

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

On the 14th day of February 2022, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

1 P R O C E E D I N G S

2 MS. JEFFRIES: Good morning, everyone,
3 and welcome back to session two, day one of the
4 negotiated rulemaking. I hope that you all had some time
5 to relax and find some spare time in between sessions. I
6 am Commissioner Cindy Jeffries and for today's session,
7 Commissioner Brady Roberts will be facilitating for you,
8 and I will be your tech support person on this end. I've
9 placed my email in the chat box. If you have any
10 difficulties, please feel free to get a hold of me. With
11 that, Brady?

12 MR. ROBERTS: Yes, ma'am, good morning
13 and happy Valentine's Day, everyone. Just a few very,
14 very brief housekeeping items and then we'll go into a
15 roll call and then jump right into discussion of issue
16 paper number one, Ability to Benefit. So first off,
17 thank you everyone who took the time to suggest amended
18 regulatory text for the Department's consideration in
19 between weeks one and two. Just as a reminder and moving
20 forward into week three, the Department has a fairly
21 lengthy process of review and editing for these
22 proposals, and we do need to distribute and publish
23 those revised issue papers a week ahead of time. So as
24 much as possible, we do ask that folks try to submit
25 those proposed to regulatory text documents as early as

1 possible to give time for the Department to give them
2 fair consideration for review. Greg, is there anything
3 that the Department wanted to add on that note or
4 anything else you want to speak on on that item?

5 MR. MARTIN: No, not really. I would
6 say, though, that if people have, you know, had raised
7 issues or submitted papers to us that we did not get to
8 reference in this in these latest issue papers, you can
9 feel free to bring those up those points up during our
10 discussions.

11 MR. ROBERTS: Great. Thank you. And
12 again, just moving forward into week three, it becomes
13 very important just because obviously that's the last
14 week that we have and we're going to move folks
15 hopefully towards consensus in that third week. So as
16 much as humanly possible, we do ask folks to be as
17 proactive as they can with those with those papers. Just
18 in terms of time. Oh wait, Johnson, I see your hand.
19 Please go ahead.

20 MR. TYLER: I would like to ask a
21 question to the committee and the Department of
22 Education regarding transcript withholding. I don't know
23 if now's the time to bring it up, but I had raised this
24 issue in one of my my issue papers submission and I feel
25 like it's worthy of discussion at the beginning of the

1 week.

2 MR. ROBERTS: Sure. Greg, do you do
3 you have a preference? Do you want to respond to that
4 now or do you want to get back to the committee on that
5 issue?

6 MR. MARTIN: Do we want to do the
7 introductions first? Do you want to do the roll call
8 first?

9 MR. ROBERTS: Yeah, I think that makes
10 sense. Johnson, if it's okay, I'll go back to you. Two
11 other brief reminders just on timing for this week.
12 Again, each speaker will have three minutes to address
13 the committee for each comment. We do ask that folks try
14 to withhold their comments for new information and just
15 as a timing reminder, just because we do encourage and
16 want to see the back and forth, but we don't want that
17 to dominate the entire discussion. We do ask that these
18 exchanges as a whole take about three minutes. And of
19 course, you're always welcome to requeue if you have
20 more to add. But just in terms of timely discussion and
21 deliberation, we are going to be timing people to three
22 minutes per remark and hand raise, if that makes sense.
23 So, I just want to make a brief note on that. And then
24 number three, just for smooth flow in terms of the live
25 stream and primaries and alternates. We do ask the

1 primaries remain on camera and at the table, so to
2 speak, as much as possible. Alternates are, of course,
3 welcome to come to the table, but just please try to let
4 us know ahead of time if it's a planned absence or in
5 the chat just before you come on. Just so we can see and
6 announce that and make sure everyone's aware of who's
7 speaking on behalf of which constituency. So, thank you
8 very much. That is really all I have in terms of
9 housekeeping. And let's move into a brief roll call. So,
10 if folks just want to come off from mute and say good
11 morning and hello. Starting with accrediting agencies,
12 we have Jamie Studley, our primary.

13 MS. STUDLEY: Good morning, everyone.

14 MR. ROBERTS: Good morning. And she is
15 joined by her alternate Dr. Laura Rasar King.

16 DR. KING: Good morning, everybody.

17 MR. ROBERTS: Morning. For consumer
18 advocacy organizations, we have Carolyn Fast.

19 MS. FAST: Good morning.

20 MR. ROBERTS: Morning. And her
21 alternate Mr. Jaylon Herbin.

22 MR. HERBIN: Good morning.

23 MR. ROBERTS: Good morning.

24 Representing civil rights organizations, we are joined
25 by Ms. Amanda Martinez.

1 MS. AMANDA MARTINEZ: Good morning.
2 Happy Valentine's Day, everyone.

3 MR. ROBERTS: Good morning. Happy
4 Valentine's Day. Representing financial aid
5 administrators at postsecondary institutions, we have
6 Ms. Samantha Veeder.

7 MS. VEEDER: Good morning, everyone.

8 MR. ROBERTS: And her alternate, Mr.
9 David Peterson.

10 MR. PETERSON: Good morning.

11 MR. ROBERTS: Good morning. For four-
12 year public institutions of higher education, we have
13 our primary, Mr. Marvin Smith.

