any three consecutive years. And I as I explained earlier, this does not apply to the small program rate that we discussed earlier. Finally, if the Department does not calculate a rate for a program, the status of the program will not change. So here we look at the framework, we have the debt to earnings rates for each awardee of the Secretary calculates two debtto earnings rates for each GE program, and the GE program passes if the discretionary earnings rate is less than 20 and the annual earnings rate is less than eight. And here you see the failure if discretionary rate is greater than 20. Or the annual debt to earnings rate is greater than eight. And the GE program becomes ineligible subject to paragraph (c)(4) if it fails the

D/E rate in two of any three consecutive years for which the program's D/E rates are calculated, except that failing a small program rate does not make those programs ineligible. And then , you could see on the next page, if the Secretary does not calculate or issue D/E rates for a program or an award year or calculates only a small program rate, the program receives no result under the D/E rates measure for that award year and remains in the same status as it existed in the previous award year. So that is the entirety of 403, and I will open that up for discussion at this point.

MR. ROBERTS: Thank you. Brad, I see your hand, but I just I would be remiss if I didn't mention Beverly. I forgot to announce that you are back at the table on behalf of minority serving institutions. So welcome back and I apologize for not saying that sooner. Brad, go ahead.

MR. ADAMS: No problem, Brady. You know, this is a major change that I'm deeply concerned with, and I'd love to see the data behind why the Department's proposing this, but this is substantially different from the 2014 and 2011 rules to basically say that the under the 2011 rule, a program was deemed failing if its annual earnings rate exceeded 12 percent and its discretionary income rate exceeded 30 percent.

Under the 2014 rule, a program was deemed failing at its annual earnings rate exceeded eight and its discretionary income rate exceeded 20. But the Department created a zone concept, allowing programs additional time to come in compliance with this annual earnings rate if it was between eight and 12, and its discretionary income rate was between 12 or 20 and 30. So in this most recent proposal, the thresholds are at eight and 20, but the zone concept has been completely removed. Again, this is alarming and is a material deviation. And I believe it just highlights how the arbitrary nature of these rates and where they just keep coming from. Again, there's nothing in the GE statute that defines the metrics we use and what the actual thresholds are. I'm strongly opposed to this change. At a minimum. I believe the 2011 threshold at 12 and 30 should be reinstated. And I'd like to see impartial nonpartisan peer-reviewed research supporting the Department's determination that the eight and 20 rate thresholds, along with the associate cohort and earning periods are appropriate means for which to measure a graduate’s ability to service their debt. Can we talk about why we removed the zone?

MR. MARTIN: I'll address some of it now and let Steve comment on that, as well, if he wants to. The purpose of the zone was to, as previously stated, to allow schools a time period to bring the program costs or basically make adjustments in that program that would affect its rates in order to improve performance, and that could have resulted in reduced tuition and fees for a cohort such that there would be lower annual loan payments for the transition amounts. And to clarify, just so everybody knows what we're talking about, if we go back to the 2014 rule where this was in place during the transition, if the program was failing or in the zone on the outcomes under the D/E rates measure section, if that was the case, we would calculate the transitional draft D/E rates using median loan debt of students who completed the program in the most recently completed award year, not the median loan debt for the applicable two-year or four-year cohort period. So it would be the debt for the most recent year. Final D/E rates for the GE program would have been the lower of the draft transitional D/E rates. So that was what we did at the time. And that was the transition at this time and something I also wanted to point out there so that here would be- so for the programs between one and two years in length, the transition period was the first six years for which we calculated rates and for programs longer than two years in length. The transition period was the first seven years for which we would calculate rates in each of the each of the years from which we apply D/E rates is counted toward the transition period, whether or not we issued rates for specific year. So in this case, we wanted to streamline the rule and to implement the effectiveness of it. As I just pointed out, the transition rates delay, you know delay the effectiveness of the rule for a number of years, and we wanted to make the impact of these rules to occur and on a faster time and a faster timeframe than the seven-year horizon you see here. Steve, do you want to add anything to that or?

MR. FINLEY: Yeah, thanks, Greg. Greg's role here is to explain the proposal that's in front of the negotiators for discussion, right? To the extent you want to ask us about what was considered and what was not considered in getting that proposal to you, that's deliberative. We'll explain what's in front of you and we're here to listen to your suggestions about things that we should consider further for the next session. So, it's pretty clear on its face what you've got in front of you today is a simpler proposal than the prior regulations and that included eliminating the zone. And we're here to listen to your comments on that framework.

MR. ADAMS: Can I respond to that? Thank you, Steve and Greg, I appreciate the comments. I do think changing the goalpost every time a new GE rule comes out without any documentation or data is not appropriate. I'll also say that under the 2014 rule, I recall there were over 800 programs, and I can't remember how many thousands of students I believe it was in the hundreds of thousands of students that were in a failing program and to then move it to now eight and 20. I don't know what that would change in the numbers. I'm sure you all might have that information, but to just arbitrarily start changing things when this impacts people's livelihoods, cities, students, the whole bit is just inappropriate without any documentation. Thank you.

MR. ROBERTS: Thank you. Barmak, I see your hand, but I just want to make a quick note that Yael is at the table on behalf of state attorneys general. So with that, Barmak, please.

MR. NASSIRIAN: Yeah, I share Brad's interest in avoiding arbitrary numbers, but having been on the 2014 neg reg committee, I can tell you that the arbitrary numbers were the 12 and the 30 because the research at the time set the maximum levels for debt to earnings and debt to discretionary earnings at eight and 20. And now I'll editorialize and say that the

Department was so scared of acting decisively that it began to add multiple fudge factors to that very clear, non-arbitrary threshold. So they created the zone out of whole cloth and just to give themselves leeway, they gave a 50 percent tolerance level, so they took the eight to 12 and the 20 to 30, and then they created the two out of three. So, so in some ways, I see the proposed numbers as much more fact-based than the arbitrary numbers that the Department created the zone with. For what it's worth.

MR. ROBERTS: Thank you, Barmak. Yael, please.

MS. SHAVIT: Thank you. I would second Barmak's point and also just wanted to lend my voice applauding the Department for eliminating the zone, I think was an arbitrary way for schools that shouldn't be in operation to continue to be. And note that I think that what the Department has done creates leeway for schools that have one tough year, right? The context for eligibility achieves, I think, the appropriate balance for institutional needs and ensuring that students are protected. And in any event, this is, I think, a very thoughtful approach that is more frankly tied to the appropriate goals of GE than the previous [inaudible].

MR. ROBERTS: Thank you, Yael. Brad,

go ahead.

MR. ADAMS: The elimination of the zone, which allowed for the four-year timeframe to correct anything that was of issue as well as removing the transitional rates is, I'll just agree to disagree and I do think the Department should be explaining their thoughts when issuing these red lines when they deviated from the 2014 rule and we did deviate here pretty substantially from the 2014 rule on this change. But I also want to talk about this timeframe for loss of eligibility here in this section. So under the Department's proposal, a program will lose eligibility if it fails two out of three consecutive award years, is also required to make significant student warnings if it fails only a single year. We emphasize here that we believe these warnings will cause harm to these programs, making it impossible to recruit future students and leading to a program teach out. The current proposal affords institutions virtually no opportunity to adjust for market shifts or other unforeseen events like a global pandemic. A program that consistently prepares students for gainful employment might fail in a year like 2020 when unemployment increased dramatically. But under Department's proposal, the program would only be required to make the warnings due to one year of failing. We believe this would likely cause a program to close. We would like to propose that a program would only lose eligibility if it fails three out of four consecutive years. This affords institutions with a more reasonable opportunity to adjust for market shifts or other unforeseen events. In addition, we propose the new rules specify that the Secretary has the discretion to waive sanctions for any program training students to be essential workers or entering professions experiencing critical national job shortages. I'd like to give an example of our own pharmacy school. A three-year program so if it fails year one of the three-year program, doctor level of pharmacy, essentially, we have to give warnings out to new students and existing students. Students can't transfer out of a Doctor of Pharmacy program. You can't just transfer into another one. The accredited programmatic accreditation standards don't allow for that. If you fail year two, you've got students that started in that year one that don't get the opportunity to finish. You are essentially closing a program that's a three-year program before you even had a chance to finish. That's not right to do to students. That is completely wrong in the zone, at least allow for that and the previous issue paper. So I'd like to hear the Department's thoughts around why a three-year doctoral level cohort-based program would have to close and let go a substantial number of employees and leave students hanging with nowhere to go and irreparable harm and debt. Thank you.

MR. MARTIN: I'll address it very quickly in just in saying that the Department's goal is not to close programs. The goal of the Department is to make them accountable. As far as the warnings go, it's because students who borrow to attend these programs have a very real interest in being able to service the debt they've taken on with the with the income that they're likely to earn. As far as the warnings go, again, as it affects students, you've indicated one way it affects students. Another way it affects students is that they're in a program which could possibly lose eligibility and that they need to be warned of that possibility so that they can make decisions accordingly. So apprising students of the fact that the institution has this issue, I think, is something that is the Department's position that is an important facet of this of this framework.

MR. ADAMS: [Inaudible] students with debt with no ability to graduate is even more inappropriate. I would like to at least propose that [inaudible]students who start a cohort period can finish that period with their federal aid. Thank you.

MR. ROBERTS: Yeah, any proposals feel free to place in the chat or email to us. And then we do try to just limit folks overall speaking time with the back and forth in mind for about three minutes, just trying to.

MR. ADAMS: So that includes the Department's response [inaudible]

MR. ROBERTS: No, we paused the time when negotiators aren't speaking, but overall sort of comment period for comment. But just wanted to note that. Yael, I see your hand next.

MS. SHAVIT: Thank you. Just two quick points. The first, it's entirely inappropriate to deprive prospective students of meaningful information and frankly, major red flags about the schools they're considering enrolling in, in order to satisfy the school's recruitment desires and goals. I would urge the Department not to entertain calls for keeping students in the dark about this type of information. I think that is completely improper. And the second point that I want to make is that I think it is important to consider the pandemic. I think the discussions that we've had today that have raised the effect of the pandemic are appropriate. That said, I don't think that they require changes to regulatory text. I would like to urge people to recall that the Department has broad and truly far-reaching powers in the time of emergencies. Both make changes temporarily to the requirements that schools face and that students face. And in fact, the Department has used those authorities during this pandemic to the benefit of institutions and students. So you know some of the concerns that you're raising, Brad, I hear, but we already have the mechanism to address the emergent and infrequent occurrences that happen. And I think that the language of these regulations doesn’t need to answer all of those questions. Those are questions that should be, and are in fact, answered by different Departmental authorities.

MR. ADAMS: I just want to point out, I do think there's a difference in the warning to a prospective student and one that has yet to start and one that is continuing in their cohort-based program. I do think there's a big difference there. And that'd just be my comment, but I agree with you on the prospective student front. I can't argue against that point, I agree.

