

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 2, DAY 3, MORNING
February 16, 2022

P R O C E E D I N G S

MS. MILLER: Good morning everyone, welcome to day three of session two. We have a lot to get through, so we're going to jump right in with roll call. Okay, representing accrediting agencies, we have Ms. Jamiene Studley.

MS. STUDLEY: Good morning.

MS. MILLER: And her alternate, Dr. Laura Rasar King.

DR. KING: Good morning.

MS. MILLER: Good morning. Representing civil rights organization and consumer advocacy organizations, we have Ms. Carolyn Fast.

MS. FAST: Good morning.

MS. MILLER: And her alternate, Mr. Jaylon Herbin.

MR. HERBIN: Morning.

MS. MILLER: Good morning. Representing financial aid administrators at postsecondary institutions, we have Ms. Samantha Veeder.

MS. VEEDER: Good morning, everyone.

MS. MILLER: Good morning. And her alternate, Mr. David Peterson.

MR. PETERSON: Morning.

MS. MILLER: Good morning.

Representing four-year public institutions of higher education, we have Mr. Marvin Smith.

MR. SMITH: Good morning.

MS. MILLER: Good morning. And his alternate, Ms. Deborah Stanley.

MS. STANLEY: Good morning.

MS. MILLER: Good morning.

Representing legal assistance organizations that represent students and/or borrowers, we have Mr. Johnson Tyler. Okay, Mr. Tyler is not with us just yet. His alternate, we have Ms. Jessica Ranucci.

MS. RANUCCI: Good morning. Johnson is unavailable this morning, so I'll be at the table.

MS. MILLER: Okay, thank you.

Representing minority-serving institutions, we have Dr. Beverly Hogan.

DR. HOGAN: Good morning, everyone.

MS. MILLER: Morning. And her alternate, miss Ashley Schofield. Okay, Ms. Schofield is not with us quite yet.

DR. HOGAN: She might be in and out because she had something to do on campus.

MS. MILLER: Thank you. Representing civil rights organizations, we have Ms. Amanda Martinez.

MS. AMANDA MARTINEZ: Good morning.

MS. MILLER: Good morning.

Representing private nonprofit institutions of higher education, we have Ms. Kelli Perry.

MS. PERRY: Morning.

MS. MILLER: Good morning. And her alternate, Mr. Emmanuel Guillory.

MR. GUILLORY: Good morning.

MS. MILLER: Good morning.

Representing proprietary institutions of higher education. Okay, actually, let me skip that one for a second. Representing state attorneys general, we have Mr. Adam Welle.

MR. WELLE: Good morning, this is Adam. My alternate, Yael, she said she's going to be a few minutes late.

MS. MILLER: Okay, thank you.

Representing state higher education executive officers, state authorizing agencies, and/or state regulators of institutions of higher education and/or loan servicers, we have Ms. Debbie Cochrane.

MS. COCHRANE: Good morning.

MS. MILLER: Good morning. And her alternate, Mr. David Socolow. It seems like, oh, I think he's entering now, so we'll just jump back and have him introduce himself in a minute. Representing students and

student loan borrowers, we have Mr. Ernest Ezeugo. Seems Mr. Ezeugo is not with us quite yet. And his alternate, Mr. Carney King.

MR. KING: Good morning.

MS. MILLER: Good morning.

Representing two-year public institutions, we have Will Durden, who is in for Dr. Kress, who will be joining us later today.

MR. DURDEN: Yes, good morning.

MS. MILLER: Good morning.

Representing U.S. military service members, veterans, and/or groups representing them, we have Mr. Travis Horr. Okay, I believe that his alternate Mr. Barmak Nassirian is sitting in for him today, is that correct?

MR. NASSIRIAN: Morning.

MS. MILLER: Good morning, thanks. And I skipped one, sorry about that. Representing proprietary institutions of higher education, we have Mr. Bradley Adams. I think Bradley will be joining us momentarily. And his alternate, Mr. Michael Lanouette.

DR. LANOUILLE: Good morning.

MS. MILLER: Good morning. For our advisors, we have a compliance auditor with experience auditing institutions that participate in the Title IV, HEA programs, Mr. David McClintock.

MR. MCCLINTOCK: Morning, everyone.

MS. MILLER: Good morning. And we have labor economist or an individual with expertise in policy research, accountability, and/or analysis of higher education data, we have Dr. Adam Looney. Okay, seems Dr. Looney is not with us quite yet. And for the Department we have from the Office of General Counsel, Steve Finley.

MR. FINLEY: Good morning.

MS. MILLER: Good morning. And, of course, our federal negotiator, Gregory Martin.

MR. MARTIN: Morning.

MS. MILLER: Good morning. Did I miss anyone who hasn't joined quite yet?

MR. SOCOLOW: Yeah, hi, it's me, David Socolow, I'm here. Good morning,

MR. ROBERTS: And Ernest, as well, have both joined us.

MR. EZEUGO: Hello.

MS. MILLER: Welcome. Okay, well, we have a full day of jam-packed schedule. We have to be done with gainful employment by noon. And after lunch, we'll jump right into financial responsibility. So, I ask the committee to remember the protocols: three minutes for comments, and comments that move the

conversation forward. And with that, I will turn it over to Greg to pick up where we left off yesterday.

MR. MARTIN: Thank you, Rozmyn. And I'll just wait for my colleague Vanessa to pull up the text, and there we are. So, we are in the GE issue paper, in 668 section 406, determination of the debt-to-earnings rates. So, we're going to start there today, and yeah, just making sure we're in the right place: 406. And so this section describes the determination of the program's status based on debt-to-earnings rates. Each year in which the DTE rate is calculated, the Department will notify the institution of its debt-to-earnings rate for each GE program, and for its small programs by credential level. We will also notify the institution of whether the program is passing, failing, or ineligible. As previously noted, we are no longer including a zone period. We will also notify the institution if the program could become ineligible in the next award year, and whether the institution is required to provide a student warning. So, you see there some of the changes. In (a) (1), the debt to earnings rate for each GE program and for its small programs, as determined under 668.404, which we discussed yesterday. And then in (2), you see the determination by the Secretary of whether each program is passing, failing,

or ineligible, as described in 668.403. So, that is the entirety of section 406, so I'll stop there and entertain comments at this point.

MS. MILLER: Welcome to the table, but I just want to mention that David Peterson will be at the table for financial aid administrators, and Emmanuel Guillory will be at the table for private nonprofit institutions of higher education. With that, Brad, please.

MR. ADAMS: Hi, yes, you know, I missed the opening comments, Greg, but I just want to state for the record that I'm frustrated that the Department in this committee is not offering enough time to take this GE issue paper seriously. The fact that the Department issued its first redline on this issue one week ago, and we've got a total of four hours to negotiate the significance of this issue, and at best we'll get one more redline and another four hours to review in March, is troubling. Why did the Department choose to slam GE into the middle of the six other important issue papers, when in the past two GE negotiations it created an entirely separate rulemaking committee for this important rule? The Department's own Steve Finley said yesterday the Department does not have to justify or support why the Department has

significantly changed the previous 2014 GE rule. Greg admitted in his opening comments that the committee really didn't have enough time. The Department also said a few things yesterday that I didn't appreciate, and several public commenters have asked if I'm sincere. The Department does not care about taking this negotiated rulemaking process seriously, which is required by a federal statute, and why are we even having this negotiation that I can think of better uses for my time? I'm concerned that the Department rushing this process will open it up for more litigation. I, along with Emmanuel, would love to see the bad guys go out of business, but the difference is I want the bad ones to go out of business in all segments of higher education. And no one can stand here and say there are not bad players in all segments of higher education today. Imagine being in my shoes, an institution that borrowed \$10 million and spent 5 years to risk getting a low-cost doctorate in physical therapy program approved through a difficult programmatic accreditor like [inaudible]. Then, take that same figure and multiply it by four to get a doctorate in pharmacy, a doctorate in nursing with concentration CRNA, a master's in PA approved through separate programmatic accreditors. If one of those programs comes back and fails one year of GE, including

a potential accidental calculation error, then it's going to leave hundreds of employees left without a job, millions of dollars investment capital wasted, and students forced to go to more expensive nonprofit options. Now, think what that'll be across the nation. The warnings being proposed in GE will end programs if they fail one time. The sad part is these rules eliminate quality investment in other higher education programs. I'm sure most people saw the Wall Street Journal article titled *Some Professional Degrees Leave Students with High Debt, but Without High Salaries*, dated December 1, 2021. In the article, it says NYU dental students should expect a total doctorate dental program to cost \$570,000, and that NYU educates nearly 10 percent of all the dentists in the United States. We looked at a dental program and wanted five million into a dental program to get approved through Coda. And unfortunately, we would only have to charge \$250,000 for that program. We didn't go through that investment because of GE, and that hurts student options, and increasing student debts for others. I'm passionate about this issue because I care about students, and all students. If this committee is serious about protecting students, we need more time to debate GE. We have a statutory authority to make these changes and go through

the process the right way. So, I'm formally asking the Department to pull this gainful employment issue off of this negotiated rulemaking and put it in its own process to allow negotiators more time, just like it did in 2011 and 2014. That's the only way to show that we're giving fair issue to this process. Thank you.

MS. MILLER: Thank you, Brad. Any other questions? Marvin, I see your hand, but I'd like to acknowledge that Dr. Adam Looney has joined us. Marvin, please.

MR. ADAMS: Can we have Steve respond to the request to move this negotiation to a separate committee, please?

MS. MILLER: Greg or the Department, did you want to respond to that?

MR. MARTIN: I'll respond to that, and Steve can add something if he wants. Obviously, it is part of this table. We have no plans to remove it as part of this table. I understand that there may be differences of opinion as to whether or not there is enough time devoted to this particular topic. Obviously we have a very full agenda, and GE is part of it. At this point, I do want to make every effort to get through GE. The suggestion that we remove it from this table is not one we've entertained so far. However, I

want to commit to Department to getting through this in the timeframe that we established and that we published in the Federal Register. However, I will take the comment back to leadership.

MR. ADAMS: At a minimum, we need another week.

MS. MILLER: Brad?

MR. MARTIN: And I also want to let Steve comment if he has something additional to say.