14 MR. SMITH: Morning.

15 MR. ROBERTS: And his alternate Dr.
16 Deborah Stanley.

17 MS. STANLEY: Good morning. It's
18 Deborah, not doctor.

19 MR. ROBERTS: Oh, sorry, my apologies.
20 For legal assistance organizations, we have Mr. Johnson
21 Tyler.

22 MR. TYLER: Good morning.

23 MR. ROBERTS: And his alternate Ms.
24 Jessica Ranucci.

25 MS. RANUCCI: Hi everyone.

1 MR. ROBERTS: Good morning. For
2 minority serving institutions, we are joined by our
3 primary Dr. Beverly Hogan.

4 DR. HOGAN: Good morning.

5 MR. ROBERTS: And her alternate Ms.
6 Ashley Schofield.

7 MS. SCHOFIELD: Good morning,
8 everyone.

9 MR. ROBERTS: Morning. For private
10 nonprofit institutions of higher education, we have our
11 primary, Ms. Kelli Perry.

12 MS. PERRY: Good morning, everyone.

13 MR. ROBERTS: And we are joined by her
14 alternate Mr. Emmanuel Guillory.

15 MR. GUILLORY: Good morning.

16 MR. ROBERTS: For proprietary
17 institutions of higher education, we are joined by Mr.
18 Bradley Adams.

19 MR. ADAMS: Good morning.

20 MR. ROBERTS: And his alternate, Mr.
21 Michael Lanouette.

22 DR. LANOUILLE: Good morning.

23 MR. ROBERTS: Good morning. And just
24 as a note, Michael will be joining us as the negotiator
25 for our proprietary institutions this morning. For state

1 attorneys general, we have Mr. Adam Welle.

2 MR. WELLE: Morning.

3 MR. ROBERTS: Morning, Adam. And his
4 alternate, Ms. Yael Shavit. Not seeing Yael, but we will
5 circle back.

6 MS. SHAVIT: I'm right here. Good
7 morning.

8 MR. ROBERTS: Good morning. For state
9 higher education executive officers, state authorizing
10 agencies and state regulators of institutions of higher
11 education, we have Ms. Debbie Cochran.

12 MS. COCHRANE: Good morning.

13 MR. ROBERTS: And Mr. David Socolow.

14 MR. SOCOLOW: Good morning.

15 MR. ROBERTS: For students and student
16 loan borrowers, we have Ernest Ezeugo.

17 MR. EZEUGO: Morning.

18 MR. ROBERTS: And Mr. Carney King.

19 MR. KING: Good morning.

20 MR. ROBERTS: Good morning. For two-
21 year public institutions of higher education, we have
22 Dr. Anne Kress.

23 DR. KRESS: Good morning. Happy
24 Valentine's Day.

25 MR. ROBERTS: Happy Valentine's Day.

1 And Mr. William Durden.

2 MR. DURDEN: Good morning.

3 MR. ROBERTS: In our final
4 constituency group for U.S. military service members,
5 veterans or groups representing them, we have Mr. Travis
6 Horr. Not seeing Travis, but we are joined by his
7 alternate, Mr. Barmak Nassirian.

8 MR. NASSIRIAN: Good morning. Travis
9 will be out today and tomorrow.

10 MR. ROBERTS: Oh great, got it, thank
11 you. Joining us from the Department of Education, we
12 have several members of the Office of General Counsel.
13 We have Mr. Steve Finley.

14 MR. FINLEY: Hi, good morning.

15 MR. ROBERTS: Morning, Steve. We are
16 also joined by Ms. Donna Mangold. And we are joined by
17 Mr. Ron Sann as well.

18 MR. SANN: Good morning.

19 MR. ROBERTS: Good morning. And last
20 but certainly not least, we are joined by our federal
21 negotiator, Mr. Gregory Martin.

22 MR. MARTIN: Morning, everyone.

23 MR. ROBERTS: Good morning. I don't
24 believe I forgot anyone, but feel free to come off from
25 mute if did neglect to announce you, and I apologize if

1 I did.

2 MR. MCCLINTOCK: Good morning, good to
3 see everybody again.

4 MR. ROBERTS: Great, David, and then
5 I'm sorry. Dr. Adams Looney. I apologize.

6 DR. LOONEY: Morning.

7 MR. ROBERTS: Morning, apologies. So
8 with that, if alternates wouldn't mind going off camera
9 and then Johnson if it's okay, I'll turn it right back
10 over to you just to readdress the issue. And then Greg,
11 I'll ask if the Department would like to respond at this
12 point.