MS. SHAVIT: I think that the same argument applies to students enrolled. And in fact, in some instances, it may be like the damage is different damages equally. There is no good argument for keeping useful information, important information, from students so that they can make the right choices for themselves. Certainly not for the schools' goals of allowing students to maintain enrollment for their own, frankly, especially in context where it's for their own profit.

MR. ADAMS: And I respect that, last comment on this, is I just wouldn't want to leave that up to the discretion of the Department, so.

MR. ROBERTS: Good, thank you. Greg, not seeing any new hands. Do you want to take a quick temperature check on 403 GE framework?

MR. MARTIN: Yes, please. Thank you.

MR. ROBERTS: Thank you, everyone and again could I just see thumbs for a temperature check on 403? I think I'm seeing three down, but please feel free to correct me if I missed someone. I got that one and feel free any of those three, feel free to come off of mute and share anything new for the Department and the committee to consider with respect to your reservations.

MR. GUILLORY: I'll quickly share that I'm concerned with the removal of the zone period only because when we get to later parts of the regulation, there are no opportunities for institutions to appeal anything. The Department just tells them, here's your

D/E rate and there it is. You pass or you fail. There's no opportunity to question the list of completers, as was in the 2014 regulations. There are no draft D/E rates, as was in the 2014 regulations. It's just here's your rate, and that's it. Your program is either going to operate or it's not. And so once again, I want to get the bad actors I do, but I don't want to get the good actors. I want to make sure that those programs are serving students well by enrolling a large number of low-income students, making sure that access to postsecondary education is there, but access to a quality program, we don't want them to have access to programs that are going to defraud them and just prey on them and then send them down and say, okay, go live your American dream. We don't want that. But for those programs that are doing good, to let students learn, educate themselves, and they happen to enroll a large number of low-income students and a large number of students of color, I just am very concerned that if we're going to remove the zone and then not give institutions any ability to question anything at all, then that's kind of where my big concern comes in.

MR. ROBERTS: Thank you. I think Greg, we are ready to move on to 404, which is a lengthier section. Do you want to take it in its entirety, the calculating D/E rates?

MR. MARTIN: I'm trying to think of how we ought to do that, we could take it up through, I don't want to give us too much to have to deal with so let's start here and take it up through B and then we'll stop at annual earnings to give people an opportunity to talk before we take it straight to the end because I don't want to pile too much on before we get there, if that's okay with you, Brady. Okay, so we're looking at 404 calculations of the D/E rates. And here you see the calculation of the discretionary earnings rate and annual earnings rates. This section addresses the calculation of the D/E rates. Again, these calculations are generally following the 2014 GE rule. One change we have made here is that we are using only median earnings. Given the changing rules on privacy suppression, we believe that the Department will be better able to access data if we produce only median earnings rather than both median and mean earnings. This section outlines how the Department will calculate the annual loan repayment loan payment. First, the Secretary will identify the median loan debt for the program, up to the total amount of tuition, fees, books, supplies and equipment for each student. The Department will remove the equivalent number of highest loan debts as the number of students in the program were not matched to earnings data. The median debt will be amortized over a 10-year period for certificates and associate degrees, 15 years for bachelor's or master's, and 20 years for other programs. The calculation will also use an average of the annual statutory interest rates in effect during the three years prior for four unsubsidized undergraduate and graduate loans as appropriate for certificate associate degree and master's degree programs, or the six years prior using the same loan types as appropriate for bachelor’s, doctoral or first professional programs. So take a look at the calculation of the rates, which is using the median whereas we use the median and mean in the 2014 rules. It pretty much mirrors what we what we had in those rules. And just thinking if there's anything else we need to. Oh, you see there, so just walking through it again. We have in A, we have the discretionary earnings, A1, A2 as the annual earnings, annual payment, loan repayment you see described in B and then the amortization is in is in B2. And I'll stop there for comment before we move on to C annual earnings.

MR. ROBERTS: Is the committee tracking? If possible, we'll hold comments just for sections A and B of 404. Barmak. You're muted right now.

MR. NASSIRIAN: I objected to this back in 2014, and I'll continue to object for what it's worth, it is just very weird for me that you drop the highest debt levels for every unknown cell when there's nothing scientific about that. What that is extending the benefit of every doubt to the institution. I don't know how far I'm going to get with this, but I'll stop there.

MR. MARTIN: Thank you.

MR. ROBERTS: Brad, go ahead. Brad, for some reason, we're not able to hear you. It looks like your unmuted on mute, but we can't hear you.

MR. ADAMS: Thank you. There we go. Appreciate it. It's unclear to me in this section which agency will supply the Department with the earnings data. You know, the fact that we are not allowed to appeal the earnings data is a major concern of mine that we'll address in a later section. But I just want to ensure we understand that and the 2014 earnings data from the Social Security Administration excluded critical income components, including unearned income and self-employment income. Many graduates start their own businesses following graduation. We have physician assistants opening up independent rural clinics, pharmacists opening up local independent pharmacies and of course, cosmetology graduates in many states work as 1099 self-entrepreneurs, and for the initial years, these entrepreneurs would not have had a chance to make a significant earned income. And so maybe the IRS would be a better spot. I think that's where you're pulling the college scorecard information, if I read that right on your website. So I just again want to understand where the income information is coming from and why we just trust that it's right when we get it.

MR. MARTIN: Well, we have given our ourselves flexibility here to obtain the earnings data from a variety of what we believe are high quality sources for that data. We did use SSA in the previous rule. Whenever we do any of this, it requires a memorandum of understanding between us and the entity, so giving ourselves more flexibility gives us the opportunity to collect the data from the most appropriate source. We don't want to be tied down to indicating that there's only one source from which we can get this data.MR. ADAMS: I guess it sounds like ED has not decided on an MSA on where it would be receiving the income information at this time.

MR. MARTIN: At this point. Yeah, go ahead, Steve.

MR. FINLEY: Yeah, I'll take that. The

scorecard data is sourced from the IRS and this regulation, the proposal is just to remove the restriction that the Department could only get it from one federal agency. I believe if you've got input on why the earnings information might be different from different federal agencies, we would like to see it and consider it. But this is just to simply avoid the situation of not being able to go to an alternative federal agency for similar data information if for some reason we had to, right? Because this became an issue in the past when the memorandum with the Social Security Administration was not renewed.

MR. ADAMS: Well, thank you for that, Steve, I appreciate the ability to have different sources of income being considered, I did think that was a problem with the 2014 rule. And I'm curious, and maybe this is something for the Department to come back with. But just asking what the difference would be between the IRS and SSA income and maybe present that to the committee because another thing that will come up later is the mean and median and the higher up on the salary, which has now been taken away as well. So just more information on the difference between IRS and SSA would be appreciated.

MR. ROBERTS: Thank you. Debbie, I see

your hand next. Oh, did you want to respond? Did I miss [inaudible]?

MR. MARTIN: No, I just want to say, we'll take that back. Thank you.

MR. ROBERTS: Okay. Debbie, go ahead.

MS. COCHRANE: Thank you. I had a question about the amortization periods and particularly the 15 and the 20-year ones, which I know they are carryovers, but they do still seem very long for a for federal loan programs, which still have as a kind of quote unquote standard repayment plan, a 10-year period. Obviously, the existence of IDR programs is a reality, but kind of how we set the amortization period does feel like it's setting a sort of a norm for what we think people should be able to repay in what time period. And certainly, graduate programs, in particular, may entail more debt, but they also entail more earnings. So I guess my comment is that they seem long. And I'm wondering if the Department can provide any information about what standard repayment lengths are for people with bachelor's degrees or graduate degree programs, and if that is typical for a borrower and earning those types of degrees.

MR. MARTIN: I'm pretty sure we can probably get that data. We do have that, so I won't say for certain, but it sounds like something we could provide. So if you want to put that in as a data request, we would do everything we can to respond to that.

MR. ROBERTS: Obviating the need for a facilitator to ask people to put stuff in the chat there, Greg. Brad, go ahead.

MR. ADAMS: So I'm curious here, the Department still is offering no solution to the problem of unreported income, as the Department is well aware on June 28th of 2017, the D.C. District of Court issued an opinion and order in the matter of the American Association of Cosmetology Schools versus the U.S. Department of Education. In its opinion, the District Court largely agreed with the AACS finding that the Department did not adequately address how underreported income will be treated when calculating debt to earnings ratios for programs like cosmetology. And explicitly the Department also removed the critical opportunity present in the 2014 rule for institutions to file an alternate earnings appeal in the AACS litigation, the Department actually leaned into the alternative earnings appeal, arguing that the ability of an alternative earnings appeal process justified the use of the SSA earnings as it afforded schools an opportunity to address the problem of underreported income by using alternate earnings data collected from state data systems or through a survey. With the appeal process removed, the Department would appear to have no mechanism for addressing the underreported income issue. We also believe the appeal process represents sound policy as it a mechanism designed to improve the accuracy of the earnings information. So specificly, can we talk through why we removed the earnings appeal process and what we're going to do about unreported income?

MR. MARTIN: Yeah. First of all, I'd like to address the issue of the sources that we might go to obtain earnings information. And I was informed that the master file used by the IRS and, as I say, is the same and does include self-employment earnings. So I just wanted to point that out. Going to your point about unreported income, namely in the form of gratuities we did have an alternative earnings of alternate earnings appeal in place of the previous regulations. That was extremely cumbersome, and I don't think a very effective process. Here you know, and this does come down to a bit of outlook for philosophy on this and the Department's position is that we have access to a federal program and institutions are, of course, fiduciaries for these program funds on behalf of students and that the way we are keying this measure to earnings as lawfully reported to the federal government. And I do understand that there are instances where people do not report all of their earnings to the IRS. They should. That it's legally required they do so. So if you're in a field where there are significant earnings from gratuities, it's still expected to report those earnings. Your Social Security benefits, when they're calculated, don't include a balance that you didn't claim on your tax return. So we take the same tack here and that it is incumbent upon individuals to obey the law and report their earnings. And we don't believe that it's necessary for our regulations to take into account the fact that some people don't report those earnings as they're supposed to. And we also want to point out that I think over the past couple of years, it's gotten better with more and more earnings and more and more payment for services being done by credit card. I know that's certainly common in restaurants and where I get what's left of my hair, cut, throw that in there. So I didn't just say hair so everybody would be laughing, thinking what hair? I thought would be self-deprecating up front. They're probably that's being addressed [inaudible] there we do we do concede that there are earnings that are unreported. But again, our position would be that it's incumbent upon all of us to report earnings to the IRS. And I know Steve might have something to say about that, so I want to give Steve the opportunity to come in if he has something further to say.

MR. FINLEY: Yeah, I will just add that as a matter of policy, the Department's looked at this issue carefully in the intervening years, and we're dealing with a federal program where a lot of student eligibility is based on the income that's reported to the to the federal government. And the proposal is to set the income measures for these for these programs based on the same levels of income that are lawfully reported to the federal government.