MR. FINLEY: Yeah, Brad, thank you for the comment. I understand your frustration at the limited time compared to prior sessions on this. It's on the table for discussion, and when I said yesterday we wouldn't use this opportunity to explain the rationale for the proposals that are on the table, that doesn't mean they won't be explained as part of the formal rulemaking process. Right now, this is a chance to get feedback, and we appreciate the feedback you provided and the feedback we're getting from others. And as Greg noted, your request will be discussed internally and you'll get a reply. Thank you.

MS. MILLER: Thank you, Steve. Marvin.

MR. SMITH: Yeah, I wanted to talk a little bit about the small program rates. I think that a lot of the four-year publics are going to be subject to

the small program rates because we have lots of certificate programs with very few student borrowers. So, I'm curious about the level of detail that's going to come in this small program rate, because we're not going to know the income levels of like a dental hygiene certificate program versus a computer engineering drafting certificate program. They're all going to be lumped together, and we won't have any details on the differences in the income and debt of these students. So, I'm just trying to figure out the value of what we're supposed to do with the small program rate, or maybe I misunderstand the data that we will get.

MR. MARTIN: Well, the reasoning behind it is to provide some detail about these programs that are that are too small to produce rates for, and there are a lot of them. So, if we are not doing this, we just simply let all of those go without any information being published about them. I do understand the concern that you're going to have, you could have programs that are different put together by credential level, such as the example you gave. And I point out again that there are no measures, that that rate is not keyed into any loss of eligibility or anything like that, it's simply as informational. So, our desire there was to produce some data for the public about the

success of those programs.

MR. SMITH: That makes sense, thank you.

MS. MILLER: Thank you, Marvin. Brad.

MR. ADAMS: Thank you. So, in 668.406, I just want to point out, and it was briefly mentioned yesterday, but that the correction appeals process from both the 2011 and 2014 rules have been completely removed. In the prior process we got data on completers, and then we were able to review and had an opportunity to correct. The Department issued the debt rates for those completers, and institutions got the opportunity to correct the data. Then they issued D/E rates, and we got the opportunity to challenge the accuracy of those rates through alternative appeals processes. These necessary processes are absent from this current proposal. Corrected data in turn made for more accurate D/E rates. We know how wrong the Department got the data in the 2014 process. The Department's failure to include these processes, like the omission of the alternative earnings appeal, represents a serious issue for institutions and increases the likelihood that D/E rates will be inaccurate or misleading. This is even more important given the Department has proposed eliminating the zone and, with the current proposed disclosure

language that is in place, if you fail once your program is more likely finished. It would be terrible if a simple data error that was not able to be challenged ended up ending a successful program from being offered to students.

MS. MILLER: Thank you. Other questions, other questions? Okay, I don't see any other, Brad, is your hand up again?

MR. ADAMS: It is. One other point in this section: I want to offer a thought of a safe harbor here, as a process for appealing the draft D/E rates. We propose the Department perform an alternative safe harbor D/E rate calculation at the 8-digit OPEID level for any program at the 6 OPEID level that failed this D/E rate. This would permit the Department to assess and institutions to discriminate. While a D/E rate that was calculated for a program across all locations and markets might be failing, the D/E rate for programs in specific locations and markets may be passing. Critically, this would allow for successful programs to avoid becoming collateral damage, especially given the push to group programs together at the four-digit SIP code. Further calculations and related disclosures that are based on individual locations will be more meaningful to the students attending those locations,

and more accurately reflect the quality of instruction, operational cost, employer demand, and market characteristics of that student's specific campus. We highlight that because the Department has already the ability to gather and calculate data at the 8-digit OPEID level, and there are no system limitations that should inhibit the efficient calculation of location-specific alternative rates.

MS. MILLER: Thank you, Brad. You can submit that proposal to Cindy and we'll pass it on to the Department. Other questions? Okay, I don't see any other hands. Greg, are we okay to move on?

MR. MARTIN: Yeah, we could take a temperature check for 406 before we move on to 407.

MS. MILLER: Okay. Brad?

MR. ADAMS: Yeah, just real quick, I just want to make the comment that it seems like we're just pushing this along. I'm making comments and no response from anyone in the Department. I would just appreciate Greg or somebody to respond to these proposals.

MR. MARTIN: Well, we did address yesterday the Department's reason for not including the earnings appeal. I don't have anything else to add to that, Brad, beyond what I said yesterday, so it doesn't

do any good to be redundant of the reasoning I gave yesterday. Obviously, some people will not agree with that. I don't know that my speaking to it again today will change that. As far as the data challenges go, we did indicate yesterday that we intend to use administrative data to the extent we can, and we will give institutions time to correct that data before we use it. And again, we do expect that the information that institutions provide to us will be accurate, whether it's information that is in NSLDS, COD, or information provided by the institution for other reporting purposes. So, beyond that, I think I gave the Department's reasons for doing that yesterday. I don't think that reiterating them again will serve any purpose. Your comments are noted, and we will take back your suggestion for the calculation by 8-digit CIP for consideration. And I thank you for offering that.

MS. MILLER: Okay, thank you, Greg. So, can we get a temperature check on 668.406? I need to see all thumbs high, please. Okay, looks like we have two thumbs down if I'm correct. Thank you. Greg, can we move on to the next section?

MR. MARTIN: Yes. Vanessa will be bringing up section 407, which is consequences of the D/E rates. And talking about the changes here, this

section outlines the consequences for failing D/E rates. Specifically, if a program could become ineligible in the next year based on its debt-to-earnings rates. the institution must provide a student warning, as we propose in our disclosure requirements. The wording itself will be accessed through a Department of Education website, and this hopefully will remove some of the burden on institutions in monitoring the delivery of this warning. However, institutions will still be required to provide students with a warning and information on how to access the Department website, as well as the requirement that students must attest to having viewed the disclosure. For enrolled students, that communication must include information on the student's opportunity to complete, transfer, or access refunds if the program loses eligibility. And for prospective students, the institution must provide a cooling off period between the student completing the attestation and the institution enrolling the student or engaging them in a financial commitment. So, you see that represented there in (2), content of the warning. The institution must provide the relevant information to access the website maintained by the Secretary in wording as specified by the Secretary in the notice published in the *Federal Register* that the program has

not passed the standards established by the U.S. Department of Education and may face restrictions.

MS. MILLER: Greg, I think you may have frozen. Is that just on my end?

MR. EZEUGO: I heard it too.

MR. MARTIN: Then let's move on to...

MS. MILLER: I'm sorry, Greg, to interrupt, I think you froze for a little bit.

MR. MARTIN: Oh, I'm sorry. Let me go back.

MS. MILLER: Okay.

MR. MARTIN: I'm sorry, I didn't realize that. I didn't have anything indicating here that I had a bad connection. Is it okay now? I appear to be coming through?

MS. MILLER: Yes.

MR. MARTIN: Okay, good. Sorry about that. It's just the vicissitudes of Zoom, I suppose. So, we were discussing in 407(a)(2) the content of the student warning, and I just wanted to direct everybody's attention to the text there that the institution must provide the relevant information to access the website maintained by the Secretary. And then you see the warning, as specified by the Secretary in a notice that will be published in the *Federal Register*, that the

program has not passed the standards established by the Department of Education and may face restrictions on enrollment, and a statement that the student must attest to having seen the wording through the disclosure website established and maintained by the Secretary. And then I want to move down to (5), delivery to prospective students, and you see here the website information reflected, an institution must provide the warning as required under paragraph (2) of this section to each prospective student, or to each third party acting on behalf of the prospective student, at the first contact about the program between the institution and the student or third party acting on behalf of the student, by hand-delivering the warning and the relevant information to access the website maintained by the Secretary, so there you see the website referenced. Again in (B), sending the warning and the relevant information to access the website. And in (C), providing warnings and the relevant information to access the website. And in (C) romanette (ii), an institution may not enroll or register or enter into a financial commitment with the prospective student with respect to the program earlier than 3 business days after the student completes the attestation that was referenced previously. We can move down to (b), restrictions. This

section further clarifies that an institution may not disperse Title IV funds once ineligible. They may not seek to reestablish the eligibility of a failing program that it discontinued for at least 3 years after the determination of eligibility, and ineligible programs remain ineligible until they are otherwise reestablished in accordance with the timelines in these rules. And there you see it reflected in (b), except as provided in 668.26, the institution may not disburse Title IV, HEA funds to students enrolled in an ineligible program, and the period of ineligibility is referenced there. An institution may not seek to reestablish the eligibility of a failing program that it discontinued voluntarily, either before or after the D/E rates are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates until 3 years following the date specified in the notice of determination following informing the institution of the program's ineligibility, or the date the institution discontinued the failing program. And lastly, under (3), restoring eligibility, an ineligible program or failing program that an institution voluntarily discontinued remains ineligible until the institution establishes the eligibility of that program under 668.410(c). So, I'll stop there and entertain any comments or expression.

MS. MILLER: Thank you. We have Yael Shavit who has joined us for states attorneys general, and who is up first.

MS. SHAVIT: Thank you. As I mentioned yesterday, I appreciate the importance of providing students and prospective students with information. I do have some concerns about the attestation and potential misuse of it, and I think it's important for the Department to clarify. My concern is that such an attestation not be used to prevent students from accessing different relief that might be available to them under different Departmental regs, including the Borrower Defense rule or rules pertaining to closed school discharges. And I think this is something that the Department should clarify, whether it's in the regulatory text itself or even just as part of the NPRM describing the purpose here, but I think it's critical that students not be barred from accessing relief in the event that they're ultimately entitled to it by virtue of having completed such an attestation. And I also do want to note that despite, I think, the well-intentioned pieces of these provisions, including the cooling-off period, there still remains very real opportunities for abuse here that I think are very hard for the Department actually get at, including a lack of access to whatever

information is being provided by schools to students around the issue of the attestation and their responsibilities. And I think that's an important thing to keep in mind when the Department considers what submission of an attestation actually means. So, this is an area where I think it's important for the Department to make very clear that students are not going to lose rights by virtue of submitting an attestation.

MS. MILLER: Thank you. Will?

MR. MARTIN: Thank you, Yael. I also want to say, before we move on, the intention of the attestation is not to prejudice the student's access to any relief that he or she may be entitled to under any other provisions, the intent is to make certain people see it. That's our main goal here. To the extent possible, I do concede that there's no way to force somebody to absorb anything, but we're trying to make sure to the greatest extent possible that students actually view it. And we've had problems with that in the past, trying to come up with a way of doing that. This is our best proposal now. You make some good points; we'll definitely take those back, and hopefully I can provide some clarity about the view of how attesting to the warning plays into any of those other things.