13 MR. TYLER: Thanks, Brady. I hope you
14 can hear me okay. My radiator is singing loudly in New
15 Jersey. It's cold here. So, I put in the chat the memo I
16 wrote in support of putting transcript withholding into
17 this issue. It's an issue that I really feel
18 passionately about because I deal with consumers every
19 week on this issue, I would estimate that one out of six
20 people who call me have this problem. And as a legal
21 solution, their only solution is bankruptcy, which is a
22 big deal. But, you know, besides the passion of seeing
23 how this really cripples people because they can't go
24 anywhere else, they can't go to another state to go to
25 school, they can't go from a private school to a public

1 school, they can't go from SUNY to CUNY, they can't go
2 anywhere. They can't go to a proprietary school with the
3 transcript being withheld. But the data actually shows
4 this is not an effective tool and it affects people of
5 color, which is really of no surprise. And we data mined
6 a lot of information that was publicly available from
7 SUNY. We did FOIA requests to get information and I
8 think one of the real key things is this does not help;
9 99.25 percent of SUNY students pay their tuition debts.
10 They pay their debts to go to school, they want to go to
11 school, they want to get educated, they want to stay
12 with their friends, they want to reenroll. It's this
13 small percentage who cannot and those who cannot, when
14 you look at the size of the average debts, they're very
15 low \$6000 for a four-year school and in the hundreds for
16 a community college. And then when you look at the
17 Federal Reserve data, which shows that people of color
18 have no assets essentially compared to white families,
19 you can understand when we looked at the zip codes where
20 these people were being sued for the debts, that 9 out
21 of 10 people are people of color. So, the Secretary has
22 convened us all here to try to make the outcomes more
23 equitable in the United States regarding student loans
24 and this just seems like an important issue that needs
25 to be addressed. The final thing is, you know, only 7

1 percent of the SUNY related lawsuits end up getting paid
2 off. So these transcripts are held forever, 93 percent
3 of the people never go back to school because of this,
4 when this happened. So, it came up in some of these
5 negotiating rule papers. And the other thing is, you
6 know, a consumer on their own raised this issue at the
7 public hearing in June and basically spoke eloquently
8 about how his dream of becoming an architect has been
9 completely stymied by this and over a relatively small
10 debt for him too, I think, 6 or 7 thousand dollars
11 related to his name. So that's my thought about this. I
12 was wondering if other people had other thoughts and
13 whether the Department had some thoughts about this.
14 Thank you.

15 MR. ROBERTS: Yeah, thanks, Johnson. I
16 do see Adam; I do see your hand. Please go ahead.

17 MR. WELLE: Sure, I just wanted to
18 lend support to Johnson's proposal. We did put as state
19 AGs the certification issue paper and certification
20 regulations proposal around transcript withholding. It's
21 an agreement to the comments that Johnson made based on
22 the information we've gotten here at the Minnesota AGs
23 office. I know other AGs have faced this as well. This
24 is a particularly harmful debt collection practice to
25 take the leverage that a school has in that the student

1 has made this educational investment one of the biggest
2 investments they'll make in their life and to be able to
3 kind of hold it hostage until they pay that
4 institutional debt. And it's a particularly harmful
5 practice and we've heard of one case here in Minnesota.
6 Often these institutional loans can be and have high
7 interest rates. We had a case here in Minnesota where it
8 went to trial, and we had testimony from several
9 students about the hardship and the difficulty and the
10 kind of predatory nature of this debt collection
11 practice for some of these high interest institutional
12 loans. And then just from the Department standpoint, I
13 think this is important because this is an investment
14 that the Department of Education has made in the
15 student. So to have an institution be able to basically
16 withhold the transcript, withhold the proof that the
17 student has received the education seems to undermine
18 the goals of the Higher Education Act. And also, the
19 practice will lead to defaults we saw in the testimony
20 here in Minnesota and some of the complaints students
21 have to face between repaying their federal loans or
22 their other personal expenses because they can't afford
23 the payments and they have to make the payment on the
24 institutional loan, which can lead to to default. So it
25 seems like from the Department of Education's standpoint

1 and the higher education goals that this is a practice
2 that should be debated. I think it makes sense in the
3 [inaudible] and then the certification procedures that I
4 think it could be in other regulations for. Thanks.

5 MR. ROBERTS: Thank you, Adam.
6 Carolyn, I see your hand next.

7 MS. FAST: I just wanted to add my
8 support for the idea of including a prohibition on
9 transcript withholding either in this administrative
10 capabilities section or in the certification language. I
11 agree that this is extremely important and will affect
12 an enormous amount of people and there's really a
13 growing recognition of this as an issue. There are a
14 number of states in which there either has now have been
15 laws prohibiting this or that such laws are under
16 consideration, and I think that it would be really
17 helpful for this to be included.

18 MR. ROBERTS: Thank you. Ernest,
19 please go ahead.

20 MR. EZEUGO: Joining the line of
21 negotiators to add my support to this really important
22 consideration. Quickly, I would add some context to a
23 little bit of what Johnson mentioned on some studies
24 done on transcript withholding. Young Invincibles, the
25 organization we're part of, did research with the

1 Student Borrower Protection Center and the Community
2 Service Society of New York and found significant
3 disparities and who had issues and holds related to
4 transcript withholding as part of the SUNY system. Our
5 research found that zip codes with the most densely
6 Latino populations had on average 8 times more
7 transcript withholding cases than zip codes with the
8 least densely populated Latino populations. We found
9 that the zip codes with most densely black populations
10 had on average 10 times more transcript withholding
11 cases than codes with the least densely black
12 populations. So I add that context and hope that the
13 committee would think about and consider this as a
14 significant racial equity issue. And then finally, I
15 would add a little bit of an anecdote. I know that
16 sometimes in these things, we don't necessarily like to
17 talk about anecdotes and include personal stories
18 because they're not always representative. I would ask
19 you to consider mine real quickly. When I finished
20 school after my mom got sick, I had thousands of dollars
21 in debt to the university that I attended. I honestly
22 was one of, I think, the lucky ones. I got an internship
23 at the Department of Education shortly after I
24 graduated. That turned into a job that turned into
25 another job in D.C., way off the course the positive