MR. ADAMS: Can I quickly respond, Brady? So to Greg, to your earlier point, I agree with you that the appeal process was burdensome. I've lived through it, but there were mistakes, and those mistakes were able to get corrected through due process. And so, I just want to point out that we need some sort of alternative earnings appeal process or just the ability to appeal, which has been completely taken away from us throughout this this proposal. So thank you.

MR. ROBERTS: Okay, thank you. Johnson.

MR. TYLER: Yeah, I feel like Adam

Looney had some empirical data on the lack of any correlation between certain professions that Brad is bringing up that have unreported income, I think Adam said that actually there's a high percentage of reporting. But in addition to what Greg and Steve said, I just want to say, our whole economic safety system is designed on reporting your income. And if you want to get unemployment benefits, if you want to get worker's comp, all these things that are designed to protect Americans require people to report their income and including, getting an accurate amount of what your financial aid is. So we shouldn't be sort of saying, oh, nod, nod, wink, wink. It's okay not to do this. It's to all of our constituents' peril, not to report their income accurately. So I just wanted to reiterate that.

MR. ROBERTS: Thanks, Johnson. I wanted to see if Adam did want to clarify, but I'm not seeing him jump up on screen, so I'll move to you, Brad. But Adam, feel free to weigh in if you'd like.

MR. ADAMS: I'm curious why in the 2011 & 2014 gainful employment rules, the Department used the higher of the mean or median of earnings on the cohort as the denominator when calculating the D/E rates. Our belief that this approach is the best and most fairly representative of the earnings of the cohort and here the Department's proposing only to use the median. So do we have any information on what that difference would be and why we're choosing the median instead of the higher of the mean or the median that we've had in the past two rules?

MR. MARTIN: I'd rather take that back and get a better answer for you than rather doing it off the cuff.

MR. ROBERTS: Thank you. Barmak.

MR. ADAMS: Just quickly to add to it, I mean, that was intentionally removed, so I would think the Department has a reason why they did that. Do we not have any reason on that? That's a big difference.

MR. ROBERTS: I think just to reiterate the Department's position, I think, you know, at times they might just need to take back certain points so they can provide a fuller answer to the committee, but it's been noted. I appreciate you raising the concern. Barmak sorry, Barmak, go ahead.

MR. NASSIRIAN: Yeah, my recollection and this is editorial, it was just another illustration of the ways in which the Department was calculating every index with maximum flexibility towards institutions. There was no there's no scientific basis for it, and it's actually statistically pretty illiterate to use the higher of the two. You should use the same whatever your whatever average you want to use, use the same one for both. I think we can have a conversation whether it should be mean earnings and mean debt or median earnings and median debt. There are some differences there. But the notion of giving you know the higher of the two just was an act of I think, lack of lack of sort of decisive intervention.

MR. ROBERTS: Okay, thank you. Greg, let me ask you this, I do want to give the committee a very brief break just to in keeping with prior sessions, but just probably only five minutes conscious of the time. Do you want to finish up with 404 or do you want to do it now and then come back and finish [interposing]

MR. MARTIN: We can do it now and I'll finish 404 [inaudible].

MR. ROBERTS: Okay, so negotiators, if I can just have everyone come back in five minutes, I have 2:31, so 2:36 we'll resume discussions. We wanted to give you a chance to step away if you needed it.

MR. MARTIN: Thank you.

MR. ROBERTS: Alright, welcome back, everyone, apologies for the brief delay. We just had to find out where we were actually in the document. So with that, I think we're ready to continue with section 404 calculating D/E rates and Greg, I'll leave it to you and Rene to tee up for the committee where we should resume discussion.

MR. MARTIN: We're going to resume discussion with paragraph (c), annual earnings. So there we are. And I want to make sure that [inaudible] okay, I think I think I'm good here. So under C annual earnings in this paragraph, we're explaining the annual earnings measure, which is to reiterate, relies on median earnings as provided by a federal agency with earnings data. And I just go back to Brad's point I have asked for and we will be providing more clarification on the issue of median versus mean. So here you can see under the annual earnings the Secretary will obtain from a federal agency with earnings data the most current available median earnings for the students who completed the GE program during the cohort period. And the Secretary uses the median annual earnings to calculate the D/E rates and so we've already had a discussion of annual earnings, but I will move on and when we're done with this, when we finish this through E, I'll open it up. But I just want to move on for now. And then we're going to get down to D loan debt and assessed charges. This loan debt requirement is largely the same as we found with the 2014 rule, we heard from a lot of negotiators during the last session that it would be important to include institutional and private loan debt in this calculation. So we are proposing to do so here. We have also proposed to include Parent PLUS debt taken out on behalf of the graduate in the GE program. Maybe I should say completer because we don't want to confuse people into believing that means graduate student, that means a graduate of the GE program. We believe it is important to consider the totality of loan debt for the program that would include an intergenerational debt and believe this will provide a more accurate calculation. We also note that the cap on student loan debt at tuition, fees and books, supplies will continue to apply to this debt level in the calculation. So you can see here then that the loan debt is discussed under D and note the addition of what we're looking at D1 romanette 1-- the amount of Title IV loans that the student borrowed. Total amount disbursed less any cancelations or adjustments for enrollment in the GE program that including direct loans made to parents of dependent students but excluding direct unsubsidized loans that were converted from TEACH grants. You see here that we have retained any private education loans as defined in 34 CFR 601.2 to include private education loans made by the institution that the student borrowed for enrolling in the program and are required to be reported by the institution in 668.408. So let's move over to E. We made some changes there under exclusions, so I wanted to review that. So the exclusion from the calculations are the exclusions that we have here are very similar to the 2014 rule for the sake of simplicity, we've eliminated one of them and that was the military related deferment. The reason for this is that graduates who are employed as service members are paid on a regular schedule and we believe should serve as a credit to the institution what their earnings are. So we concluded that it was better to include those students than to than to exclude them. So if you look at the exclusions in E, again, pretty much mirroring what was in 2014. You'll see here that we have one or more of the student's loans have been approved for discharge on the basis of the student's total and permanent disability. The student, we make it clear who was enrolled full-time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earning information under earning information under paragraph C of this section. So we wanted to point out that the enrollment must be full-time. And so that that's all I want to say about the exclusions. We can move down to F, which is D/E rates not issued. And this section clarifies when the Secretary does not issue a debt to earnings rate for a GE program, and that includes when there are fewer than 30 students in the cohort period, except as measured by the small program rate that we discussed earlier and when the federal agency, with earnings data does not provide median earnings. The section also provides for the calculation for small programs rates that we previously explained for each award year, the Secretary will calculate a small program rate for all the small programs within a credential level. And we're also explaining here the process by which we will calculate the debt to earnings rate. The Department has proposed to utilize data reported to NSLDS, COD, and other ED systems for the purpose of calculating these rates. And in doing so, we will provide institutions the opportunity to update their data until 60 days after the end of the award year. And then we'll proceed to calculate the rates using that updated and corrected information. So it's just going through what is here in the [inaudible] not issued F after applying the exclusions in paragraph E of this section, or if there's fewer than 30 students completed the program during the two or four-year cohort period or the federal agency with earnings data does not provide the median earnings data for the program as provided under paragraph C. And we also have the small earnings rates described there for small program rates for each award year the Secretary determines the total number of students who completed small programs within a credential level at the institution during the four-year cohort period, and if that total is 30 or more students, calculates a small program rate for those small programs under the provisions of this section. So. I'll open it up for discussion at this point because we are done with 404 at this point.

MR. ROBERTS: Great. Thank you. And again, just to remind everyone, give given the volume that we have to discuss in this section, a lot of folks can withhold comments for ideas, proposals serious reservations, things like that, that would be appreciated. Johnson, go ahead.

MR. TYLER: I just want to commend the Department for putting in Parent PLUS loans. I think it's really important. Parents really want their children to succeed and are willing to do anything, and they often end up with gigantic, unaffordable debts. And unlike other federal loans, the repayment options for Parent PLUS loans are really difficult, and people often default on them because there are no affordable repayment plans, so it should be counted there. I don't understand the small cohort thing. It keeps popping up. Is there a simple primer for me to understand how it's being used for GE? That's my other question.

MR. MARTIN: The small programs rate is just to account for the fact that there are many, many programs which under the regular cohorts, even the expanded cohort, there won't be enough students in it to produce a rate. So understanding that we will not be able to do a rate for that program, we still wanted to provide some sort of information about that program. And as was pointed out, we will take that into consideration in looking at the institution. There will be no D/E rates associated with it. So if you have all these programs that are still too small to calculate a rate, we're just going to aggregate them by credential level and just produce a rate that won't be used for purposes of determining program eligibility, but the small earnings rate will apply to that credential level. To give a picture of what's occurring with the programs at that credential level. That was our intention.

MR. TYLER: Okay, that's very helpful. Thank you.

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

MR. NASSIRIAN: Two quick points on

this, one of them is I'm not quite sure what the rationale may be for excluding converted TEACH Grants. We've seen the statistics on conversions. They never come as a surprise to the institution. The institution frankly knows a lot better than the student what the probabilities may be of a TEACH Grant being packaged in real time, turning into a non-sub loan downstream. So to the extent that the student is on the hook, this is no longer a theoretical thing than the TEACH quote unquote Grant has been converted into a loan. I don't see any reason to exclude it. That's one comment. The other comment has to do, and I hate to even bring the topic up, nor do I know that we want to have that phraseology in regs, but I do worry about newfangled financing schemes. Income share agreements. Things of that nature coming in to replace private financing. And I want to make sure that any financing scheme, any form of financial aid that may carry any possibility of a repayment expectation is included here. The reference to 601.2 doesn't quite capture that, because that reference is to classic private loans. And I just want to make sure that we don't leave a giant loophole here by which people will claim, well, this shouldn't count because it's not really a loan, even though there is repayment involved.

MR. MARTIN: The second part of your question, well, I'll take that back, Barmak. The point you made about the income share agreements, things along those lines. The first part of your question regarding TEACH, the reason for excluding TEACH, I'm guessing I'm probably not going to convince you, but the reason for doing it was because obviously it starts as a grant. It is called a TEACH Grant. It starts out as a grant. I think that when a student receives that grant, there is the expectation, at least at the time was it was received, that the student will fulfill the teaching service requirement necessary for that to be a grant. Of course, if the student fails to meet that it converts to a loan. But it was not a loan initially. So again, we're providing a bit of a benefit of the doubt there. You could argue it on both sides. That was the Department's determination. If your suggestion is to remove that. I'll take that under consideration then and ask if anybody else at the table has a thought on that in addition to whatever else you may have thoughts on with respect to this section.

MR. ROBERTS: Anything directly related to the Department's request there, otherwise I will move to you, Brad, but feel free to speak up if you want to speak to that. Yael, go for it.