MS. SHAVIT: I appreciate that, and again, I definitely understand and agree with where the Department's motivation is here. I think my concern is twofold, one that institutions in the midst of their own proceedings with the Department of Education may try to raise the student's submission of an attestation as either a defense in the context of a Departmental proceeding to recoup funds following a Borrower Defense claim, but also that, while I think I'm aligned with the Department's views about this now, I can imagine a world where the Department could take a different position in the future if it wasn't laid out clearly what the Department will do here. But, thank you.

MS. MILLER: Barmak.

MR. DURDEN: Thank you. I have some clarifying questions, coming back up to the top: (a) student warning, (2) content of warning, romanette (iv), (B) as in boy, (1) and (2). So, here it says that the colleges that are notifying these individuals must also indicate (1) and (2), and for number 1 it's not clear. Do you mean that the college should indicate whether the program will be discontinued if it loses Title IV eligibility? And for (2), on the refunds, do you mean that the funds would be refunded if the program loses eligibility, or if the program is ending?

MR. MARTIN: Give me the cite again, I'm still trying to find that.

MR. DURDEN: Yeah, we're in romanette (iv), so kind of at the top: student warning, the communication that the college provides to the students.

MR. MARTIN: Oh okay, for warnings provided to enrolled students. Is that where you are?

MR. DURDEN: Yeah, an indication of whether their institution will (1) and (2). Do you see that?

MR. MARTIN: Oh, okay, I see. I'm sorry. Yes, I see where you are now.

MR. DURDEN: Thank you. So, for number (1), "continue to provide instruction in the program to allow students to complete the program," I'm trying to clarify, is the college indicating whether the program will be discontinued if it loses Title IV eligibility?

MR. MARTIN: Yes. Yeah. So let's go back to under romanette (iv) there, a description of the academic and financial options available to students to continue education in another program at the institution. And I think this would be whether the program loses eligibility as a result of the process or the school voluntarily discontinues the program. So this indication, would the student be able to continue the

program and will the institution refund any of the tuition and fees required to pay to the institution on behalf of the students. So, those circumstances could result from the actual loss of eligibility under the rule, or the institution after the warning, after failing one year voluntarily. It's deciding whethervoluntarily at that point to discontinue the program.

MR. DURDEN: Okay, if I can follow up? I think we're just trying to clarify, we're not assuming that because the program loses eligibility that the program is ending, correct? I just want to make sure we're not making that assumption.

MR. MARTIN: No, because the fact that the program lost eligibility doesn't mean, we don't control whether a school offers a program. We do have authority over whether it's eligible.

MR. DURDEN: Correct, yeah. So, for number (2), do you mean that the funds would be refunded if the program loses eligibility or if the program is ended?

MR. MARTIN: That's a good question here. I think that they should inform, well, I think we may have to put some clarifications around that, so I'll take that back. So what you're saying here is if the

program were to lose eligibility but continue to be offered by the institution, what would the condition of any refund of tuition and fees be at that point? I believe we've written this with an eye toward the program ceasing to ceasing to be offered, but I will take that back as far as what would occur if the program had lost eligibility, but the school continued to offer the program.

MR. DURDEN: Thank you. It's felt a little conflated, so we appreciate your attention to that.

MR. MARTIN: And I do want to point out, too, that we referenced 668.26, which is the end of participation, so there are rules. I don't want to go over those now, but there are rules about how a school can pay out student aid in the in the event of a loss of eligibility. And just to point out some information here, yes, this is if the program loses eligibility, so institutions would be required to provide warnings to enrolled students that describe, among other things, the options available to continue their education at the institution. The regulations also provide that for a GE program that loses eligibility or any failing program that is discontinued by the institution, that the loss of eligibility is for 3 calendar years. So, we do mean

specifically a loss of eligibility, but I could see how there could be some confusion related to the refund if the program continues to be offered. But again, I do want to point out that we do have a mechanism in 668.26 for a school to pay out Title IV aid for the student in a current year before the student would no longer have access to that aid. But thank you, I will take it back, and perhaps we can have some more clarification there.

MR. DURDEN: Thank you.

MS. MILLER: Thank you. We have Barmak next, but I wanted to acknowledge that Mr. Carney King is at the table for students and student loan borrowers. Barmak.

MR. NASSIRIAN: Yes, I wanted to first echo Yael's concern. I appreciate the Department doesn't intend to use the attestation against students, but it would be helpful to address that issue. The second topic I wanted to raise is the question of transfer and guidance, with regard to transfer, any advice that the institution dispenses regarding transfer. The sending institution is in no position, unless it has ascertained that credits transfer, it is in no position to tell people whether credits will transfer or not. And more often than not, the typical advice is 'sure you can,' by which they mean 'sure, you can try.' And frankly,

transfer alone doesn't mean much unless the credits are applied in the appropriate way toward the earning of a degree. You know, they can all be taken in as unnecessary electives and leave the student still as far away from graduation as they would have been had they not transferred the courses. So, it seems to me that in romanette (iv) subsection (C), an explanation of whether students could transfer, it borders on meaningless. You really need to firm that up to make sure that it's clear that the institution has either made arrangements or has ascertained that credits will transfer and apply towards the credential that the student was seeking. So, that's one issue, and the second one has to do with the final phrase in subsection (A) under romanette (iv). I'm not quite clear. I do understand that institutions are in a position to ascertain whether credits earned in one program that may be losing eligibility could be used in another program under their control, but this final phrase, "and which course credits would transfer in the event that the program loses eligibility," do you mean 'would transfer to another institution?' Or are you still talking about transfer to another program at this? I just don't understand, because it seems to me to be redundant in both cases. You've already addressed whether they transfer within the institution from one

program to another in subsection (A), and you presumably are addressing interinstitutional transferring subsection (C). I just wanted some clarification on that. Thank you.

MR. MARTIN: Yeah, Barmak. In (A), "a description of the academic and financial options available to students to continue their education at the institution," and so that that is intra. I think I got that right, institutional transfer there. So what you referenced, "could transfer credits earned in the program to another program at the institution and which course credits would transfer in the event the program loses eligibility for Title IV funds," so this would be irrespective, I think, of whether or not the program would continue to be offered. Would they allow the student to transfer into a program that is still Title IV eligible? To your point in (C), an explanation of whether students could transfer, I think yes, I would definitely stipulate your concern or the point you made that it's impossible to ever know for sure whether credits will transfer, and I think in a lot of cases you're right, the school might say, 'yeah, they might transfer, you can try to get them transferred.' But I think this does take into account the possibility that an institution may have an agreement with another

institution for those credits to transfer, so if there's some type of agreement like that, they could let the students know that, 'yes, your credits will transfer to institution B or C.' Obviously, no schools are in a position to say your credits will absolutely transfer writ large, I get that, but we might be able to put some more context around that, so we'll take that back. Thank you.

MS. MILLER: Thank you. Mr. Jaylon Herbin is at the table for civil rights organizations and consumer advocacy organizations. And Jessica, you are next.

MS. RANUCCI: Thanks. I'll try to be quick because my concerns are largely the same as the ones raised by Barmak and Yael. On the attestation, I would just ask the Department to consider whether it might be appropriate to either in addition or instead ask the school to attest to this. It seems to me like the school is in a much better position to assess that federal regulations have been followed. And while obviously that's not fraud proof, I think the Department would have independent tools, I'd guess fraud in that way would risk Title IV eligibility under independent regulations, is my understanding. On the transfer point, I 100 percent agree with Barmak. I think that we've seen

real problems with schools disseminating false information about what transfer options are available, and I think that the gold standard here is some sort of teach-out agreement/teach-out plan. I understand the Department's problem here, because that's at the institution level and various schools that are closing, and this is at a program level and the program isn't necessarily closing. But I guess I would ask the Department to think creatively about how it might be something that, I defer to Jamie and her people, but something that their people thought a lot about. There's a lot of resources already out there for how to deal with this problem, and whether the Department can leverage those resources here, because I do think such open-ended language really gives an opportunity for problematic communication.

MR. MARTIN: Thank you, we'll take that back.

MS. MILLER: Thank you, Jessica. Brad, and then Carney.

MR. ADAMS: Thank you. Institutions should not be penalized if a program that is being retired produces failing D/E rates in its final years. A program that its institution voluntarily determines to wind down could suffer a decline in D/E rates,

particularly if the decision to wind down the program was based on market changes. For example, if you're producing graduates for a rural hospital and the hospital closes due to market reasons outside of the institution's control, then the institution would be prevented from creating future similar programs within the four-digit CIP code with other hospitals or anyone else in any other market for 3 years. Even if the new version is shorter, less expensive and redesigned to be more attractive to employers. For example, if medical assisting failed in New York, you cannot open up a PTA program in Florida. I would have hated to have a real estate program in 2008. We need a stronger way to allow for institutions to do the right things based on local market conditions.

MS. MILLER: Thank you, Brad. Carney.

MR. KING: Yeah, I have just a couple of questions and comments. Forgive me, it's kind of early in California still, and I might not have had enough coffee, but I'm trying to see what the whole picture looks like once the ineligibility happens. Is it just referring to the website and then a separate statement that the students have to sign, like another document outlining what the Secretary is asking for, or is it all kind of one giant piece? I'm just concerned

that students are going to get buried in the minutia of what's happening or don't know to check the Federal Register for bad actors when they're in school. So, I just kind of want to clarify how that all works.

MR. MARTIN: Well, I would say here, look at it in the context of where we start with in (A). These are the result of a student warning, so the idea here is that there has been a warning issued because the school has failed at one year. So, at that point, the potential exists for the program failing another year and lose eligibility. So, this is about informing students of that potential outcome and letting them know what their options are, making certain that they've seen it, that they know that potential exists, and going from there. So, that is what this is, what this section is about. At this point with a warning a program has not lost eligibility, and so we're not at that point, we're just at the point where you're informing students of what their options may be in that eventuality. Does that help?

MR. KING: Yeah. And would anything be sent to anyone, like would their parents also be notified if they're on the loan for the students, or is it just on the students?