1 direction of what I thought I'd be doing after
2 [inaudible] out, working and stringing together multiple
3 part time jobs to try to pay off, as as Adam mentioned,
4 both federal student debt and institutional student
5 debt. It still took me years to pay off my debt and
6 consideration of living costs, costs that home and
7 trying to support family. And again, I landed multiple
8 full-time jobs after that, and quite frankly, kick
9 started my career at Higher Education Act policy, which
10 is to say I can't even begin to imagine the impact that
11 transcript withholding is a practice that we could
12 address in this rulemaking has on people who don't get
13 as lucky. People with more significant hurdles and
14 obstacles pursuing their careers and finishing college.
15 So I would offer that also as a consideration. Hope we
16 can address it in this rulemaking.

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

19 MS. RANUCCI: Thanks. Unless Johnson
20 objects, I'm just going to sub in very quickly to make
21 one comment. You know, I just want to echo what
22 everybody said, and I think my experience largely tracks
23 Johnson's in terms of we see this at legal aid
24 organizations all the time where people just want to go
25 back to school and they aren't able to. And just to make

1 a couple of other points in my experience. One is that
2 these are often extremely low dollar value. We're
3 talking five hundred dollars, a thousand dollars and
4 because of that, it disproportionately affects the
5 people who don't have the cash. And then I think that
6 relates to my second point, which is these often, in my
7 experience, arise from a disconnect between the
8 withdrawal policy and the R2T4 rules. So there are
9 people who are never going to pay for the semester out
10 of pocket, they don't have money in a bank account. They
11 went to a school, often in the schools the people we see
12 either there where sort of life circumstances that
13 happened or the schools themselves were not what the
14 student expected so that they withdraw, they then end up
15 with, you know, the difference between R2T4 and the
16 withdrawal rules means that they have a credit balance.
17 They never have cash to do that. There was never going
18 to be money there, and that's what they're going after.
19 And just as a quick anecdote, I represented a client who
20 we were trying to help her with a \$2000 debt from 2004.
21 This was 2 years ago, and it's someone who couldn't pay
22 it. Even when we negotiated to have it with someone who
23 was employed, who got money from their employer to be
24 able to go back to school, and it just was not able to.
25 It was just such a waste. It was a waste of the federal

1 money. It was a waste of the city money that could be on
2 the table. And it was just someone who was just
3 completely stuck over this very small dollar amount
4 from, you know, 15 years ago. So I just want to
5 emphasize, I think it's really important for the small
6 dollar and for the people who just aren't able to access
7 the cash to negotiate or pay these off.

8 MR. ROBERTS: Thank you, Jessica.
9 Gregory, does the Department have a response they'd like
10 to share now?

11 MR. MARTIN: Sure. Well, obviously
12 this is an area of great concern for four people at the
13 table here and I think around the country. And you know,
14 it is definitely an issue that we are aware of.
15 Obviously, we had no proposed rules relative to that and
16 these papers, but we can certainly consider it. Of
17 course, you know, it's fine to hear these comments and
18 that but I think we have a discussion of certification
19 procedures scheduled for Wednesday and since any, if
20 there were to be a regulation addressing this, that it
21 would likely be in 668.14 Program participation
22 agreement, it's best discussed within the context of
23 certification procedures. So I will commit to having a
24 discussion of that when we get to that topic, but I
25 would like to keep to the schedule that we have in front

1 of us.

2 MR. ROBERTS: Okay, thank you. So with
3 that guidance for the committee, Greg do you want to
4 walk through the changes for issue paper number one,
5 Ability to Benefit?

6 MR. MARTIN: Yeah, we can start with
7 Ability to Benefit. We can bring up that paper and we
8 will walk through the sections again. I think we'll do
9 it by, we can do it by paragraph. Generally, I'll try to
10 do it by paragraph. If it's a whole section that's
11 relatively small, we can do it that way, too, so play
12 that by ear, but I will try to go through, I will
13 generally try to go through by paragraph as we look at
14 Ability to Benefit. So we'll start with B, no real
15 changes here. Just to review this is the definition of
16 an Eligible Career Pathways Program and this is in the
17 definition section 668.2. And you can see here that the
18 program combines rigorous and high-quality education
19 training of the services that aligns with the skill
20 needs of industries in the economy of a state or
21 regional economy involved; prepares an individual to be
22 successful in any range of secondary or postsecondary
23 education options, including apprenticeships. Includes
24 counseling to support an individual and achieving
25 individual's education and career goals. Includes, as

1 appropriate, education offered concurrently with and in
2 the same context as workforce preparation; organizes
3 education training and other services to meet the
4 particular needs of an individual in a manner that
5 accelerates the educational and career achievement of
6 the individual to the extent practicable and engages an
7 individual to attain a secondary school diploma or its
8 recognized equivalents ,and at least one recognized
9 postsecondary credential ; and helps the individual
10 enter or advance within a specific occupation or
11 occupational cluster. So that's our definition. And
12 remember that we, I, just want to reiterate that that's
13 simply the definition, the definition part, and we will
14 talk later in 157 about the ways in which the
15 institution demonstrates to the Secretary that it is
16 meant that definition of an Eligible Career Pathways
17 Program. So I'll open it up to any discussion people
18 have about the about the definition.