MS. SHAVIT: My caution on the point of the TEACH Grants is, Greg, I'm sure you're aware of our lawsuit, the Mass AGs lawsuit against PHEAA and the context of that lawsuit. In the wake of that lawsuit, frankly, there were reforms to the TEACH Grant program, but you know it became quite clear that the program was being mismanaged to the detriment of students and the rate of conversions that were erroneous conversions was significantly high. And I think high enough that it should really give pause to having the benefit of the doubt go against the students in this context. It's something to consider, but you know, I share Barmak's discomfort. I will jump back in line and let Brad speak first. [Inaudible]

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

MR. ADAMS: I just want to comment on Johnson's point, and I understand what he's saying when he talks about the Direct PLUS loans made to parents, but let's be honest here. The calculation is the student's ability to service their debt. That's one of the two main calculations of this. The Parent PLUS loan is not the student's debt. It's not. It's the parents' debt. So I’ve got to push back on that. If you're going to include the Parent PLUS loan as part of the debt, then you're going to have to include the income of the parents on the income or vice versa. You exclude it from the debt, but you can't put it in one spot in the numerator, not in the denominator or vice versa. So we've got to have an apple to apple comparison here, and I'm comfortable either way. You want to include the parents' salary, include the parents' salary as part of the calculation, or you got to exclude the debt because the calculation is the student's ability to service the debt. And that's not the student's debt. I'd love to hear Johnson or the Department talk us through, actually the Department on why, why we are adding in debt that the student does not have to service into this calculation.

MR. MARTIN: I will address that. I want to say one more thing about the TEACH Grant, and I think it's important to understand as we go through these rules that none of this accrues to the student. We are looking at student debt, we're looking at student income, but the consequences accrue to schools. So I think that what was pointed out about the servicing problems with TEACH were very true and we addressed that in the previous regulations. And we hope that going forward, there'll be a vast improvement in that and that we will have, hopefully, no erroneous conversions. And certainly, if they're made erroneously, the students now have a right to go back and look at that. So I think that argues, in my mind, more in favor of certainly keeping this as an exclusion because it was all the more intended to be a grant and only became a loan where the student legitimately did not complete the service obligation, not through error or mistakes in servicing. To the to the issue of PLUS loans, inclusion of PLUS loans, yes, it's true that those loans are not student debt. And so, that that point is true, however, we have legitimate concerns, and we will take that that back and I invite anybody to comment on that. We have legitimate concerns about institutions offloading debt from students onto parents where it's in the school's best interest to do that. So I'm certainly not accusing schools of doing that but it can and does happen. This accounts for any idea that an institution might have to take debt, that would otherwise be on students, and load it onto the parental side. So I'll leave it at that.

MR. ROBERTS: Thank you. Yael, back to you.

MS. SHAVIT: Sure. A quick response on the TEACH Grant issue. I mean, I think the concern I have here is that I think the most recent data shows that it's still almost two-thirds of grants that are converted to loans. The reality is that the specter exists, that that's going to happen, and it's information that's much more available to institutions than it is to students at the time of enrollment. So it seems like it is still kind of counting. It's one more instance of giving institutions the benefit of the doubt where at the very least, it's a program that has a real possibility of resulting in debt that the student might not appreciate at the outset, right? And until we see that the program is functioning in exactly the way that it's intended to, I don't know why we will give the benefit of the doubt there to the institutions that are aware of these figures. The point I wanted to make was to kind of support Barmak's concern about through different fintechy [phonetic] financing options and ISAs in particular and to lend kind of what I have seen to that discussion and to the importance of ensuring that ISAs are explicitly or it's noted that they are explicitly private educational loans, whether it's in the regulatory text or in the NPRM, ultimately to make clear the Department's position. I realize it's the position that the CFPB has taken. I assume it's the Department's position as well, but I am aware of ISA providers today that are continuing to take the position that is at odds with the CFPB's position that they are, in fact, not offering credit or loans. You know, their argument probably being that the CFPB's position was articulated in a consent judgment and not in more formal guidance, but to the extent that I think ISAs are very comfortable flouting the clear import of the CFPB's actions, it is exceptionally important that the Department not kind of inadvertently create a loophole here that may create more incentives for institutions to enter partnerships with ISA providers to skirt GE and frankly, in other contexts that have come up during this neg-reg process is just as important. So in every instance here, I think it's really critical that the Department be clear that the definition of private educational loans extends to these other types of arrangements as well.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank you. Debbie, I see your hand next.

MS. COCHRANE: Thank you. So there are,I think, throughout this proposal, there are several ways or several areas in which the Department’s put in some really good provisions that are aimed at making it harder for institutions to game with the rule or the measures. So I had two suggestions in the sections that we're talking about right now along similar lines. One is in D3. It says the Secretary may include the loan debt incurred by the student for enrollment in GE programs at other institutions if they're under common ownership or control. I would consider changing that to a shall from a may. And then secondarily, in in the exclusions in E2, I would recommend putting on a timeline provision. So right now, if a student reads as if a student is enrolled full-time in any other eligible program anywhere during the calendar year, is that like one day at the calendar year and then they're all of a sudden excluded from the measure entirely? That would again seem like a potential area for gaming. So would suggest putting in some time period, some number of months minimum.

MR. MARTIN: Thank you.

MR. ROBERTS: Okay, Johnson, I see your hand next.

MR. TYLER: Thanks. So to address Brad's question, I understand the sort of symmetry you're talking about, but the reality is Parent PLUS loans are they go for unmet need under the federal loan program, so they really can suck a huge amount of money out of a family. And there's no credit worthiness, really. [Audio] they seem to see a lot of Parent PLUS loans involving art schools and large four-year institutions. And what it does is it really divides the family because the kid is like, invest in me, invest in me. And then the parent who is often has a rather poor paying job, ends up getting a bill saying, you said you were going to pay for this. What's going on? So it has a really corrosive effect, and I think there's plenty of justification that way given you know those factors here, it really becomes very destructive for families of a Parent PLUS loan. So to have institutions out there where they're not getting counted, they're really creating a lot of havoc economically and just socially among these families.

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

MR. ADAMS: So I've got a big concern here around capping the debt at tuition and fees because, in my opinion, it should exclude institutional grants. You know, basically the regulations should specify that the total amount assessed to the student of tuition would be reduced by any institutional scholarships or grants the student receives to attend the program. Is that as money they would never have to owe? The D/E rate calculation is a student-by-student calculation is intended to capture the student's actual total cost or debt load. Accordingly, the cost assessed should be reduced by the scholarships and grants the student received. This approach is consistent with the rule, provides more accurate data, and is particularly important given the prevalence of tuition discounting and institutional aid in higher education. Many public and private nonprofit institutions offer athletic, academic and merit-based scholarships, and they heavily discount tuition, with some reports suggesting an average tuition discount as much as 50 percent. This approach also incentivizes institutions to grant institutional aid in order to bring the cost of programs into would be lower and hopefully bring it into compliance with acceptable D/E rate thresholds. Let me just give you a basic example that happens here at my institution, and Dave kind of alluded to this earlier, I believe, during Adam's presentation. Or maybe it was during the Department's presentation. But if the tuition cost is $5,000 dollars and the student receives a $1,000 dollar state grant, a $1,000 dollar Pell Grant and a $3,000 dollar institutional grant so that their tuition is debt free. Yes, here at our institution, a Tennessee Promise eligible student can go to school completely debt free, but we cannot- I'm sorry, completely tuition free. We cannot control, though, if the student borrows federal loans, even though tuition is 100 percent covered through their grants. So if a student is eligible and chooses to borrow $5,000 dollars for living costs, that's a hit to the debt, even though the student didn't owe a single dollar in tuition to the institution. So I want to get thoughts on why we're not reducing for institutional grants, given the students didn't owe that money, and we're going up to the full face value of tuition of these.

MR. MARTIN: Well, I'll take back the suggestion, and I can open it up for discussion. Our view of it is that irrespective of what grants are offered to the students or the tuition actually assessed, what's going on the student's account as what they owe. So we consider that to be a good bellwether of loans. We have already built in a cap at that, at that figure. In fact, if an institution does give a student institutional grants, it's quite likely that will result in a reduction of of borrowing. It would have to count in the aid and the basic aid [phonetic] formula not to go back to [inaudible], though, I always enjoy the opportunity to do that. So it would be those institutional grants that you're giving the student that would count as estimated financial assistance, and so would affect the total amount that students could borrow. That occurred in a previous rule at the table in

2014, we said that it was acceptable for institutions to offer grants to students, with the student agreeing that they would forego loans in lieu of the grants, as long as the student was able to reverse that and always able to borrow what he or she wanted. So we already have given schools the opportunity to give students grants that would reduce loans. So I would argue that's already built in there and that sticking with the tuition and fees is a good indicator. Steve, do you have anything you want to add to that?

MR. ADAMS: If I can quickly respond, I disagree. The whole point of the Tennessee Promise program is that students go to school tuition free to [inaudible] community college rates, so it is not built in. And I'll give you another example. So the Grad PLUS program for the Doctor of Pharmacy program, you know that that tuition is capped at cost or cost of attendance, and a $10,000 scholarship from Walgreens or CVS, or anyone else that goes against their tuition, if they then choose to borrow additional debt to live off of that counts against us in the total cost capped at tuition fees. So I'll disagree with you on that, and I'll submit this comment as one of many of my comments that I'll be sending in at the end of this discussion.

MR. MARTIN: That's fine. Understood.

I still want to make it clear that it is true that those grants could go for tuition. But I would still submit that when you do that, it's the cost of attendance which is the limit to which aid can be applied . So when a student receives a scholarship, it does necessarily affect the amount of loans that the student can borrow. But we can agree to disagree there, and you can certainly put it into the chat and we'll take it back.

MR. ROBERTS: Thank you. Barmak, you are up next.

MR. NASSIRIAN: So unlike 90/10, which is intended to be an institutional cash flow analysis, gainful employment is at its core a student cash flow analysis. It seeks to answer the question, are students better off or worse off as a result of attending this institution? The fact that students have, first of all, people can't borrow beyond the cost of attendance and the cost of attendance is a requirement for participation in that program. The student has to have housing, food, et cetera, et cetera. Frankly, I recall back in 2014, we objected to the capping of the amount of tuition and fees precisely on those grounds because it carves out a huge component of cost, subsistence costs, from the calculation. Frankly, I get if you narrow your perspective enough to somehow concede that the only thing the institution is facilitating here in terms of outcomes for students is limited to tuition. You run into the problem of what do you do with grants? But from my point of view, it should simply focus on the total debt the student undertook to attend that program. It doesn't matter where the money went, because the issue is, is this program leaving people better off or worse off? So I just think the whole conversation is kind of weird because we've taken a very artificial and really imperfect metric on either side and we're hanging our hats on it. It should be on the total amount of debt regardless of where it went.