MR. MARTIN: It's just a warning for

students and prospective students, so there would be at this point some obligation on the student to apprise parents of that. But this is about, since the student is the one attending and the student's the one receiving the education, this is what these warnings are geared to.

MR. KING: Okay. And then does their Pell Grant reset if their program loses eligibility? Is there a mechanism for that?

MR. MARTIN: We do have some Pell Grant restoration of eligibility, I do not believe there is any currently any Pell Grant restoration with respect to losing eligibility for GE because we haven't had GE, but that's a good question. I'll take that back, because you're making, I would ask, are you making a suggestion that that be the case?

MR. KING: Yes.

MR. MARTIN: Then in that case, I will take that back. Okay.

MR. KING: And then my last question on this is, I want to make sure that universities cannot withhold transcripts if they're in that process.

MR. MARTIN: We will have a discussion of that a little later in the week.

MR. KING: Okay. Alright, thank you.

MS. MILLER: Thank you, Carney. David, and then Debbie.

MR. PETERSON: Yeah, I guess my question involves the attestation of the student. My concern is, from a program standpoint, am I able to give that student aid if we haven't received any notification from the Department that they've seen the warning? Are we able to register them for continuing their enrollment? I guess I kind of agree with the earlier statement. That should be probably something that we as an institution assume responsibility for, not the Department. I feel like you're really going to be slowing the process down for some of these students to continue on, if that's what their goal is to do. That's the only comment I had.

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

MS. MILLER: Thank you. Debbie.

MS. COCHRANE: Thank you. I have two points. Both of them are kind of feeding off of things that have previously been said. I'm not totally sure I understood the specific details if there were some offered. One is just I would voice some support for a concept that Brad said, which is that I think, in my view, I think having institutions intentionally wind

down failing programs or programs that they can see are not working well for students is an unintended consequence of this rule. And so, I think we should be mindful of that, and encouraging of institutions to kind of do the right thing before federal policy requires them to do the right thing. So, as a general matter, I also was not sure I totally understood the exchange between Will and Greg with respect to (B) (2), the idea of refunds and the idea that programs would stay open, because it feels like (B) (1) talks about whether an institution will continue to provide instruction in the program. And of course, if it's losing Title IV eligibility, then that continued instruction couldn't be with Title IV, so it would seem like it was continuing to operate without Title IV. So again, I'm not totally sure I understood that, but if (B) (2) is essentially saying that some students should be getting refunds, they would be entitled to refunds under certain circumstances, I think we should be cautious about dialing that back if programs are still remaining open. I think what I've seen in cases where an institution as a whole loses Title IV and stays open, the institution is able to do so by pushing students to private and institutional loans, and that is not a good option. I think whether someone wants to stay enrolled in a

program that loses Title IV eligibility should be the choice of the student, and if we are effectively denying a student the opportunity for a refund, we're holding them hostage.

MR. MARTIN: I take your point, but I will say here that, we mandate when an institution has to do a return of Title IV funds calculation, that's when a student withdraws or is expelled or otherwise leaves a program in the middle of a period of enrollment, which probably would not be the case here. But if it were, if a school ceased to operate a program in the middle of a period of enrollment, then there would be a return of Title IV funds calculation necessary for their Title IV funds. This is a refund. So, this has to do with their refund of tuition and fees, or other required charges. We cannot compel an institution to provide a refund for students--not talking about R2T4 now, a refund. So what we're talking about in this regulation is simply, if you note in (B), an indication of whether the institution will. So, we're not in any way mandating an institution to do so, but just as information to students as to whether--I think there is always the possibility that, yes, with the loss of Title IV funds, that the institution can continue to operate the program. I don't know how often that would

happen, that they would operate this program without benefit of Title IV funds. So, I think in most cases, you're probably going to have a program which is not going to be operating anymore, and that's where this regulation is coming from. So, though we cannot mandate that the institution offer a refund to students, we can mandate that they indicate to the student, at least, whether or not they are going to as in (1) continue the program of instruction. They might want to teach out the students in that program. And then, I think what (2) is saying is if they're going to close it and students will no longer be able to be in the program, will they get that refund of tuition? So, it's about information being provided to the student, not a mandate from the Department that these things be done, except to the extent that they have to indicate it, if that helps.

MS. MILLER: Thank you, Greg and Debbie. We have Carolyn Fast, who has rejoined us at the table for civil rights organizations and consumer advocacy organizations, and we also have Mr. Ernest Ezeugo, who has joined us at the table for students and student loan borrowers. Brad.

MR. ADAMS: Thanks. We'd like the Department to consider if a program is subject to a loss of eligibility due to failing D/E rates, it should only

lose access to the Direct Loan program. Students attending the institution and choosing to continue in the program should still have the opportunity to access Pell Grants, and maybe the institutions could even offer matching similar institutional grants, similar to how the Yellow Ribbon VA program works. I don't think it's fair to students to lose their access to Pell by continuing in programs they choose to, and I would appreciate comment on that, and just the overall comment on closing a program due to market conditions and excluding that from the provision.

MR. MARTIN: I can take back both of those suggestions, Brad. It's not what we proposed here, and I don't have the authority to just say 'yes, we would accept that' or not. I'll definitely take those back and discuss it with leadership. I get your point about the wind down of the program. But I do want to point out that the consequences for students remain, whether or not it's the result of the Department, or whether it's that of failing D/E rates or whether the school chooses to wind down the program. So, I do want to point that out, but I will definitely take back the suggestion about the Pell Grant, and the other one about the program wind down.

MR. ADAMS: And just to finalize that

comment, senior leadership at the Department previously discussed bifurcating sanctions based on the purpose of the Title IV program. So, we think there may be merit in doing this with Pell, considering this is GE and this is part of the rate in the debt to earning metric.

MR. MARTIN: Thank you. We will definitely discuss that.

MS. MILLER: Thank you, Brad.
Emmanual.

MR. GUILLORY: So, I had a question for the Department. So, Greg, I just wanted some clarification, from my understanding and reading of this with these warnings, this would happen after one failed D/E rate. Is that correct?

MR. MARTIN: That is correct.

MR. GUILLORY: Okay. So, a program would fail once, and then could not fail the next year, but because they failed once and they issued these warnings to students, which would freak a student out--I mean, if I was a student, I would be freaked out to see this morning like, 'oh my gosh, this program failed this rate and I need to get out of it.' And then the next year, the program passes and the program continues to pass, yet the student has altered their life, went to a new program, just out of fear that something is going

on, and this program actually is doing a good job and it's not a bad actor program. And so my concern just comes around to the idea of yanking the students around. Yes, we want to protect the students, we want to make sure they are in good programs, 100 percent, and we want to make sure they're not in the bad actor programs. But what about those programs that aren't the bad actors, but something happens in the market, like a pandemic or something, and there are just unfortunate events surrounding that with the earnings data and that sort of thing, and so this program doesn't receive the best rate for that year? I just concerned about the--obviously we want to warn students who want to be transparent with information and data, I'm not saying we don't want to do that, we do want to do that--I just get concerned about those programs that have a slip up for some reason for one year, and they're good, but then the student freaks out and then makes all these changes and it disrupts their postsecondary higher education career.

MR. MARTIN: Thank you.

MS. MILLER: Thank you. Yael.

MS. SHAVIT: I just want to say I think students are certainly able to take circumstances into consideration when they're thinking about and processing the information that they need to make

informed choices for their lives. These rates are not arbitrary. They're indicia. Whether or not they're indicators of a problem that can be corrected or a problem that will persist is certainly not a reason to deprive students of the information that's necessary. And Emmanuel, you say that you're all for transparency. Transparency is providing students, with this information, the ability to make their own informed choices. I think there's just absolutely no justification for keeping any of this type of information secret. And I also want to note that this regulation is not just about weeding out bad actors, it's also about weeding out schools that, for whatever reason, aren't able to provide gainful employment, even though they would like to and intended to, and students need to be able to have a preview into what may be coming down the line. If that means that some students decide that their level of risk aversion is such that they want to transfer, that is their prerogative to do it, and I think there's just absolutely no justification for depriving them of that information.

MS. MILLER: Thank you. Ernest.

MR. EZEUGO: Yeah, I'll keep my comments pretty brief, because I think I agree completely with everything Yael just said. I would also,

I'm curious as to the number of programs that are actually failing this D/E standard for 1 year and then coming back and maintaining strong presence. As my colleague Carney said in the chat, and also speaking as one of the only students on this committee, so I'm far less concerned about the collateral damage of being jerked around a little bit in what seems like a relatively rare instance when the program fails this metric once and then recovers, compared to what can happen when, quite frankly, the metric is correct and shows that a program is not necessarily keeping up with its commitment to making sure students are gainfully employed after graduation.

MR. MARTIN: Thank you.

MS. MILLER: Thank you, Ernest.

Emmanual.

MR. GUILLORY: I just wanted to add to my comments that when I think of these career programs, and I'm talking about programs that are at our institutions, private nonprofit institutions or publics or whatever, I'm not talking about for-profit institutions per say. I think about institutions that enroll a large number of low-income students and low-income students of color, who we want to make sure they have access to a postsecondary degree. We want to make

sure that it's quality, and we don't want them to be preyed on or anything like that, but they take a chance on students to make sure they have access and make sure they can get that degree, to then help them live their American dream however they want to do that. And because of unfortunate discrimination that has happened in our country, which would require them to have come from low-wealth families, which means they have to borrow more because they don't have the money to lean on to help pay for living expenses, to attend their postsecondary degree. They go to a program that would be considered a gainful employment program, because that's what we're talking about, those types of programs. For whatever reason, they choose to go into that program, and they attend an institution that has a great mission and that is not trying to prey on students at all, but want to give them an opportunity to be successful, and then they go into labor market and they experience discrimination in the labor market, not because they're not intelligent and smart and hardworking, but because they're just faced with challenges because of the color of their skin, unfortunately. Then those programs at those institutions that would likely enroll a large number of low-income students of color would likely not have the best D/E rates only because those students who are low-

wealth are taking on more debt because they need to. And then when they get to labor market with their earnings, it's not on par equal with their peers, necessarily. That's not a fault of the program, per se, that's a fault of the history of what has happened in this country. But I agree with the comments that my colleague Ernest made yesterday, in that we definitely don't want programs that prey on these various types of students that I'm talking about to exist. We don't want that. I don't want that. I'm not advocating for that. I'm just trying to keep in mind, I just want to make sure that we are holistically thinking about all the types of career programs out there at many different types of institutions that are the good actors. So, I just wanted to add that point.