19 MR. ROBERTS: Alright, thank you. Just
20 before we [inaudible] in, I do want to make two brief
21 notes. David, is in on behalf of state agencies and Will
22 is on behalf of two-year institutions. And conveniently,
23 David, I see your hand first, so please go ahead.

24 MR. SOCOLOW: Thank you very much. And
25 recognizing that this is the statutory definition and as

1 you said, 157 has the standards that the Department will
2 be applying. And when we get there, we can talk about it
3 more, but I would want to kick this off by respectfully
4 asking the Department to respond to the suggestion I
5 sent on February 1st that the new rules should reinforce
6 the transformational policy in the 2014 revisions to
7 ATB, which support the career and academic success of
8 adults without a high school diploma. By aligning with
9 integrated education and training, IET, the best
10 practices to help these adult students. The 2014
11 amendments to the Ability to Benefit provision of the
12 Higher Education Act added a key requirement for
13 students without a high school diploma to participate in
14 a career pathway program as a condition of receiving
15 Title IV financial aid through all three ATB eligibility
16 methods. And now 7 years plus after that law was
17 enacted, commend the Department for proposing not just
18 to put this statutory definition in the regs where it's
19 pretty much identical to the law, but to actually verify
20 the eligibility of career pathway programs that are
21 going to offer Title IV aid to these students without
22 high school diplomas. Why has the Department not taken
23 the opportunity to align its standards for evaluating
24 these career pathways to reinforce the curricular model
25 that works best for adults without high school diplomas?

1 Now, career pathways can have all kinds of forms. This
2 general definition here can apply to lots of different
3 career pathways, mostly for adults and others with high
4 school diplomas. But for those who don't have high
5 school diplomas, the ATB population, IET is the evidence
6 based best practice that is noted in the Institute of
7 Education Sciences, What Works Clearinghouse and in the
8 Department's Office of Career Technical and Adult
9 Education Toolkits. And finally, again, can the
10 Department please clarify that it's going to apply the
11 same standards in 157 A, 668.157 A, to all three methods
12 for students to become eligible for ATB, whether it's
13 passing a test, completing 6 credits of coursework or
14 the equivalent through something paid for with other
15 than Title IV or through a state process. Thank you.

16 MR. ROBERTS: Thank you, David. The
17 Department might need some time. Unless Greg, I'm
18 happy to seed the floor to you, but if not, I can go to
19 our next commenter.

20 MR. MARTIN: Yeah, I can. I'll address
21 that we have considered the the position that David just
22 advanced regarding IET. And I want to just say we, you
23 know, we did consider that and as a response would say
24 that, you know, we do not currently take the position
25 that IET is the only way adult education services can be

1 part of a career pathway. It's certainly one way the IET
2 programs, for instance, like I-BEST, are important
3 evidence-based models, but adult education can be part
4 of a career pathway by offering other types of
5 [inaudible] services as well. The recommendation here
6 will be stricter, and we are concerned about
7 participation in the overall participation in career
8 pathways. So we're trying to tread a line between
9 integrity here and also access to the programs and, you
10 know, having a critical mass of of these programs in
11 place to allow students to benefit from it. Career
12 pathways are not required to use the IET as a sole
13 implementation strategy for IET so this would not be
14 consistent with the definition. Other adult education
15 strategies are often used to provide adult education
16 services within a career pathways program, so we
17 definitely share the desire to to make this as useful
18 for students as possible but again, we're trying to
19 balance that off with being overly restrictive. So we
20 will take back the comment, but that's our response to
21 to that assertion. But I will open it up for discussion.

22 MR. ROBERTS: Great. Will, please.

23 MR. DURDEN: Thanks. Also, when we get
24 into this definition a little bit more and how it gets
25 applied, I'll have a comment on that. Just to something

1 general as well to open the session, I believe last
2 month it was actually also David who made a data request
3 to the Department of ED so we could get more of a handle
4 on just how much Ability to Benefit is being used
5 nationwide, where, and how, and I was curious about the
6 status of that request?

7 MR. ROBERTS: Okay. And again, just as
8 a reminder, I mean, we all know this has been mentioned
9 before, but any questions and reminders about data
10 requests just talking in the chat if there's not a
11 response immediately available from the Department for
12 the committee. Jessica is at the table on behalf of
13 legal aid organizations. And Jessica, your hand is next.