MR. MARTIN: Thank you.

MR. ROBERTS: Thank you. Johnson.

MR. TYLER: Yeah, I think Barmak said it better than I'm going to be able to say it, the reason we're having gainful employment is people are losing opportunities on dead end educations. And so the employment part is an important part of this whole thing. But every time you go to school, you're expending all this family capital, in essence, to try to get ahead through your education. And so, this gainful employment is really designed to weed out the places that are not providing that. So debt is not just the most important thing of whether you're able to service the debt, it's really their earnings related to it. So once you're in the category, I think it makes sense to use this calculation with respect to debt. I hear often from my clients, "I can't go back to school because I don't have anyone to take care of the kids now" or "because I'm too old now and I got to do this" or "I lost that opportunity", "I'm not capable of doing it again. No one in the family is going to be able to support me on this." So I think that's an important thing to think of when you're thinking of the debt, the loan side of this, it's sort of built into this entire metric.

MR. ROBERTS: Thank you. And, Dave, our advisor, I see your hand, do you want to address the committee?

MR. MCCLINTOCK: Yeah, I was just going to weigh in about the logistics for how some of this works. So one would just be a quick clarification about the 90/10 and it is a student-by-student metric. It has to be included student by student and it impacts the overall institution very clearly, but it's calculated looking at each student individually. Regarding the gainful employment and the calculation of the debt, certainly, you look at what a financial aid administrator is packaging for a student. You're looking at the cost of attendance, which does include the tuition and fees of the school, often include does include a living expense calculation. It's the same regardless of the level of enrollment at the school. Students are eligible for the full amount of loans if they're attending at least half-time, so there can at times be a pretty large spread between the cost of the program. I understand loans that students are eligible to receive through the government program because they need those funds to live while attending school, but it's a wider difference that is being included here as part of the calculation. And I would include, I think Brad alluded to institutional grants and Pell Grants. The Pell Grants are specifically identified to be utilized for education would be applied first against the cost of attendance before evaluating whether or not a student is eligible to receive any loans just the way the calculation works.

MR. ROBERTS: Okay, thank you. Emmanual, I apologize for cutting you off earlier. Please go ahead. And if folks are okay, we might be able to take a temperature check just conscious of impending public comment period.

MR. GUILLORY: Yeah, thank you, I just have been listening to my colleagues talk about student loan debt and cost of attendance and borrowing and things of that nature, but what we're talking about here are the gainful employment programs and if those programs are serving students well, how are those students benefiting from GE programs? And so, when I think of adding the Direct PLUS loans here, which I don't think that's necessarily the best idea when I think of adding the debt that a student would borrow up to cost of attendance because of housing and food and transportation, things that are very important that a student would need to borrow for. Because if you are low wealth family, you don't have that. So for you to go to school, it's a whole lot more than for someone who comes from a high wealth family. That's very important. However, if we're going to look at the program the student is going to, then whether or not that student attended a gainful employment program or another program, if they are a low-wealth, low-income student, they're still going to have to borrow sizably more, of course, than your high-income, high-wealth students if they have to borrow at all to attend the institution. So I just remain a little unclear as to how we can then divert the borrowing for housing, food and transportation to attend the postsecondary institution to then say that program that they are attending is now going to be a fail and is bad because the borrowing amount would be regardless of what program that student goes to, because they're low-income, low-wealth, so.

MR. ROBERTS: Okay, thank you. Brad, I spoke too soon. Go ahead.

MR. ADAMS: I would like to get the Department's opinion on why the military deferment was removed from E1. I'm not following the reasoning for that.

MR. MARTIN:As I said earlier, we removed it because of the fact that students in the military are employed, that we looked at the reason for when you look at the exclusions here, they're exclusions that pertain to why we shouldn't look at that student's income. For instance, the student was enrolled full-time in another program. That would suggest, well not in every case, but it does certainly suggest that that student is not working because that student is enrolled in an institution full-time and not earning an income. Therefore, that's the exclusion which we've included there, and which makes sense. The military one refers to people who are in an organization and as service members, and they receive regularly scheduled pay and thatmay workto the benefit of a school to include that income. I think before when it came up, there was a lot about people serving in the military. I don't think we should look at that as a as a pejorative. They are in a profession and it is a paid profession.

MR. ADAMS: One final question on Section 404 that I had was on the interest rate and what the Department is going to view that interest rate as being for the debt service calculation, given that students have been on a deferment since March of 2020. So we're almost on two years here of essentially zero percent rates. I'm curious where the Department's mindset is in that. I know Adam used 3 percent earlier, but where is that going to be?

MR. MARTIN: I can't predict what the interest rates are going to be obviously, what we're going to base it on. I don't want to downplay the significance of the of the pandemic and its effect. However, we're not we're not regulating here to the pandemic. These regulations are for going forward beyond that. So interest rates will still be what they are, irrespective of any relief that is given to students with respect to repayment under the pandemic rules or pandemic flexibilities, I should say.

MR. ADAMS: Well, I guess I'm just clarifying. We know what the interest rates are from March of 2020 to February '22, but for some reason it sounded like [Inaudible] really did not like my comment because I heard some of the things she said about that comment. So let's make sure that doesn't happen, please. I'm sure everyone else heard that as well.

MR. ROBERTS: Okay, I didn't hear anything, but it might've just been on my end. I guess, with no new hands, Greg, do you want a temperature check for what is it, 404?

MR. MARTIN: Yes, 404, please.

MR. ROBERTS: Alright. If we could see thumbs very briefly, kind of in the center of your screen as much as possible. I'm seeing one, two, three thumbs-down. Feel free my team to interrupt me if I'm missing anyone, but anyone care to come off of mute and add anything new for the Department and the committee to consider on 404? Alright. Much appreciated. I think we probably have time, we're about 15 minutes away from public comment. Greg, do you want to at least you can begin the conversation on 405? And I just want to remind folks who are watching on the live stream who did receive confirmation they have a speaking slot today to try to log on a little bit early and as much as possible, try to match your naming convention with what you signed up with, just so we can get you in as expeditiously as possible and hear you speak. But with that-

MR. MARTIN: Thanks, Brady. I think I think we'll take advantage of whatever time we have- [interposing]

MR. ROBERTS: Oh yeah. I didn't think we were going to have a break time-

MR. MARTIN: Let's do that as Rene pulls back up the amendatory text in 405. And so here we have a discussion of issuing D/E rates in this section. We're explaining the process by which the Secretary will issue the debts to earnings rates. The Department has proposed to utilize data reported to NSLDS and add systems for the purpose of calculating these rates. And I say, as I said before, we're going to give schools the opportunity to correct that data after the year is over. We will compile a list of students by payment period during the cohort, as well as completers from small programs by credential level. And we will then send the list to the federal agency with the earnings data, which will produce median earnings and send back aggregate only median earnings information and the number but not personal information about which students the agency could not match. Let's go through this here, so first, we're looking at 405, administrative data. And you'll note here, as I just discussed and calculated D/E rates for a GE program and the small numbers rates, the

Secretary will use enrollment disbursement and program data or other data. The institution is required to report the Secretary to support the administration or participation in the Title IV HEA programs in accordance with procedures established by the Secretary. The institution must update or otherwise correct any reported data no later than 60 days after the end of an award year. So here we're talking about our desire to, as much as possible, move to using administrative data to calculate the rates. Our goal here is to produce accurate, meaningful rates with as little burden on schools as possible, so we're trying to move in that direction. There are some limitations on what we can do administratively and what information we need from institutions, so we are looking at that going forward to see how we can maybe use more administrative data, but there are obviously some things we cannot get administratively, at least not now. One of those things would certainly be institutional debt and/or private debt because we have no means of obtaining that without the school reporting it to us. We also aren't able to break down the cost of attendance looking just at the cap on tuition and fees and allowance for books and supplies unless we have that information provided to us by the institution, but do want to point out that we are trying to move in the direction of the use of administrative data to the greatest extent possible. So here the Secretary will use administrative data to compile a list of students who completed the GE program during the cohort period and a list of completers. The Secretary will remove from those lists those students who are excluded under 668.44(e) and provide that list to the institution. ED is also going to obtain from federal agencies earnings data and the median earnings for students. And then we will calculate the D/E rates and return them to the institution. And under obtaining earnings data for each list submitted to the federal agency, the agency will return to the Secretary the median earnings of the students on the list, whom the federal agency with earnings data has matched in aggregate and not on an individual level and the number, but not the identities of students on the list the federal agency with earnings data could not match. Now I want to move down to D, which is the calculation of D/E rates and I want to point out here, this section will explain the calculation of D/E rates themselves. The Secretary will use median annual earnings data to calculate the rates for any program where the agency was unable to match earnings data with at least one student that will drop an equivalent number of students from the debt cohort, beginning with the highest debt borrowers. And this will give schools the benefit of the doubt in that regard and, something else I wanted to point out here,you see that reflected there in D. So why don't we move to a discussion of what is in the remaining portion of 405?

MR. ROBERTS: Alright. We have about eight minutes left, so with that, Emmanual please get us started.

MR. GUILLORY: So in subparagraph D2, it mentions whose earnings Social Security Administration did not match. I don't know if that was just an error. If you meant to have that there or you meant to say federal aid.

MR. MARTIN: We do. We do. It should read federal agency with earnings data, not SSA. So yeah, you're right. It does say whose earnings data SSA did not match and that should read [inaudible] should want to strike that out and put federal agency with earnings data. Thank you for that.

MR. GUILLORY: Okay, perfect. And once again, I would like to just say I understand what the Department's doing here. You're trying to get the bad actors, and I understand that. I applaud the effort to want to make sure students are going to institutions and programs that serve them well, 100 percent. But when I look at this process, it just seems like I said before, you're just telling an institution whether or not they fail or not. And I just don't understand how you wouldn't at least allow for there to be some sort of due process on behalf of the institution to make sure the data is right, really. I mean, yes, get the bad actors. And if they fail, they fail. But why not make sure the data is accurate before you make that final determination and I feel like the 2014 rule allowed for that. Maybe some of my colleagues would argue that it allowed for that too much or that it shouldn't allow for that at all. But what I'm hearing from my members is this is something that obviously would matter when you're about to close down a program just to make sure the data is accurate.

MR. MARTIN: Let me just say in advance that I'm not discounting your point there. To the extent that we use administrative data from NSLDS COD, I would argue that that data is reported by institutions and there's an expectation that it be reported accurately. We are giving schools time to go back and clean that up before we use it. But if an institution were to say that they don't believe that the rates would be calculated correctly because the data that they supplied to the Department is not correct, then that's largely on the institution. And I would say the same thing for any data that they give us under reporting requirements as well. That data should be correct. So we are we are going into it with the expectation that what we are using is correct data.