MR. MARTIN: Thank you.

MS. MILLER: Thank you. Amanda.

MS. AMANDA MARTINEZ: Yeah, this is a question for the Education Department. I think the conversation has been fruitful. I also think that this is an extremely [inaudible] perspective here. And also, in good faith, I'm imagining the reason why the Education Department outlined this section in detail specifically in warning students is because, through experience, the Education Department has collected or

has made an analysis of what's going on in the environment when it comes to career educational programs, and in the cases when they are bad actors, right? You're collecting this information, you're making an analysis and a decision of what to do to help improve the lives of students in this case, so I'm guessing that's where that came from. You probably have some data, and you make these regulations based on your experience in regulating or understanding institutions in this specific scenario. And so you probably have more cases than none, I'm guessing here, that this is the best way forward. This is the best solution forward for students, because you probably see cases where most likely that institution, whether the school closed or they no longer become eligible for Title IV aid, they are more likely probably to not again be able to have Title IV aid the next year. So, I think that's probably the likelier case, versus the other cases that are presented here. And I would like for you to share that this is coming from reasoning, analysis, and history in regulating this market. I think this is one I'd like to share my support for, this section. I think it's a clear section. You didn't necessarily say the data or how many cases this brings up or why it's important, but it would be helpful probably to hear that you are making, the

Education Department is outlining the section because it has experience and this is the best way forward.

MR. MARTIN: Yes, I think that it goes without saying that where an institution is required to issue a warning, that there could be a built-in incentive for the institution to not make that very apparent because of the ramifications of this. And so, our concern is for students, that they are actually informed of this potential, and that it not be possible for an institution to bury that information or somehow obscure it. This affects students' lives, potentially, and they need to know about it. So, that's what's driving this, so that we can, to the greatest extent possible--understanding we can't make it so in every case--but to the greatest extent possible, we can get reasonable assurance the student has been informed of this, has seen it, knows about it, that it wasn't in tiny font somewhere on a website where we're buried among many other papers. So, that is our goal here, is strictly to get information to students, which could have a great bearing on their future.

MS. MILLER: Thank you, Jamie.

Jamienne.

MS. STUDLEY: Jamie is just fine. A very quick comment, I want to pick up on what Emmanuel

was saying, because his point is well-taken in the larger context about the importance of looking at institutional peers' population context in light of societal discrimination and biases of all kinds that affect student outcomes. But I want to just underline what Jessica put in the comments on the side about the application of that warning's important reality to GE. GE is like a baseline or a core minimal standard, and the analysis that suggests that it's not driven by those program circumstances, and we haven't heard any argument to the contrary here, suggests that it's appropriate to use GE as a floor or requirement and then to consider the issues that you're describing for other aspects of institutional performance beyond that. But in short, the point is well-taken, but I don't think it affects GE, which has all sorts of protections and minimums and room for income variations and debt to create this 'this is just not acceptable' standard, and then beyond that, to take into account the other factors that are deeply troubling and very real in terms of how to understand institutional effectiveness and its relationship to other forces and factors, and not penalize either institutions or students for those.

MS. MILLER: Thank you, Jamie. I am not seeing any other hands raised. Greg, are we okay to

take a temperature check or did we want to move on to the next section?

MR. MARTIN: No, we could take a brief temperature check of 407.

MS. MILLER: Okay, so if I can see a show of thumbs for 668.407. Hold them up high for me. Okay, I'm seeing one thumb down, am I correct about that? Okay, thank you very much. Greg, I'll turn it over to you for the next section.

MR. MARTIN: And Vanessa will be queuing section 408, reporting requirements for GE programs. And here we note that this section outlines reporting requirements for gainful employment programs, and these are similar to the 2014 rule. They include some basic student-level reporting on the enrolled program, enrollment and attendance dates, and enrollment status by attendance identity. So, you can look through those. If we look at (a)(2), for students who completed or withdrew from the program, the institution is required to report when the student left the school, their total private and institutional loan debts, and the total amount of tuition and fees assessed for books, supplies, and equipment allowed for the student. This will allow the Department to create completer lists to include the non-Title IV debt and the debt-to-earnings

rate, and to do the cap of the debt levels at tuition, fees, and books and supplies. So, I just wanted to point out that we have included that. And, in moving down to (b), this section outlines the reporting date requirements and requires the institution to explain why it might fail to meet any of the reporting deadlines. As you can see, those are outlined there. The institution must report information required in (a)(1) and (2) of the section no later than July 31 following the date the regulations take effect for the second through the seventh award years prior to that date. And then we also have it for medical and dental programs that allow a residency, that's July 31st following the date, the regulations take effect for the second through the 8th award year prior to those dates. And that is it for reporting, so I can open up the table for any comments or discussion on 408.

MS. MILLER: Any comments or questions? Yael, please.

MS. SHAVIT: Very quick comment. Consistent with the comment I made yesterday that any reporting requirements about institutional debt should make sure to either cross reference in a way that makes clear that ISAs and the like are included or explicitly states that as well here. Thank you.

MS. MILLER: Thank you. Will.

MR. DURDEN: Thank you, I'm finding my spot, I'm getting in here to make sure that I can show you what I'm looking at. So, 408, I think we've got (b) (2) for any award year. So, this is about "an institution must report the information required for any award year if an institution fails to provide some of the information required," wondered if we'd get any clarification on "the institution must provide to the Secretary an explanation acceptable to the Secretary of why the institution failed to comply with any of the reporting requirements." So that's a question/clarification there at the end of that section. And then just back to a comment on any retroactive reporting and the burden, that creates administrative burden for institutions and hoping for some type of a safe harbor provision or something a little bit more specific about how institutions can work with that.

MR. MARTIN: Thank you. Yeah, in looking at (b) (2) where you referenced, "a reason acceptable to Secretary of why the institution failed to comply," there could be extenuating circumstances why an institution could not comply with that requirement. There could have been a flood at the institution or something, or a fire, or there could be some reasonable

circumstance that made it impossible for the school to submit that information, so we just want to account for that possibility. And of course, there is some subjectivity involved there; I think that's necessarily so. So, the Department would determine whether or not that reason was acceptable. And, I forgot your other point. I'm sorry, you made one more point.

MR. DURDEN: It's just a point on the retroactive reporting.

MR. MARTIN: Oh yes, retroactivity. As I've said, the Department is making every effort that we can to calculate rates through administrative data that we've got, and primarily what we have from institutions comes from comes from COD and NSLDS, but there are obviously some things we cannot get. So yes, there is going to be some burden associated with that. We have yet to flesh all the details of that out. But it is a good point and I'll take that back, and we certainly want to provide more information and detail on that.

MR. DURDEN: We look forward to that, Thank you.

MR. MARTIN: Thank you.

MS. MILLER: Debbie.

MS. COCHRANE: Thank You. Just a clarification on the suggestion for potential need for

clarification on the length of the program, which is in (1), romanette (ii). I think when we saw the prior iteration of the GE rule, at least with respect to the disclosures, what we saw a number of institutions doing was dividing out their programs by different lengths. It would say a master's program you can do with a 12-month or a 24-month, and the only difference being one was a half-time enrollment and one was full-time enrollment. So, I think it just adds to confusion for students and potentially another way of gaming the rules. So, it might be helpful to add some clarification about whether length should be in the calendar months, whether minimum or full-time status or typical, or in clock or credit hours.

MR. MARTIN: Thank you.

MS. MILLER: Thank you. Okay, I am not seeing any more hands for comment on 668.408. Greg, should we take a temperature check?

MR. MARTIN: Yes, please.

MS. MILLER: Okay. Let's see a show of thumbs for 668.408. Okay. One thumb down, am I correct? We have one thumbs down, thank you. Greg, over to you.

MR. MARTIN: And we'll have Vanessa cue up 409 for us. And you see 409, supplementary performance measures. I want to point out here that this

is a new section of the regulations that we didn't see in 2014. While we believe it is very important to regularly assess program-level eligibility based on debt-to-earnings rates, those rates are not reflective of all the potentially problematic outcomes at an institution. We have therefore proposed to add this requirement across all institutions that certain data elements be reviewed and may be considered during recertification, and/or prior to issuing new or updated program participation agreements. And these elements include withdrawal rates, debt-to-earnings rates. Considering outcomes only of graduates of the institution at schools with very high dropout rates, especially, may not be reflective of all problematic outcomes that students experience. We propose to examine the withdrawal rates of students. Debt-to-earnings rates, this will allow the Department to consider broadly a school's D/E rates, if appropriate. The small program rates, in addition to considering the D/E rates of all programs, this will provide an opportunity for the Department to consider the outcomes also of programs for which D/E rates weren't individually reported as part of the holistic review of the institution's outcomes. Instructional, advertising, and administrative expenses, this information can provide valuable insights

into the priorities of the institution and the potential misallocation of resources to address other problematic outcomes. And job placement rates, if states or accreditors are requiring institutions to report placement rates, we will examine what those rates look like. We recognize this information may be of limited utility to students, depending on the methodology that is used, but we believe it is essential for regulators, including the Department, to be aware of how such information is being reported. So, you can see there in section 409, turn over and take a look at that new section, where we are asking for a withdrawal rate, debt-to-earnings, we're looking at small program rates, instructional advertising, job placement, again to take a holistic view of the institution's participation. And this is for all institutions, not just GE. So, I'll open the floor for comments on that. All programs, rather, not just GE programs.

MS. MILLER: Carolyn.

MS. FAST: I think that we are generally in support of this provision. I have a question, or a comment perhaps, about the performance rate related to instructional advertising and administrative expenses. This is a helpful addition, and I have some thoughts about this that we will share, some

potential proposal language.

MR. MARTIN: Okay, thank you.

MS. STUDLEY: Yes, I'd be interested in knowing whether the Department has these now, whether you've got the data to compile all of these or whether that would require additional reporting? And whether something like number (4), instructional advertising and administrative, whether there are accepted or standard accounting definitions for those that would allow for calculation and comparability?