14 MS. RANUCCI: Thank you. Brady, I
15 asked Cindy to screen share a picture, I don't know if
16 that's possible on the tech end, but if it is, that'd be
17 great if you could share it with the negotiators and the
18 public. But I'll start while you're working on that. I
19 just want to emphasize because of this conversation how
20 important this is again, from a legal aid perspective,
21 and I don't want to beat a dead horse here, but I think
22 sometimes we see what happens when things go wrong in a
23 way that other people at the table just don't see. And
24 so just two brief points on that. One is, you know, my
25 office was involved in a lawsuit two years ago regarding

1 ATB fraud that resulted in over 4000 people calling us
2 for help, whose school closed at the latest in 1994. So
3 these debts, like this is they hang out for 30 years
4 like anyone who is going into an ATB program that is not
5 good for them. It's not a problem now. It's a problem
6 now. And you know, we're talking now into the, I would
7 say, the 2050's that these debts are going to be hanging
8 around. And so it's really, really important to get this
9 right. And then my second point, which is on the
10 picture, if you can get it, if not, that's okay.

11 MR. ROBERTS: Jessica, so, Vanessa, if
12 you wouldn't mind bringing down your screen share of the
13 document very briefly. And Jessica, you should have
14 screen share ability. So you have the image queued feel
15 free.

16 MS. JEFFRIES: Brady, I have it for
17 the sake of time.

18 MR. ROBERTS: Okay.

19 MS. RANUCCI: Thank you, Cindy. You
20 know, this is not just a problem from the 80's. I just
21 wanted to share with you. This is a picture of an ad
22 campaign that went out in the last couple of weeks. My
23 colleagues took this last week on the New York City
24 subway. This is a full subway car with ads from the same
25 school. And this is one that particularly sticks out.

1 This same school was put on probation from its regional
2 creditor in December. And that letter stated that it was
3 at risk of losing its accreditation and that it had
4 submitted a teach out plan. So I think this is exactly
5 what we're trying to avoid is and I think the way to do
6 that is as David and others have said, to really
7 strengthen the definition of ECPP so that we're making
8 sure that people who are in these programs are in fact
9 benefiting from them and they're not going to be saddled
10 with debts that they can't repay through 2030, 2040,
11 2050 and up.

12 MR. ROBERTS: Thank you, Jessica. And
13 David, we'll go back to you.

14 MR. SOCOLOW: Thanks, and Greg, thank
15 you so much for the for the response, so I want to
16 clarify in rejoinder that I'm not suggesting that IET is
17 the only way career pathway can work for adult
18 education. I am suggesting that this Title IV regulation
19 should have the most stringent possible. You said
20 specifically, you're trying to balance integrity well,
21 in light of what Jessica has just shown in light of the
22 the original rescinding of ATB, you know, in 2011
23 because of abuses and then the partial restoration of it
24 for Title IV aid access. We have to air on the side of
25 being very clear about what works and what makes sense.

1 This is an exception to the general rule. Adults without
2 high school diplomas, you know, probably aren't going to
3 be able to succeed in college, but they can if we do it
4 right and we know what doing it right looks like. And
5 rather than investing this Title IV money in things that
6 don't work or that are less likely to work, why not?
7 Please, use this opportunity to make clear what all the
8 science and all of the research on these dual enrollment
9 partnerships between higher ed and adult ed have shown
10 over the last two decades is what we know works. And so
11 you can, yes, there are other places in the general
12 adult ed landscape in which there's other modes for
13 adult ed for individuals without high school diplomas.
14 But this is the part about individuals that have high
15 school diplomas getting this investment of financial aid
16 and getting possibly student loans. And before we allow
17 that to happen, let's cabinet closely with the IET
18 definition, please. That's my fervent request.

19 MR. ROBERTS: Thank you, David, and I
20 just wanted to welcome back Johnson to the table on
21 behalf of legal aid and Johnson, please.

22 MR. TYLER: Yeah, just a different a
23 different issue relates related to it's just paragraphs
24 subsection six about the secondary enabling the person
25 to obtain a secondary school diploma. So in this memo

1 that I've thrown in here, there's a person in
2 California, Mr. Alvarez, who went to a for-profit school
3 and basically their idea of getting your high school
4 diploma was signing up to an online course where there's
5 no assistance in helping. Mr. Alvarez try to understand
6 the classes he's taking and the entity that they sign up
7 with is a for-profit. He got passing grades from them,
8 but he couldn't pass, he didn't learn anything. And so
9 there's sort of this, there's a whole industry that's
10 potentially out there to be abused to take advantage of
11 this Title IV money by purporting to say that people are
12 going to get a high school diploma. And you know, we saw
13 this a lot prior to the amendments of ATB. I'm sorry,
14 when it was banned in 2012, we would see these things
15 all the time, but these mills are cropping up again. One
16 beauty school created their own high school diploma
17 mill. That was in 2015, there was a lot of litigation
18 about that. The Department of Education is familiar with
19 that. And just as recently as 2021, Florida closed down
20 a high school diploma mill. So, you know, I think we've
21 proposed language here in paragraph section six here
22 about how to how to define what a useful education is or
23 a useful way of trying to pursue your high school
24 education should be I think it's way too vague here.
25 It's going to lead to a lot more of these subway ads in

1 New York City and other states.

2 MR. ROBERTS: Thank you. Greg, I'm not
3 seeing any new hands on this first section. Do you want
4 to go through the next section?