MR. GUILLORY: Can I quickly respond to that? Okay, I can I completely understand that, and I get that, Greg. Unfortunately, we do have some institutions that don't report accurately to IPEDS and it's unfortunate. And we even saw an issue with the COVID 19 relief funds per se. There was a provision in there that relied on IPEDS reporting, and not every single institution did that the right way. So then we had to rework a formula to make sure certain institutions got the portion of the money that they should have received, and it is on the onus of the institution to make sure they are accurately reporting. But you know at the same time, if someone is not doing that at the institution accurately, then to allow for the ability to correct that, I think is important. Thank you.

MR. MARTIN: Thank you.

MR. ROBERTS: Barmak, I think you are next in queue.

MR. NASSIRIAN: Yeah, just reiterating the point under D2 that that unless the Department believes that people with the highest loan debt levels will somehow be most likely to be missing from the earnings file, that it makes no sense to do what the Department's doing here. The proper solution is to randomly drop the number of records for the same number of records that you don't have earnings data for. The notion of just starting from the top to quote unquote give the Department give the school the benefit of the doubt, really, the converse of that is you're basically exposing those students to huge risk by making this entirely unjustifiable assumption.

MR. ROBERTS: Thank you. I think, assuming the comment is going to be three minutes in length, Johnson, you'll be our last for today. We'll go right into public comment and Brad we'll pick up with this discussion with you beginning tomorrow.

MR. TYLER: Yeah, so my question is section C. Question number two, which is that you're going to exclude people from the list whose earnings data could not be matched. So that just basically means you can't find any earnings for the person or does that mean that there was reported no earnings? I'm wondering whether this addresses this concern of people who are unable to [interposing]

MR. MARTIN: Yeah, no earnings. The agency with which we did the match had no earnings. It was not able to return earnings for that individual.

MR. TYLER: So if they filed a a tax return which had no earnings, would they be excluded ?

MR. FINLEY: If they're matched with zero earnings, they're not excluded. These are people for whom no match is made.

MR. MARTIN: Correct. No match.

MR. TYLER: Okay, thanks.

MR. ADAMS: Brady, if it's okay, that's my exact question is that D2 that we're talking through. I know we got a minute.

MR. ROBERTS: Yeah, we have time.

MR. ADAMS: I'm confused. I read that differently, Steve. So I read that if there was an error reporting back from the IRS or from the Social Security Administration, you'd be removed. I think we need to make sure that we also exclude anybody with zero income because anybody that has zero income is choosing, most likely, not to work. But I just I wanted clarification, is that anyone that's zero income or is that anyone where you just can't get an error on the Social Security number or something like that?

MR. FINLEY: Yeah, my recollection, which could be flawed, of course, is that these are people that they could not match. Period. And then remember, if there is a match, there's no way to identify the people in the list that were matched, right? That's because we only get aggregate data back from that. But these are just non-matches.

MR. ADAMS: Maybe you can clarify that then, because my question is if the Social Security number matches and income is zero, are they included or excluded from D2?

MR. FINLEY: I believe they're included. That's that is considered a match.

MR. ADAMS: That's considered a match, okay. I will submit a proposal that I would want those excluded because if they have zero income, pretty certain they're probably choosing not to work.

MR. ROBERTS: Excellent. Thank you, everyone. I know this was this was a lot to cover in one day. We're going to pick right back up with this section tomorrow. We are now moving to public comment. I think we are ready to admit the first speaker, just with the general instructions that speakers will have three minutes to address the committee. You'll be given a 30-second warning and then you will be removed from the meeting so we can move to our next speaker. So who do we have coming in to join us first?

MS. JEFFRIES: Brady, we have Edward Brown, who is the CEO of Brown Aveda Institute.

MR. ROBERTS: Good afternoon. Anybody hear me?

MS. JEFFRIES: Wait a minute, wait a minute. They jumped around on me. Edward Brown, I apologize. We move to Edward Long from- Edward, I'm going to put you back into the waiting room as you are on the waitlist and the screen changed just as I clicked, okay? Alright, let's try this again, and hopefully they won't jump around. Edward Brown, CFO of Brown Aveda Institutes.

MR. ROBERTS: Hi, good afternoon, Mr. Brown, can you hear me?

MR. BROWN: I sure can. Can you hear me?

MR. ROBERTS: We can. If you're comfortable and you'd like to, feel free to turn on your video. Otherwise, you have three minutes to address the committee, beginning when you start speaking.

MR. BROWN: Okay, hold on one second. I'll turn it on. Okay. Good afternoon, my name is Edward Brown, CFO of Brown Aveda and Casal Aveda Institutes, both certified for Title IV participation. I have a bachelor's degree in business and was past employed by the Cleveland Clinic Foundation. We are a small, family-owned business. My wife and partner, Nancy Brown, is a licensed cosmetologist. We have five locations in Ohio. Two are salons. The cosmetology schools currently have 300 students between the three campuses. As salon operators, we had been very concerned with the level of training students received in other cosmetology schools, which at that time our salon recruited from. We made the decision to open our first school in 1997 without financial aid for our students. In 2003, our schools became eligible for financial aid. We have since graduated over 5,000 students. Most of our graduates are women and entered the profession, working either full or part-time based on their personal needs. Many part-time graduates do so to make supplemental income for their families. Our graduation rate is over 78 percent, median loan debt approximately $8,000, and our graduates' monthly payments are approximately seventy-nine dollars per month based on the standard 10-year repayment. Our average 2018 cohort default rate was 3.6 percent for our three campuses. Our schools are not a significant source of the student loan debt in this country. In fact, recent Wall Street Journal articles have focused on the significant student loan debt from college graduate programs. I want to make three primary points. One, accountability. I fully support accountability, but I cannot emphasize enough the need for accountability to apply to all higher education. Certification. The Department certification proposal seeks to shorten the amount of aid students receive to attend a cosmetology program based on the median length of state licensed program. This would deny aid to students in states with a higher clock hour requirement. This is both an affront to state authority to determine what curriculum is required to license a professional cosmetologist, but also, as students would be left without aid to cover the full cost of their programs. This would negatively impact shorter programs such as a licensed skin or nail care specialist. Students choose these programs so they can finish faster and prepare for in-demand occupations such as salon, spa and some medical practices earnings. The earnings metrics for cosmetology schools continue to be underreported. Underreporting occurs in three primary categories: tip income, booth rental, and self-employment. The salon industry has asked for over a decade for the same laws. This would also benefit the cosmetology industry to significantly address unreported earnings. We met with the Senate Finance Committee in

'16, and unfortunately, they said they were not interested. GE rates depend on reported earnings at the request of a bipartisan group of house members. I, along with my colleagues, met with the IRS in October '16 on what we could do to promote compliance for our graduates and work with the Department on developing an estimate of underreporting to build into the GE rule [interposing] that neither of the Department or the stakeholders [interposing].

MR. ROBERTS: Thank you for your comment, Mr. Brown. Unfortunately, we need to move to the next speaker, but we do appreciate you taking the time to address us today.

MR. BROWN: Thank you.

MS. JEFFRIES: Thank you. Brady, next, we have Elyse Hicks from Americans with for Financial Reform.

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

MS. HICKS: Yes, I can hear you.

MR. ROBERTS: Great, we can hear you and we can see you. You have three minutes to address the committee beginning when you start speaking.

MS. HICKS: Great. Thank you. Good afternoon and thank you for allowing me the opportunity to speak with you today. My name is Elyse Hicks, and I am counsel at Americans for Financial Reform Education Fund. I am also a graduate of the Charleston School of Law. However, I began my law school career at the Charlotte School of Law, which was a for-profit institution owned by a private equity firm. Because of the school's deceptive recruitment practices, such as a non-disclosure of low bar passage rates and its then pending probation with the American Bar Association in the fall of 2016, students at every level received notification during our Christmas break that the school was no longer eligible for Title IV funding. According to the latest data, roughly 71 percent of college and graduate level students rely on Title IV funding to complete their studies, and without it, I was forced to scramble for spring admission at a new school in a new city with nowhere to live during my first week of classes. Many of my colleagues who were in their second and third year at the time had no other recourse than to stay at Charlotte in fear of losing their credits and having to start over. They were struggling to stay in their apartments and even eat. Professors lost their jobs and those that were left placed peanut butter and jelly in the student lounge for students who were hungry. Some professors even housed students for the semester. Luckily, I was able to finish law school in Charleston a semester early. But now that I am in this seat, I wonder if my path here would have been less turbulent if there are more scrutiny on the certification process of institutions wanting to gain access to Title IV funding. I wonder if there were better safeguards in place would students be taken advantage of in this way. It is undeniable that no student should have their right to education stripped away because an institution isn't providing the services described in its official publications and statements. I respectfully urge the committee to set stricter guidelines when certifying schools that would like to participate in federal funding to protect students from horrible experiences like these and to use all of its tools at your disposal to increase accountability and end abuses. Thank you.

MR. ROBERTS: Thank you, Ms. Hicks, for your comment. We appreciate it.

MS. JEFFRIES: Alright, Brady, next we have Ben Landers, Director of Career and Alumni Services, South College.

MR. ROBERTS: Good afternoon, Mr. Landers, can you hear me?

MR. LANDERS: Yes.

MR. ROBERTS: Excellent. We can hear you and see you. You have three minutes to address the committee, beginning when you start speaking.

MR. LANDERS: Ready? Hi, I'm Ben Landers, a work at South College. I'm in career services. Thank you all for your work on this committee. I appreciate you doing it for the country. I come to you with two different perspectives. One is I spent virtually all of my adult life in nonprofit. I worked for the United Way System for 41 years and worked all over the United States, spent a fair amount of time in Los Angeles, South Central Basin in Watts and Inglewood, East L.A., helping people, different groups, and enjoyed that work. Also worked in the Chicago area. Also, the Washington, D.C. area and worked for the National United Way Worldwide, all in an effort to continue to help people. Local United Way assesses community needs and tries to figure out how to raise money and ultimately grant that money and help people in need. And so, I spent a fair amount of time here in the Knoxville market calling on community leaders, and I called on South College and South College always was a willing supporter. They never said no, and I very much appreciated that. So I retired from the United Way System in 2019 after 41 years. I didn't last long in retirement, found myself here at South College in Career Services, a task and employment that I really enjoy. And my job primarily is to help students and graduates in the job search process. It's really fascinating work. It's never dull. You see and hear a little bit of everything. I work with hundreds of students, pending grads and graduates. I always ask them, really, how did you find the program? Most all of them have a different response to how they found the program. I ask them what really appealed to them, and it's generally a similar message. The program spoke to them. It was the right time. I feel like the instructors were going to help me get through and I want to prepare for a job. It is about jobs, and so South College has been in a great role the last several years, if not decades, to help people that want to work make all that make that happen. Grads are constantly moving on through our system. We're lucky to have some premiere programs-

MS. MILLER: Thirty seconds left.