MR. MARTIN: Right now, Jamie, we don't have any mechanism in place right now that collects the amounts that an institution spent on these various different activities. Thank you for the comments, and I'll go back and get some more clarification on that. I'm not aware of any accounting standard that applies specifically to this, although I'm not an accountant, so I'll have to check with our people who are, and get more clarification on that.

MS. STUDLEY: Yeah, and I'll ask the same question on a provision later, this is a 'may consider the information in determining,' so the question is whether it establishes either a new definition that we need to work out here or just gives the Secretary, if and when he or she can establish, a

useful category of information and can apply it in determining whether to give a PPA.

MR. MARTIN: I think the latter.

MS. STUDLEY: What we're negotiating here on whether we should be thinking about what these particular terms are, or they're just examples of what the Secretary may do later, what's the meaning of their being in the regulation? I know that's a little abstract, but if they don't exist and we don't know how they match what's going on otherwise, would it be important to work that out here? Does it need to be in the regulation? Or does this create an authority the Secretary needs to have to decide about PPAs? In which case we should give the Secretary maximum reasonable authority.

MR. MARTIN: Right. You know, part of this is--and I definitely want to open this up and say that we seek feedback on those issues--exactly how this ought to be done. Currently, we don't put in here any reporting protocol for these amounts or expenses. This would allow the Secretary to consider these elements when looking at an institution's overall participation, and they are important aspects of institutional participation, whether an institution is diverting its resources primarily to advertising and those types of

things as opposed to education. Job placement rates obviously are something which is a consideration. But we're not specific here as to those things, other than we say that the Secretary may use these, may consider this information too in making its determination whether to certify or condition the participation of institutions. So, I will open it up if anybody has any ideas as to how maybe this should be structured, other than obviously where we become aware of it through a review or audit process, or we ask for specific information when at the point at which we recertify an institution.

MS. MILLER: Okay. We have Will, and then Brad, and then Beverly, you put in the chat that you also have a question, so you'll be after Brad. Thank you. Will, please.

MR. DURDEN: Thank you. Kind of recalibrated a little bit because I was pretty focused on gainful employment, since that's section that it's in, but now thinking about the fact that this is more broad to programs, so it doesn't seem like it should belong in gainful employment, because when we think about withdrawal rates I'm wondering what that has to do with gainful employment. That's its own question. But if that's not the key question because it applies to all

programs, then let's get that where it belongs. Kind of objecting to the small cohort authority too; not sure that's a reason to throw great programs out, so I'm not comfortable with that. And yeah, this open question about that you really have all this data available to make these types of determinations. So, I have some reservations on this section.

MR. MARTIN: Thank you, and I also want to point out that we do we invite any suggestions for text around this, and any other ways in which you might think these regulations should be presented.

MS. MILLER: Thank you. Brad, and then Beverly.

MR. ADAMS: You know, I also missed that this section, 409, was going to apply to all programs. I mean, frankly, maybe it's better at 668.43. That's pretty clear there; that's where I'd put it. But I still don't understand how this information is different from what we're already reporting in IPEDS and why it's necessary here when we're talking gainful employment.

MR. MARTIN: Thank you.

MS. MILLER: Beverly. You're on mute, Beverly.

DR. HOGAN: Actually, Brad just raised

the question and concern I had. I was wanting to clarify that Greg had actually said to all programs, and my question would be the same.

MS. MILLER: Thank you. Emmanuel.

MR. GUILLORY: I had a question regarding the small program rates actually being used to determine whether or not an institution would be approved in their program participation agreement, or recertified, or whatever the condition would be, so I guess that's on a provisional certification status or whatnot. So, is it the intent of the Department to actually then use the small program rates, as it states here, to actually determine whether or not--I mean, how would that be weighted? And I ask because before, when we talked about the small program rates, we talked about them not having an impact on their D/E rate calculations, even though the D/E rates would be calculated for these small programs. And I had mentioned earlier with moving to the 4 CIP or 6, when you want to capture all the programs and you're doing it by doing smaller program rates. But can you, Greg, just kind of explain how the Department actually plans to use these small program rates in determining a program participation agreement?

MR. MARTIN: Well, it's a tool that

the Department can, you know, one aspect that the Department can consider when looking at certifying or conditioning a program participation agreement. There's no indication here or intent on the part of the Department to set a threshold for those at which we would remove an institution's participation. It's just a consideration, but I do understand that, as spelled out here, there's not a lot of detail about that, so I will definitely take back those concerns.

MR. GUILLORY: Thank you.

MS. MILLER: Thank you, and my apologies for the background noise. I am not seeing any other questions or hands. So, Greg, should we take a temperature check on this section?

MR. MARTIN: Please.

MS. MILLER: Okay, can I see a show of thumbs for 668.409? Okay, and I am seeing two thumbs down. Thank you. Okay, Greg, can you take us into the next section, please?

MR. MARTIN: Yes. We'll be pulling up 668.410, which is certification requirements for the GE programs. Okay, and so we have that up. This is also something that we had in the 2014 rule, and this section includes procedural certification requirements for the GE programs. Under this section, institutions are given

a timeline for providing certifications that their programs meet the other requirements of this section before debt-to-earnings rates may be available. So you can see here, under the transitional certification for existing programs, that except as provided in paragraph (a)(2), the institution must provide the Secretary no later than December 31st of the year in which the regulation takes effect, in accordance with procedures established by the Secretary, the certification, signed by its most senior executive officer, that each of its current eligible GE programs included on its eligibility and certification approval report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement. We note here that if the institution makes the certification in its program participation agreement between July 1 and December 31 of the year in which the regulation takes effect, it's not required to provide the transitional certification. Looking down to (b), institutions are required under their PPAs to comply with the requirements of this section and update the certification within 10 days if anything changes that relates to the condition of continued participation, the program must certify in its PPA with the Secretary that each of its currently

eligible GE programs included on its ECAR meet the requirements of paragraph (d) of this section. And the institution must update that certification within 10 days if there's any change. And (c) reflects requirements for establishing eligibility and disbursing funds. Institutions must update their list of eligible programs with the Department in order to establish Title IV eligibility for an additional program. They may not include on that list any program that is substantially similar to a failing program that the school has discontinued or has become ineligible. And in (d) finally, the certifications themselves include assuring that each GE program is approved by a recognized accreditor or included in the institutional accreditation of the school, or that it is approved by a recognized state agency. So, you can see that reflected in (d). An institution certifies for each eligible program included on its eligibility and certification approval report, at the time and in the form specified in this section, that each eligible GE program it offers is approved by a recognized accrediting agency or otherwise included in the institution's accreditation by its recognized accreditation agency, or if it's a public postsecondary vocational institution, the program is approved by a recognized state agency. And I'll leave it

there and open the floor for comments or discussion on certification requirements.

MS. MILLER: Thank you, Greg and Vanessa. Comments, questions for the Department? Okay, I am not seeing any, oh, Marvin.

MR. SMITH: I just want to make sure I'm understanding this again, because to me, if we have a certificate program change like a curriculum change, you're expecting schools to report that within 10 days of the change, because I think that might be difficult for schools to comply with. I wonder if there might be a more reasonable number of days. But maybe I'm not clear on what type of changes in certificate programs you want us to report on the PPA.

MR. MARTIN: These don't deal so much with changes in curriculum. If we go back to (b), as the condition for its continued participation under 668.14, the institution must update the certification within 10 days if there it has to, I'll actually continue reading there, that each of its currently eligible programs included on its eligibility and certification approval report meet the requirements of paragraph (d), which we just went over, which is that it is recognized by the accreditation agency or otherwise included in the accreditation. So, what we have here is that an

institution must update that certification within 10 days if there are any changes in the approvals for the program or other changes for a program that make the existing certification no longer accurate. So, if that curriculum change precipitated a change in the approvals that it requires for (d), or made that existing certification that the program has no longer applicable, then it would have to be reported. If it doesn't affect those things, then it would not be required to be reported under this under this section.

MR. SMITH: Alright, thank you for the clarification.

MS. MILLER: I am not seeing any other hands for comment. Greg, should you take a temperature check on the section?

MR. MARTIN: Sure. So just to clarify again, we are doing section 410.

MS. MILLER: Thank you. Show of thumbs for 668.410. Okay, I am not seeing any thumbs down. Thank you. Okay, Greg, back to you for our next section. Thank you, Vanessa.

MR. MARTIN: Vanessa will be pulling up 668.43, institutional and programmatic information. And here we've added a requirement that all institutions provide information, as determined by the Secretary,

that will allow prospective and enrolled students to seek critical information about their programs, which may include any of the following items: the occupation for which the program is preparing students; completion and withdrawal rates for the program; the length of the program; enrollments in the program; repayment rates for students or graduates of the program; the cost of tuition, fees, books, and supplies and equipment; the share of students in the program who take student loans; the median loan debt for students or graduates; the median earnings of students in the program; programmatic accreditation information, if applicable; any of the supplementary performance measures we defined above; and a link to the College Navigator or similar federal website. So, you can see that reflected here in the disclosure website. The institution must provide such information as the Secretary will prescribe through a *Federal Register* notice for the disclosure to prospective and enrolled students through a website established and maintained by the Secretary. The Secretary will conduct consumer testing to inform the design of the website, and the Secretary may include on the website among disclosures the things that we just reported. So, many of these, I just want to point out that, for instance, in (2), as reported, two were

calculated by the Secretary: the program's completion rate for full-time and less than full-time students, and the program's withdrawal rates. And some of these things are calculated by the Secretary. For instance, the loan repayment rate would be calculated by the Secretary as well. So, just to point out that these would be indicated through the publication of a *Federal Register*. I'm going to go on down to (2), where we talk about program web pages. We've also clarified that the information to access the Department's website must be prominently posted on certain pages of the institution's website, and that the information to access the website must be provided to prospective students before they enroll. And that's reflected here, where we talk about program web pages. The institution must provide a link and any needed information to access the website maintained by the Secretary on any web page containing academic cost, financial aid, or admissions information about the program. And the Secretary may require the institution to modify a web page if the information is not sufficiently prominently or readily accessible, clear, or displayed in a conspicuous manner. And then there's the direct distribution to prospective students, where the institution must provide the relevant information to access the website maintained by the

Secretary to any prospective student, as defined in 668.402, or any third party acting on behalf of the student. So, with that, I'll turn it over for discussion on 668.43.