5 MR. MARTIN: Yes, we'll move on to
6 student eligibility. Okay, we're going to go to 668.32,
7 this is the discussion of student eligibility, and this
8 is talking about the ways to establish eligibility here.
9 Under (e)(1) has a high school diploma; has obtained a
10 passing score specified by the Secretary on an
11 independently administered test in accordance with
12 subpart J, and either was enrolled in an eligible
13 program before July 1, 2012; or is enrolled in the
14 Eligible Career Pathways Program as defined in 668.2,
15 which we just went over. And then before July 1, 2012,
16 just references the grandfathering that was present in
17 the statute when ATB was taken away. Is enrolled in an
18 eligible institution that participates in a state
19 process approved by the Secretary of the subpart J. And
20 again, we referenced either being enrolled before July
21 1, 2012, or enrolled in a career in a career pathways
22 program. The other ways in which students establish
23 eligibility was home schooled. We're not discussing that
24 today. Has been determined by the institutions who have
25 the ability to benefit from the education or training

1 offered by the institution based on the satisfactory
2 completion of 6 semester hours, 6 trimester hours, 6
3 quarter hours or 225 clock hours that are applicable
4 toward a degree or certificate offered by the
5 institution again wasn't enrolled before July 1, 2012,
6 or as in Eligible Career Pathways Program. So I don't
7 think there's that much there that we haven't seen
8 before, but I do want to give the opportunity to anybody
9 who would like to comment on that particular source. So
10 [inaudible], but I do want to make give the opportunity.

11 MR. ROBERTS: Thank you. Vanessa, if
12 you wouldn't mind bringing down the document just so we
13 can see everyone's bright smiling faces. Any comments or
14 new material for the Department to consider on what was
15 just presented? Alright, Vanessa, sorry, I'm going to
16 put you right back to work. Would you mind re sharing
17 the document and then Greg, would you mind walking us
18 through the next section?

19 MR. MARTIN: Sure. Let's move on to
20 668.156, and we're looking at the improved state process
21 and some changes here. And we'll start with A, under
22 approved state process. I'll wait for the document, come
23 up. Okay, there we go. So the state that wishes the
24 Secretary to consider its state process as an
25 alternative to achieving the passing score an approved,

1 independently administered test or satisfactory
2 completion of at least 6 credit hours or it's recognized
3 equivalent coursework for the purpose of determining a
4 student's eligibility for title IV HEA funds must apply
5 to the Secretary for approval of that process. And here
6 we've stricken some language there, deleted this text,
7 and instead it's been incorporated into paragraph (a)(2)
8 romanette i. So the state's application, oh, here we've
9 also updated paragraphs 2 romanette 3 to include across
10 reference to the documentation requirements in the
11 Eligible Career Pathways Program, as suggested by the
12 negotiators. So we have made some some changes here. A
13 state's application for approval of its state process
14 must include the institution is located in the state
15 included in the proposed process, which need not be all
16 of the institutions located in the state; the
17 requirements that participating institutions must meet
18 in order to offer Eligible Career Pathways Programs
19 through the State process; a certification that, as of
20 the date of the application, each process is proposed
21 career pathways program intended for use through the
22 State process constitutes an Eligible Career Pathways
23 Program as defined in 668.2 and as documented through
24 the standards outlined in 34 CFR 668.157 at this part.
25 And this was David's suggestion, we added a reference to

1 the documentation requirements in 668.157 and for
2 clarity sake we've also maintained the reference to the
3 actual definition in 668.2. So we're trying to pull the
4 two of those together. The criteria used to determine
5 the student eligibility determine student eligibility
6 for participation in the State process. And before
7 approving the state process, the Secretary will verify
8 that a sample of the proposed Eligible Career Pathways
9 Programs comply with the definition of an Eligible
10 Career Pathways Program as defined in 668.2 and
11 documented through the standards and 668.157. Again, we
12 see the reference to 157 there. Participating, in this,
13 I want to move on to (b)(1) where we have added an
14 accountability metric and again, just to put this into
15 perspective, we're talking about career pathways
16 programs coming in for which we don't have any data, any
17 track record, in which to evaluate the outcomes of that
18 program. So, during that initial period impose some sort
19 of an accountability standard here. So we do seek
20 feedback as to whether this should be at the
21 institutional level as is proposed here or only for
22 fields of study that will be an Eligible Career Pathways
23 Program. And we seek feedback on whether all new
24 participating institutions should be required to meet
25 the standard. So let's take a look at this standard and

1 then we'll pause to discuss this, since this is new. So
2 if a participating institution does not have more than
3 33 percent of its undergraduate regular students
4 withdraw from the institution during the institution's
5 latest completed award year, the institution must count
6 all regular students who are enrolled during the latest
7 completed award year, except those students who, during
8 that period, withdrew from, dropped out or were expelled
9 from the institution; and were entitled to and actually
10 received in a timely manner, a 100 percent refund of
11 their tuition and fees. So I want to stop there and open
12 the floor for discussion on this and just to say that
13 this incorporates the withdrawal standard that is
14 present in 668.16, that's administrative capability and
15 that is currently applied to new institutions. So with
16 that, I'll open for discussion.

17 MR. ROBERTS: Great. David, I see your
18 hand first. And Vanessa, if you wouldn't mind bringing
19 down the document just very briefly.