MR. LANDERS: -in physical therapy and health sciences, virtually all find work. There was an example of a young woman that had a was having a baby with no staff, family support and a nurse helped her get through and she wanted to do that and found South College and came to work. We had another young man that

that very much wanted to pursue physical therapy and had a sports injury, and he was able to come here and get placed and made it work. So I think this [inaudible] helps-.

MR. ROBERTS: Mr. Landers, unfortunately. Thank you so much for your comment. We appreciate it.

MS. JEFFRIES: Okay, Brady, next to we have Eileen Connor, who is the director on Project of Predatory Student Lending.

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

MS. CONNOR: I can hear you.

MR. ROBERTS: Excellent. We can hear you and we can see you as well, so you have three minutes to address the committee, beginning whenever you start speaking.

MS. CONNOR: Great, thank you, so I'm Eileen Connor, and I direct the project on Predatory Student Lending, which represents over a million student borrowers who are cheated by predatory colleges, most often in the for -profit sector. And it's frankly overwhelming to contemplate the sheer number of people who could have been spared pain, suffering and insurmountable debt with a functioning gainful employment rule. By way of example, we represent over 400,000 former students of ITT Tech in that school's bankruptcy case. The Department has acknowledged that from at least 2008 until 2016, when the school closed, it was operating essentially as a fraud. How could gainful employment have helped? In 2010, ITT's executives advised its board of directors that the overwhelming majority of its programs would not comply with the rule. ITT would have had to have reduced its tuition across the board by 11 percent in order to pass, but it didn't want to do this, not least because it didn't want to cut tuition for everyone when only some people, the few that graduated, would actually be measured. This committee needs to anticipate that schools like ITT will do everything possible to attain technical compliance with your regulations while ill-serving students. For example, ITT connived to rename its program, so they appeared to be new and wouldn't be covered. The associate degree program in computer network systems became the associate degree program in network systems administration. The curriculum was exactly the same, but at the time that ITT closed, 80 percent of its student census was enrolled in programs that wouldn't be subject to the gainful employment rule. So evasion and bad faith tactics like this ought to be an independent basis for finding a school's programs non-compliant with gainful employment and/or the institution itself as a whole to lack administrative capability. Schools getting the benefit of Title IV money should not be allowed to play these high stakes games with people's lives. In closing, I want to read a statement from a former student of ITT, Adnan [phonetic]. He's just one of hundreds of thousands who were ripped off by it and are still paying these debts a decade or more later. Adnan was waitlisted to comment to this committee during this session, but he wasn't able to get in, so this is what he had to say. He was contacted by an ITT recruiter who used high pressure sales tactics to press him into signing up for classes right then and there. He says, "When I started attending classes, I quickly realized that the program and instructors weren't at all qualified to be teachers. And nothing I was taught was even relevant to the field of study I was pursuing. I wasted three years [interposing] for a degree that has done nothing but cause me hardship. Employers will not recognize ITT as a form of higher education. I was promised gainful employment but have yet to experience it. Over $40,000 dollars has been garnished from my accounts. And it's not just me. This debt goes beyond just the lives of the students who attend the school. It's a generational cost. I have two young kids and we're suffering financially because I can't get out of this debt. At this rate, my children are going to end up paying the cost of [interposing] I should have been given the option-.

MR. ROBERTS: Appreciate you.

MS. CONNOR: I have one more sentence, and I think it's an important one. It isn't right, it isn't fair, and the Department of Education has to do something about it.

MR. ROBERTS: Thank you for your comment.

MS. JEFFRIES: Okay, Brady, we now have Ed Cramp, who is a partner from Duane Morris LLP.

MR. ROBERTS: Good afternoon, Ed. Are you able to hear me?

MR. CRAMP: I am here.

MR. ROBERTS: Excellent, you have three minutes to address the committee, beginning when you start speaking.

MR. CRAMP: Great. Good afternoon, everyone. My name is Edward Cramp. I am a veteran. I served our country as a member of the United States Navy, where I defended the rights of service members in the Naval Service. Today, I am the general counsel for the American Association of Cosmetology Schools and a partner in the Education Practice Group at the Duane Morris law firm. AACS schools are different. Our schools are small, mostly family-owned and usually only have one or two programs, meaning that the loss of one program will lead our schools to close. All of our programs are non-degree and measured in clock hours. All of our outcomes are 100 percent licensed. The Department knows that these programs lead to high rates of self-employment and tipped income. This has been confirmed in the earnings appeal process and appeals filed by AACS members with the Department under the 2014 GE rule. It has also been independently confirmed by the IRS. AACS supports common sense regulation and institutional accountability that does not unfairly limit our students access to Federal Student Aid. We are very concerned that the Department's decision to convene this committee without a representative from our sector leaves it without the expertise necessary to craft regulation that takes into account the unique nature of our students, institutions and outcomes. With respect to the gainful employment rule, we have been very concerned about the unfairness of exclusively using government data to establish graduate income without allowing institutions to show their graduates wages are in fact higher than reported to the government. We have been here before. The Department did not address our concerns about reported income in the 2014 GE rule, and in December 2016, AACS reluctantly filed a lawsuit against the Department to prevent the application of the 2014 rule to our members. And in June 2017, the D.C. District Court Judge Rudy Contreras, ruled in our favor. Among other things, Judge Contreras found that graduates of our schools are highly likely to under-report earnings because they accept tips or are self-employed, that while IRS income data accurately reflects reported income, it does not accurately reflect actual income. The Department knew this, and this led Judge Contreras to describe the Department's use of the data as wooden and flawed. And finally, that the Department acted arbitrarily and capriciously with regard to graduate earnings underreporting as an issue. The Department appears to have addressed Judge Contreras's concerns in the current draft of the GE rule by eliminating the earnings appeals process altogether, leading erroneous government data as the only means by which to establish graduate income. This Orwellian proposal, which could have been lifted straight out of the pages of 1984, is ironic, given that the Department, Judge Contreras and AACS all agree that the data does not reflect true government or true graduate earnings. While Judge Contreras found that the prior appeals process was flawed, it seems unlikely that he or any D.C. Circuit Judge would find that this approach is anything but arbitrary and capricious. Thank you.

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

MS. JEFFRIES: Okay, Brady, next, we have Ryan Mackenzie representing themself.

MR. ROBERTS: Good afternoon, Ryan, can you hear me? Looks like he just needs to enable his audio.

MS. JEFFRIES: It's connecting, Brady.

MR. ROBERTS: Yep, here we go. Good afternoon, Ryan, how are you?

MR. MACKENZIE: Good. How are you?

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

MR. MACKENZIE: Okay. Good afternoon. My name is Ryan Mackenzie. I'm an Army veteran who attended to DeVry University online. When I contacted -- DeVry, I was working long hours at a factory because I needed to provide for my family. And when I found out about this opportunity, I thought, you know, maybe I could do this while I work and better myself for my family. When the recruiters found out I was a veteran in [inaudible], working long hours, they took advantage of my situation. They convinced me that a degree in computer game programing would make all my hopes and dreams come true. They told me programing had a 95 percent job placement. They had contacts with big name companies like Activision, which is huge in the gaming industry, and they could possibly give me a job paying over two hundred thousand. They said these companies that develop games love DeVry graduates, so their students had many offers and some before they even graduated. The recruiters said that game programing was so popular that if I did not enroll immediately, I would have to wait for a year or longer to get in an open spot. They also said that the program was highly selective, but they would let me in because I was a veteran. DeVry also claimed that they partnered with the VA and provided special help for veterans such as priority registration, tutors, resume writing, connections with other mentors, and 24/7 online assistance. The 24/7 part really excited me because I work long hours and oftentimes difficult, different hours at the factory. All those claims were a lie. I did not see any partnerships with any companies or hear of any and as far as I know, no one got the jobs they were promised. Anyone could enroll at any time, whether they were a veteran or not. And the veterans' services they advertised were nonexistent. I tried to contact DeVry's veterans' representative. No one would return my calls, so I didn't know what to do. The school promised 24/7 assistance, but I got no help at all. During my time of online school, they kept throwing on extra required courses every semester, which meant I had to take out more loans to meet the satisfaction to take those classes. It didn't seem like I was getting anywhere [interposing] and my debt was piling up and I didn't know what else to do. So I looked into transferring, and then that's when I found out my credits would not transfer to any school because they told me they were accredited, which was a lie also. I eventually withdrew and started over at a legitimate school where I finally got a good education, but I still have over $50,000 in student debt from DeVry and I have no problem paying for a quality education..

MR. ROBERTS: Thank you, Ryan, for your comment. We appreciate it.

MR. MACKENZIE: Thank you.

MS. JEFFRIES: Brady, next we have Jeff Arthur from ECPI University.

MR. ROBERTS: Good afternoon, Mr. Arthur, can you hear me?

MR. ARTHUR: Yes, I can.

MR. ROBERTS: Excellent, we can hear you. You have three minutes for public comment, beginning when you start speaking.

MR. ARTHUR: Alright. Good afternoon. I'm Jeff Arthur with East Coast Polytechnic Institute. I've been studying higher ed data for a very long time and have been enthusiastically engaged with the score card database since its inception. It truly can be, and inevitably will be, a game changer to improve higher ed for all students. I applaud and encourage the Department to stay the course with 668.43 disclosures. Statute does require that the cost of attending an institution be disclosed and we are learning so much about that cost, including by program. I think we would agree that any metric in the GE final rule directly relates to cost. Therefore, GE requirements should reference related disclosures in that section. While I'm far more enthusiastic about the transparency this will bring than a GE framework that gets ahead of a solid interpretation of evolving data, I'm not opposed to guardrails for GE programs, but that must include a comprehensive assessment of the data for the same program across all institutions to ensure those guardrails are justified and appropriate. The program should only face penalties when it is an outlier by balancing both post-grad salaries and graduation rates. High and low graduation rates certainly impact median salaries, and institutions with a very low grad rates have clearly evaded GE accountability, as demonstrated by the large number of programs not meeting the N [phonetic] threshold. This outlier concept was the idea of the Department's data and policy folks when I negotiated a GE rule, and it absolutely makes sense. This concept should be applied as a secondary test of the GE program to avoid what would certainly be a societal impact of removing access to many programs that tend to have lower debt and lower initial SSA wages. We must avoid pushing students from GE programs that perform better than their comparable non-GE programs. Regarding 90/10, proposed language is not recognizing the intent of the rule by effectively excluding a large amount of employer contracted or sponsored education. Congress was clear that non-Title IV eligible programs are included in the 10 revenue in a number of circumstances. The Affordability Act, passed by the House a couple of years ago, was supported by all Democratic members and included language modernizing that intent by ensuring most education my institution provides with contracted or sponsoring employers would be included in the 10, regardless of where that training took place, or whether such education is an industry certification program. We should be encouraging and rewarding institutions that when in competitive educational partnerships with employers, recognizing that employers are very good at identifying quality that will provide them a return on their investment. Overstepping the intent of this rule will lead to never ending legislative and regulatory ping-pong. As an institution in the densest military community of its size, serving over 4,000 veterans a year, we can live with flipping veterans’ educational benefits because we've put considerable effort into employer partnerships, and thank you for your time and consideration.