MS. MILLER: Okay. Jamie, and then Brad.

MS. STUDLEY: Any of you who attended or remember any of the 80 meetings I conducted on the new idea of the College Scorecard knows that I favor increased disclosure to students of the best possible information. These are consequential, complicated, and sometimes even mysterious decisions, and it's understandable that the Department wants to build on that Scorecard and other disclosure framework to help students make these important decisions. And, I would add, help drive institutions who see this information to improve themselves; and it's as important that institutions use it to meet a higher bar and realize what others are able to do when it's better than what they're doing, as that students get the information. I have the same question about this one. I won't belabor it, and maybe the lawyers can help with this. Does the Secretary need this provision to have the authority to do this? Is it a new data collection requirement, in the first sentence saying that institutions 'must provide?'

Would they not have to provide it now if IPEDS, for example, included it? That's one question. The "may" and the "among" make me wonder whether that's needed here. So first is sentence, do you want a new authority for the Department to require information from institutions? Let me pull out two specifics, and this partly goes to the question of whether we need to be designing the specific elements here, or whether that's something the Department will do in the NPRM and over time as data possibilities grow, but there are two that I think create a great deal of mischief, and I come back to them specifically, if you want to break them down. What is a program for this purpose? I'll pick on Marvin here: is UCLA's entire undergraduate bachelor's program a program in these terms? Is its history major or its chemistry major, a program that has substantial consequences? The whole issue of the primary occupation that this program prepares people for is a subject that we should discuss at length. Is it the Department's observation from history about what chemistry majors do? Would it be the same for UCLA chemistry majors and majors from a neighboring institution with a chemistry program or not? Is it based on actual history by school choice? There's a lot to be done here, and we don't want to force people into tracks or ruts in the road that don't fit the

educational component, especially if people are doing fine, if there aren't concerns about whether they're meeting the measures. And second, I would like to return to this one as well, total cost should be total price. There are institutions where the total cost is more than students are asked to pay. But more important, price without some indication of net price by family income could be one of the most dangerous pieces possible if it further exacerbates the problem that many families overstate the cost of higher education, don't realize what aid is available from the federal government and institutions, and would see a total cost item that could be terrifying and deter people from going to college, which is the opposite of what any of us want.

MR. MARTIN: Yeah, a lot there, certainly. I do want to say about this particular requirement in 43 that we already do have the authority to require disclosures, and much of this we already do disclose. This has to do with the website that we're planning to have, the disclosure website we want to build, to have a place where students are referred to and have the disclosures displayed in a way that we think will make it clear to them. And I'd just go back to up to the top of (d) again and reference the disclosure website, this is what this specifically

refers to.

MS. MILLER: I apologize for [inaudible], Greg. That's helpful clarification. And I would just add that, for my part, (2) and (3) seem reasonable. And as a [interposing] lawyer, the sufficiently prominent, accessible, clear, conspicuously direct is a good standard to set. I've been looking at websites lately and the differences are striking, as many of us, I'm sure, have seen.

MR. MARTIN: Thanks.

MS. MILLER: Thank you. Brad?

MR. ADAMS: Thank you. You know, as I stated yesterday, I applaud the Department for introducing 668.43. I think it's great. I think any disclosure as it relates to gainful employment is important, and I love that this applies to all students. I am curious, you know, you've got, I believe romanette (viii) and (ix), you're getting your requests the median loan debt of students who completed the program and you're requesting the median earnings of students that complete the program. It should be very easy, and it'd be very important to students, to just do the same calculation as in gainful employment. I don't understand why that would be a big ask, and I don't see why anybody would not support additional disclosures for students.

And I would love the Department, they've slept on my comment from last night, I'd love the Department to respond on where they are on that proposal. And I'd love someone else on the committee to speak up for providing this metric for all students, and the silence here actually surprises me; I thought we'd actually have more folks coming out in support for additional disclosures for students. Greg, any thoughts on the proposal from yesterday to just do the calculation here and then reference it in the GE statute?

MR. MARTIN: I don't have an official response to that yet, but I want to make certain that what you're asking for, what you would be proposing, is that the DTE rate calculation be applied to all programs, even if the consequence of the rate would only be for GE programs, correct? And that what would be disclosed here would be the same rate for all institutions, right? Okay.

MR. ADAMS: Yeah. Under the same programmatic formula, the same CIP code, same rules, just they wouldn't lose Direct Loan eligibility. That's the simple request. I mean, you're obviously asking for the data, so just curious.

MR. MARTIN: Currently, Department's position is that the DTE rates calculation will only be

for those for GE programs. but I will take back the proposal that it be the same.

MR. ADAMS: One follow up to that, just curious, what's the difference between this new website and the College Scorecard?

MR. MARTIN: Well, I think this website, first of all, I think it's a little broader with what we can put on it than the way the College Scorecard's built. Remember, this website will also be used for warnings, so it provides us with an actual disclosure. The College Scorecard, of course, does disclose a lot of information about programs, but this a specific place for the Department to ensure that the disclosures are presented in a specific manner. And again, we're also using it for warnings that have to be given to the student.

MR. ADAMS: Well, again, just at the close, Secretary Cardona and others, and Congress, even through this College Transparency Act bill, are pushing for more transparency, so I appreciate the Department doing this. I think the debt-to-earnings calculation would be an excellent addition to this website, and it would be beneficial for all students to be able to receive that information when looking at programs across industries at a CIP code basis. And again, I would love

someone else on the committee to speak up for all students.

MR. MARTIN: I do want to point out also, before I move on from that about the website, that the Scorecard--though I can't say enough about it; it's an excellent resource, but it's not prescribed in regulations like this is, so this would actually build this into the regulation, and it is a website specific to these things. The Scorecard has a lot of other information on it. This is specific to these disclosures that we want to see made, and made in a uniform way. And I thank you for your comments, Brad.

MS. MILLER: Okay. Will, and then Jessica.

MR. DURDEN: Thank you, and I think, Gregory, to that point, there's just that language there in that disclosure website: "the Secretary may include on the website, among other disclosures," and we'd like to see whatever that information is. I don't want to debate that right now, but whatever that information is that's provided by all institutions, that's clear and that that information displayed is not negotiable. So, we we'd see more explicit language on what that would be.

MR. MARTIN: Thank you.

MS. MILLER: Jessica.

MS. RANUCCI: This is a minor point, but on number (2), I guess I have a lot of concerns about manipulation, and I would like the Department to think about how to make this as manipulation-proof as possible, including one idea I have is just separating the first sentence into two sentences. To say something like 'the institution must provide a link to the website,' period. 'This link must be provided, like among other places,' comma, 'in the places that are listed here,' or something. Just, you know, I think one of the problems we see is that institutions that don't want to disclose costs are the ones least likely to have a very clear website page disclosing costs. And so, I wouldn't want that to be a loophole here, but I defer to you on how best to effectuate that.

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

MR. ADAMS: Yeah, so Greg, you said something there that I would just want to clarify here. You said the Department would not calculate D/E rates for all programs, and I think you meant for eligibility purposes, but I'm just curious on, you mentioned you want to take that comment back to Department, but just curious on why that would be difficult here to do.

MR. MARTIN: Well, I don't know as far as the difficulty would be, it's the applicability that I think is at issue. And I mean, I have the comment; I will take it back and discuss it. At this point, I don't know if I can speak to that in any other way. I'll ask Steve if he has anything further he wants to say about it, as part of the Department.

MR. FINLEY: Yeah, we'll definitely take it back for discussion.

MS. MILLER: Thank you. Barmak.

MR. NASSIRIAN: Very briefly, I applaud the Department for including this provision. I do think providing more accurate information to students is going to be very helpful. And, to whatever extent it has the authority and to whatever extent it can collect information without imposing undue burden on institutions, I think more disclosures are always better. So, I think this is this is certainly worthy of support.

MR. MARTIN: Thank you.

MS. MILLER: Thank you. Emmanuel.

MR. GUILLORY: I want to say that I agree with the comments that my colleague Barmak just made, and also with what my colleague Will said, just making sure the language, among other disclosures that

we give, if it's possible, have a better sense of what those other disclosures are. But, parents and students and families should definitely know and be privy to all this information, so thanks.

MR. MARTIN: Thank you.

MS. MILLER: Thank you, Emmanuel.

Okay, I am not seeing any other hands for comment to the Department. Greg, should we take a temperature check on 668.43?

MR. MARTIN: Yes, please.

MS. MILLER: Okay. Show of thumbs, please, for 668.43. Okay, I am seeing one thumbs down, two thumbs down. Okay, two thumbs down. Thank you.

MR. ADAMS: Rozmyn, I want to comment on my thumbs down.

MS. MILLER: Okay, Brad.

MR. ADAMS: Thank you. I just wanted to show the committee that I completely support this metric, and I'm only thumbs down based on the comment from Greg saying that the D/E rate would not be calculated here in the metric. But everything else associated with it, I'm completely fine with and would fully support on to go forward.

MS. MILLER: Thank you. Will, did you also want to comment on your thumbs down?

MR. DURDEN: No thanks.

MS. MILLER: Thank you. Well, that concludes issue paper 3, gainful employment.

MR. MARTIN: One more thing before we move on, I do want to bring people's attention to the last page here, where we have additional accounting metrics for consideration. These are not reflected in any of the regulations, but I do want to, in the brief time we have left before lunch, introduce these because I think it is important and I don't want anybody to miss this. On the last page of your issue paper for gainful employment, we talk about the accountability metrics for consideration. And can you pull it up, Vanessa? There they are. And so, we have an initial analysis suggesting some programs that would otherwise pass the D/E rates due to relatively low debt levels have very low earnings. Those students may have financed the program using their own funds, Pell Grants, student funds at low enough levels to pass the D/E rates, other federal aid, or the program may have been financed by employers or other private third parties. During our last session, several negotiators suggested adding an earnings metric based on the difference between the median earnings of program graduates and a threshold of earnings to measure earnings premium provided by that program, to address

programs with low earnings. The threshold for passing earnings premium could be specified in several different ways, and we have some ideas here and invite comment on them. One is the median earnings of high school graduates in the same state the program is located. The other one is a multiple of the federal poverty guideline. A third would be an estimate of full-time minimum wage work, where passing suggests that the median graduate earns at least that of a full time minimum wage worker. And lastly, an alternative way to address this with programs with low earnings could be to simplify the 2014 DTE framework by eliminating the annual debt-to-earnings metric, requiring only that programs pass the discretionary DTE rate. In the 2014 structure, an alternative debt-to-earnings rate allows those with lower earnings, especially those with median earnings below--I'm sorry, annual, not alternative--annual debt-to-earnings below 150 percent to pass the GE framework as long as the debt payments were below 8 percent of their earnings. Eliminating the annual DTE would mean that programs with very low earnings but relatively low debt levels fail the GE metrics. Programs with median debt levels of zero, where fewer than half of their students borrow and very low earnings, however, continue to pass. So, we invite feedback on these

possible additional accountability metrics.

MS. MILLER: Okay. Barmak.

MR. NASSIRIAN: Yeah, I just want to say that I strongly support the concept of putting in place a fundamental income threshold requirement. There is something on its face quite absurd about people participating in postsecondary education so that they can earn less than they'd have if they had not done so; it doesn't make any sense to me. And I do think it will protect the lowest income graduates of these programs. So, I strongly support option 1, because I do think it puts in place some fundamental protections for the lowest income graduates of these programs. I do think we need to be mindful of exceptional circumstances. There may be targeted programs for individuals who may have no other option if they did not participate in such GE programs. I think those can be accommodated on the basis of exceptional judgment. But in general, postsecondary education, particularly in gainful employment programs, is supposed to generate some kind of wage enhancement above and beyond a high school credential. Thank you.

MR. ADAMS: I just wanted to state I agree with what Barmak said, assuming this is applied to all programs. I 100 percent support whatever metric the Department chooses, and I think 1 is a reasonable

expectation. I mean, that was the first bullet point in Adam's slide yesterday. That being said, if this is just another metric that would put someone out of business, it's only applied to such a small subset of the programs out there, then I don't think it makes sense. And you know, again, apply it to everybody, just do the right thing for students. I mean, they come to school to increase the economic output of their future. And that should be as simple as it is. Why else would you go to college? Thank you.

MS. MILLER: Barmak.

MR. NASSIRIAN: In the interest of full disclosure, I think we need to be mindful of the fact that whatever we negotiate here could potentially apply to the Jobs Act, which is pending and looks like it may become law. Those programs would be subject to GE, they would not be eligible for loans, which means that the absence of any other additional metric could basically give them a kind of a pathological pass, which I assume we want to avoid here. Again, I really empathize with Brad's concern about selective targeting of different sectors, but you really can't write one equation that takes care of every variation on a theme. This would be the most effective consequence, imposing a high school earnings threshold would actually impact, I

assume, those kinds of jobs programs. They would be probably entirely concentrated in one sector, not Brad's sector, but be that as it may, I think we need to take care of the obvious. Sometimes people focus on the outcome instead of thinking a priori and analytically about something. Again, it makes no sense to me that somebody would participate in postsecondary education to make it less than they would have. I mean, that's just so crazy to me that I don't know why we're debating it. Regardless of who it impacts, that's just not a construct that we should that we should accommodate here.

MS. MILLER: Thank you, Barmak. We are at 12:02. Jamie, please. One last comment. You are on mute, Jamie.

MS. STUDLEY: Yeah, I didn't have time to type it into the chat, just a brief placeholder to Barmak on that subject: every person who leaves banking to go to a teacher certification is reducing their income potential. That said, all of those options would be above a high school graduate, but I think that we don't want to go unreasonably far or further than we need to answer the questions before us to focus all of educational outcomes on income increases. I think you and I probably agree at the end of the day about these

provisions, but I just don't want to leave it unsaid that there are plenty of artists who are making a choice to go into another field, or teaching, or some other things that society doesn't reward. And we have complex opportunities to eliminate substandard programs and impossible results while allowing people to make informed choices and institutions to know what the competition they're facing is. But I just feel the need to not have this for non-gainful employment programs be entirely housed in 'hey, we educate to earn more money,' some of us on this call might understand.

MS. MILLER: Okay. Thank you, Jamie. We are at 12:04. So, Brad, last and final comment.

MR. ADAMS: Yeah, one final closing comment before lunch here is we just spent 10 minutes talking about a whole new metric that could impact GE, and I just don't think that's appropriate to have only about 10 minutes for a major issue like this. Thank you.

MS. MILLER: I'll turn it over to Greg. Do we need a temperature check?

MR. MARTIN: No, I just wanted to bring this up. We do invite any comments or written comments from the committee on any of these items that we just discussed, so I do want to solicit that from everybody. And with that, I'll turn it over to you for,

I guess we're at lunch.

MS. MILLER: Okay, yes, we are at lunch. I believe we finished gainful employment just in the nick of time. I wanted to mention, though, that should any other issues come up against a time crunch, there may be an opportunity to revisit on Friday. With that said, I think we are ready for lunch. It's 12:05. You have an hour. And with that, can we end the live?

**Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 2, Day 3, Morning, February 16, 2022**

From Ernest Ezeugo, Young Invincibles to Everyone:

Apologies for being late. Had slight internet issues.

From David Socolow (A) State agencies to Everyone:

apologies for joining late -- I'm here

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

Emmanual will be at the table for the remainder of Gainful Employment

From Sam Veeder (she/her/hers) to Everyone:

David Peterson will be at the table representing Financial Aid Administrators for the remainder of gainful employment.

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

I think that gainful employment is an extremely important accountability imposed by Congress to protect students and taxpayers (not, in the first instance, institutions and their employees' jobs). I support the Department's efforts to regulate this critical accountability measure using, as a starting point, the 2014 rule, which was made through hundreds of negotiator-hours, including some of the same negotiators at the table here.

From Yael Shavit State AGs (A) to Everyone:

+1 Jessica

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

I agree with Jessica

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

+1 to Jessica's comment.

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

+1 Jessica

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

Yael is coming to the table for state AGs thanks.

From Ernest Ezeugo, Young Invincibles to Everyone:

+1 Yael

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

+1 Yael's concerns

From Ernest Ezeugo, Young Invincibles to Everyone:

I think Yael is right that considering that isn't the intention, it might be helpful to clarify such in the text.

From Ernest Ezeugo, Young Invincibles to Everyone:

Carney King will be coming to the table for comment.

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

+1 to Yael. Using the attestations in that way would be akin to turning the GE rule into "buyer beware" which is at odds with the statute.

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

I will be joining the table for Carolyn.

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

+1 on improving (2)(C) to provide students more specific information on whether that institution previously made articulation agreements with other schools or programs

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

Eileen Connor of the Project on Predatory Student Lending spoke last night at public comment about having seen fraud arising from institutions closing programs that failed GE and opening new, similar programs in which students can continue, in order to ensure a continued stream of Title IV funds. While I appreciate Brad's

concerns regarding closing programs, I think that allowing a school to open a similar program after failing GE could really open up opportunities for abuse, and I encourage the Department to ensure that regulations do not allow institutions to manipulate GE in this manner.

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

Carolyn will be joining the table.

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

Ernest is coming back to the table for Carney

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

If you start with the assumption that failing schools are all good, keeping the failure secret makes a lot of sense.

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

Speaking for students - I am less concerned about the collateral damage for a small portion of "good schools" that end up in this situation

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

+1 Carney

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

Agreed, Carney.

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

+1 Yael

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

+1 Ernest

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

i do not have any comments in 668.408. any reason to vote no?

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

or sideways? if i vote no i will need something to say.

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

sorry

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

mike is coming to the table for section 408. I do not have anything else to say on 407

From Beverly Hogan Primary/MSI to Everyone:

+1 to Yael. Good actors will communicate with the students in a proactive way similar to the sanctions institutions might receive from accrediting agencies. Students benefit and are loyal to transparency.

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

I heard the expert who spoke yesterday state that the academic research supports the idea that outcomes for GE programs are largely driven by the programs, not by the characteristics of the students who enrolled.

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

Unless I misunderstood?

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

i am ready to come back on video

From Beverly Hogan Primary/MSI to Everyone:

I have a question

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

I would again urge the Department to require some basic upfront assurances from schools offering GE programs that their proposed programs are needed in the marketplace and would be likely to pass the GE criteria on the basis of their cost and projected wages

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

+1 to Barmak's suggestion.

From Yael Shavit State AGs (A) to Everyone:

+1 to Barmak

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

+1 Barmak

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

+1 Barmak

From Emmanuel Guillory (A-PNPs) to Everyone:

+Barmak

From Emmanuel Guillory (A-PNPs) to Everyone:

+1

From Brad Adams (P - Proprietary Institutions) to

Everyone:

I agree with Barmak's point in the chat but i think we already do what he is suggesting when we match the cip code to the SOC.

From Beverly Hogan Primary/MSI to Everyone:

+1 to Barmak

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

+1 to Barmak

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

I support more disclosures--and more detailed disclosures--if the Department has the statutory authority and if the collection of additional data does not impose undue burden on institutions.

From Beverly Hogan Primary/MSI to Everyone:

+1 to Barmak

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

+1 Barmak

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

The Department may have additional tools for generating actionable information for consumers under the College Transparency Act, if it is enacted into law.

From Jamiene Studley (P) Accrediting Agencies to Everyone:

i want to reiterate that there was no response about what a program is for these purposes and i hope the Dept

will address that. I assume that decisions about what metrics to use and how they'll be defined will be worked out later.

From Yael Shavit State AGs (A) to Everyone:

+1 to Barmak

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

+1 to Jamie

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

+1 Barmak, I also support an earnings threshold

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

+1 Barmak

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

Support the principle that additional education beyond high school should provide a gain in earnings that ensures a path toward economic mobility

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

+1 Barmak

From David Socolow (A) State agencies to Everyone:

+1 to Jamie's point about defining a "program" especially for defining in 668.43(d)(1)(i) the "primary occupation" a program prepares students to enter

From Beverly Hogan Primary/MSI to Everyone:

+1 to Barmak

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

Jamie is right!

From Jamiene Studley (P) Accrediting Agencies to
Everyone:

That's the former college president talking.

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

We have three weeks to submit written comments

From Beverly Hogan Primary/MSI to Everyone:

Ideally and realistically, students should be better
off across a number of spectrums with postsecondary
education.

From Jamiene Studley (P) Accrediting Agencies to
Everyone:

+1 Beverly