MR. ROBERTS: Thank you very much for your comment. We appreciate it.

MS. JEFFRIES: Next, we have Josh Guzon representing themselves.

MR. ROBERTS: Okay, thank you. Good afternoon, Josh, can you hear me?

MR. GUZON: Yes, sir. Can you hear me?

MR. ROBERTS: Yes, we can. We can hear you and see you very clearly. You have three minutes for public comment, beginning when you start speaking.

MR. GUZON: Okay.

MR. ROBERTS: Whenever you're ready.

MR. GUZON: Good afternoon, my name is Sergeant Joshua Guzon of the United States Marine Corps. As a medically retired disabled combat veteran. Yes, sir. Yes, I can.

MR. ROBERTS: Go ahead, Josh. We can hear you.

MR. GUZON: Okay, good afternoon. My name is Sergeant Joshua Gibson of the United States Marine Corps. As a medically retired disabled combat veteran and father of three young children, education has been an integral part of my survival to re-entering civilian life. Unfortunately, many politicians are telling me where I can go to school. I've attempted to go to a community college, but I found University of Phoenix worked better for me. I was medically retired after fighting two wars and four deployments in Iraq and Afghanistan. I've been blown up seven times by IEDs and in countless firefights. I became disabled at age 28 and needed a degree with the use of my post-9/11 GI Bill. I earned that benefit in service to the nation. I chose to use my benefit at University of Phoenix. What politicians fail to understand about me and veterans like me who fought in the war or needed disability assistance is they do not understand how people judge me when they criticize where I go to school, and I get it. Some of them wish I had chosen a different school, and they only want to write rules for-profit schools and not all colleges and universities. This is wrong. We need to be looking at outcomes for all schools. When you limit choices for veterans, you hurt me and my family. These politics are getting out of hand. Please, leave the politics out of the decision making for veterans. What is especially unhelpful is when you only look at outcomes and wages for some schools while ignoring others. You want to look at wages earned in certain occupations. I chose to be in healthcare, not for the income, but to help others. I chose a University of Phoenix in 2017 because they supported me in my darkest times of depression. I had been suicidal and felt no way out of my life or for a brighter future. Because they cared about me and my success, I've been able to become happier and fulfilled in my workplace due to my education. I work in hospice care and create meaningful relationships with doctors in the hospitals to provide hospice care during people's most vulnerable times for them and their families. I would never be in this position if it were not for my bachelor's in science of management. I'm now pursuing my graduate degree with the University of Phoenix. And I have class tonight in systems thinking in the healthcare environment with professional Rachel Kehoe. I hope you'll consider my experience as you write your rules, and please do more accountability to all schools and for all veterans. These are the Marines that lost their lives while deployed. And this is my son and I who I have reasons to keep going in my education, and this is my bachelor's degree that I have earned and I'm using right now. Thank you for your guys' time. And I hope you guys consider everything that I've said when writing these new rules in management.

MR. ROBERTS: Thank you very much for addressing the committee. We appreciate your comment.

MS. JEFFRIES: Alright, Brady, our last speaker today, will be Donna Stelling Gurnett, Association of Proprietary Colleges.

MR. ROBERTS: Good afternoon. Afternoon, Donna, are you able to hear me? Hi, good afternoon, Donna, are you able to hear us?

MS. GURNETT: I can hear you.

MR. ROBERTS: Excellent. We can hear you. You have three minutes to address the committee, beginning when you start speaking.

MS. GURNETT: Great. Thank you for this opportunity to present these comments on behalf of the Association of Proprietary Colleges. My name is Donna Stelling Gurnett and I'm the president of APC. The Association represents the interests of 11 privately owned, primarily family-operated institutions in New York State that are committed to educational excellence, access and affordability. New York State has a longstanding history of working together with institutions of higher ed in all four sectors. SUNY, CUNY, independent nonprofit, and proprietary to benefit all New Yorkers. This commitment to parity across all sectors has created a proprietary sector with strong student outcomes that should be an example for the Department. I'd like to focus my remarks today on the proposed gainful employment portion of this rulemaking. It appears that many on this committee are urging for a return to the 2014 GE rule and strengthening the 8 percent debt to earnings metric. However, any analysis of institutional or programmatic debt to earnings data reveals that there's huge swaths of public and nonprofit institutions that would also fail this metric. I've also heard many advocates say that the GE regulation should only be applied to for-profit colleges because 98 percent of the programs that failed the 2014 GE rule were offered at for-profit institutions. However, it's important to remember that the GE regulation did not apply to degree programs at public or nonprofit institutions. It only applied to their certificate programs, but the regulation applied to all programs at for-profit institutions. Looking closer at the data from the January 2021 scorecard, there are 753 institutions across all sectors, with institutional debt to earnings rates above 8 percent. Of those institutions, over 73 percent are public or nonprofit schools, enrolling approximately 2.3 million students. These students deserve protection as well. In light of this data, APC would recommend the following. First, we applaud Secretary Cardona's commitment to treating all sectors of higher education equally and focusing on students. We have long supported accountability and transparency measures, but would advocate for any GE metric implemented to be applied universally to all sectors. The Department has the authority to do this. Second, APC would recommend that any component of the debt to earnings metric be included in the disclosures in section 668.43. This would require all institutions to disclose the same debt to earnings data and create an equal basis for comparison for students deciding what college is the best fit for them. And three, APC also applauds the recent release of [interposing] data on the college scorecard. We noted that the website provides median earnings 10 years after students who received federal aid began at that institution. Using this 10-year data to calculate the debt to earnings ratio would be a good starting point and maintains the correlation between the gainful employment debt to earnings and the recently released updated college scorecard. With that, I conclude my remarks, and I appreciate the opportunity to participate today. Thank you.

MR. ROBERTS: Thank you very much for your comment. We appreciate yours, as well as everyone else who took the time to address the committee today. Apologies for going a few minutes over, but we will pick back up with our discussion on gainful employment tomorrow. And as always, thank you so much for all your hard work and discussion today. We know it's a full agenda. We will see you tomorrow at 10:00.

Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 2, Day 2, Afternoon, February 15, 2022

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

I still have several comments on section 668.402, so if possible can we stay on that section

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

It would be helpful to see an analysis of program coverage at the six-digit CIP level, equivalent to the one presented this morning about the four-digit level. That would help us understand the tradeoffs of four versus six.

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

The data were based on 4-digit CIP codes.

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

Can the Department let us know how the 2014 GE results would of been different using the 4 digit CIP vs the 6 digit CIP

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

Laura, yes. My suggestion is to have an analysis of 6-digit CIP codes as well, so we can understand how much more coverage there will be with 4-digit.

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

Debbie - yes you are absolutely right. I was responding to Brad. Your suggestion would be what we need to see to determine the difference.

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

I will provide a memo with all my comments summarized after we finish with the GE session

From Emmanual Guillory (A-PNPs) to Everyone:

that is correct Brad from my reading

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

"I'd also like to request the Department provide us the number of hours the GE rule was discussed in the last two rulemaking compared to the budgeted time this rulemaking."

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

+1 Barmak. In a vacuum, the timeline discussion is one thing. In application and real life, it is another entirely.

From Yael Shavit to Everyone:

+1 to Barmak -- these programs are intended to provide gainful employment in specific professions, not 5 years out

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

+1 to Barmak's comment

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

+1 to Emmanual

From Adam Welle, State Attorneys General (P) to Everyone:

+1 to Barmak's prior comment.

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

+1 to Barmak's comment.

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

+1 Ernest's comment

From Yael Shavit to Everyone:

+1 to Ernest

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

Colleagues are constantly citing the pandemic as an example of an unanticipated event that could have a negative impact on earnings. For the record, wages did NOT plummet as a result of the pandemic: they actually spiked up in the months immediately after the onset of the pandemic, and real wages were higher for the two years after COVID

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

+1 Carolyn.

From Yael Shavit to Everyone:

+1 to Carolyn

From Adam Welle, State Attorneys General (P) to Everyone:

+1 to Carolyn's comment

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

+1 to Carolyn's point

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

+1 to Ernest and Carolyn's points. Labor market discrimination is all the more reason to address unaffordable debts, and doing so timely.

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

+1 Carolyn's comment

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

Grad programs at for-profit schools are statutorily covered. While for-profit institutions may be able to divine congressional intent from the text of current law, it would be best to have Congress address the issue by clarifying the text. Until then, we have to follow the black letter of the law.

From Beverly Hogan Primary/MSI to Everyone:

It is easy to confuse the intent of GE programs with other college degree programs where there are more opportunities for discriminate and prejudicial in hiring and salary setting. Perhaps more clarity is needed to draw the distinction.

From Emmanual Guillory (A-PNPs) to Everyone:

+1 Dr. Hogan

From Adam Welle, State Attorneys General (P) to Everyone:

Yael Shavit is coming to the table for state AGs

From Jamienne Studley (P) Accrediting agencies to Everyone:

+ 1 Dr. Hogan

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

That context is really helpful.

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

+1 to Yael's comment.

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

+1 Emmanual on no opportunity to appeal anything.

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

+1 Yael's comment.

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

Data request: To inform setting of timelines for debt amortization, it would be helpful to see how long borrowers typically take to repay their debt based on credential type earned.

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

It would also be helpful to have that broken down by any demographic information the Department has. Thank you.

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

+1 on ED's position

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

Can the Department remind me where we stopped in 668.404. I have other comments that are outside of the salary section and can't remember

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

+1 to Johnson's comment supporting inclusion of Parent

Plus loans.

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

+1 to Johnson's comment around parent plus loans

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

Does (iii) cover ISAs and the like?

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

+1 to Barmak's and Yael's points about the TEACH grant exclusion concerns

From Amanda Martinez (P) Civil Rights to Everyone:

+ 1 on Teach grant

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

The schools generally have a much better sense of the (high) rates of TEACH conversions for the students that it packages than the students do. Furthermore, conversions are typically the result of students being unable to secure qualified teaching positions.

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

+1 to Yael's concerns on ISAs

From David Socolow (A) State agencies to Everyone:

+1 to Yael's point that the Department should clarify that ISAs are student loans

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

+1 on Debbie's points

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

How do we know that people with zero income are choosing not to work?

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

I would be cautious about that assertion.

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

assertion*

From Yael Shavit to Everyone:

The assumption that people who have zero earnings are choosing not to work is concerning and inconsistent with the experience of many unemployed people. I would caution the Department not to accept that assumption.

From Amanda Martinez (P) Civil Rights to Everyone:

+1 Yael

From Johnson (P) Legal Aid to Everyone:

I agree with not equating $0 income as choosing to not be in the work force.