20 MR. SOCOLOW: Super thanks. First, I
21 want to thank the Department, I think it's great to the
22 way you've delineated this, that 668.2 is the definition
23 ties back to the statute and then 157 is where the
24 standards are for evaluating a career pathway. I think
25 that was well done and I appreciate that incorporation

1 in both 2 and 3 here. As far as (b)(1), that you
2 suggested, I think you're right and I agree with this
3 language that it has to be at the institutional level
4 because again, we're talking about the two year initial
5 renewal of, excuse me, the two year initial approval of
6 a state process for which the career pathways may be new
7 and innovative ideas that the state is including that
8 career pathway may not have a 33 percent withdrawal
9 standard or any withdrawal standard. It may not yet
10 exist. And so making it at the institution level and
11 making sure that a quality institution is the only one
12 that's allowed to be doing those career pathways strikes
13 me as the right choice. So I applaud this language.

14 MR. ROBERTS: Great, thank you. And I
15 just want to make a note that Emmanuel is coming to the
16 table on behalf of private nonprofits, but first, Will I
17 see your hand.

18 MR. DURDEN: Thank you. I have
19 questions about the standard and where it came from and
20 what it's trying to accomplish. A state public education
21 workforce development system is invested in getting its
22 residents into good career pathway programs that are
23 Title IV eligible that lead to high demand living wage
24 work in the region that brings racial and economic
25 justice to our residents, and it helps us meet workforce

1 needs. This is about the state process and the state
2 plan. So to my knowledge, I don't believe for-profit
3 institutions are part of that. So this is something that
4 gets coordinated by a state agency in concert with the
5 colleges working out how to make sure that we have high
6 quality programs using all of our state's checks and
7 balances that we do to accomplish that. When I look back
8 at that advertisement, I think it's a great advertising
9 and I think we should be encouraging students who don't
10 have a high school credential to save time and money by
11 enrolling in a career pathway program that allows them
12 to do both at the same time. I think the problem with
13 that advertisement for some folks was the institution
14 behind it, not necessarily the message. And I think this
15 is something that we're trying desperately to get more
16 of our residents to do and for our colleges to feel
17 comfortable doing, so implementation is key there. So
18 from where I sit seeing this new standard, this 33
19 percent, that metric wasn't familiar to me. I'm not
20 sure. I feel like that's one more thing that's going to
21 make institutions say, maybe we don't want to offer
22 this. There's too many requirements that are going to
23 make us nervous about doing it. So I'm not in favor of
24 what I'm seeing there.

25

MR. ROBERTS: Thank you, Will.

1 Emmanual, please.

2 MR. GUILLORY: So I had just two quick
3 questions. The first one was actually on page two; it
4 was in subparagraph (e) in paragraph 5. So 225 clock
5 hours is still stated here and on May 25th, 2021, the
6 Department did release an update with the clock to
7 credit conversion, and it went into effect July 1st of
8 last year. And basically, that changes in 37.5 clock
9 hours equaling one semester trimester hour or 25 clock
10 hours equaling one quarter. It's now 30 clock hours will
11 equal one semester hour. So, with that being said, I
12 think the 225 here should be 180. But I just wanted to
13 ask and see if the Department intentionally kept that in
14 there. I just wouldn't want to make this more, I guess,
15 not burdensome, not the best word, but I just want to
16 make sure that it all aligns properly. So that's my
17 first question. My second, I guess I have three, my
18 second is later on in section 668.56, the approved state
19 process, the term 6 credit hours is used, which is
20 totally fine but I didn't know if the Department wanted
21 to keep that language consistent and use the 6 semester,
22 6 trimester hours, 6th quarter hour language or just
23 keep it with 6 credit hours. And then the very last
24 thing that I have is in paragraph 3, where it says
25 before approving the state process, the Secretary will

1 verify that a sample of the proposed Eligible Career
2 Pathways Programs comply, I was curious why it's just a
3 sample and why you just wouldn't want to know that all
4 of them apply? Thank you.

5 MR. MARTIN: I can address a couple of
6 those. I don't, let me have our people check the math on
7 the two 25 clock hours. I believe that was done as a
8 percentage of the academic year but let me just check on
9 that. I don't want to make a commitment to that until I
10 have someone check that for me. I don't want to do any
11 math on the fly. Not a smart thing to do, but I believe
12 225 is correct because it is there as a percentage of
13 the academic of the way the academic year is defined,
14 the way the 6 is taking that statute only mention 6
15 credits. And it just was confirmed to me that that is
16 correct. So these six credits as a percentage of the
17 academic year as defined in statute. And since statute
18 didn't address clock hours, we just did the similar
19 percentage for for for clock hours as a percentage of
20 the academic year for for clocktower programs. As far as
21 the, so no, we don't have any plans to change that from
22 what it is as it's currently stated here. With respect
23 to sometimes saying semester, trimester, or quarter
24 hours or just credit hours, we'll make sure that we're
25 consistent with that. I'm not sure which one we would

1 use, but I think, well, credit hours are either it can
2 only be quarter semester or trimester, so we'll take a
3 look at that. As far as the sample goes, I think there
4 is a workload issue that we'll look at looking at a
5 sample of those as opposed to every single one of them.
6 So just to align our capacity with wanting to take a
7 look at what these programs, what these programs are, we
8 decided to go with a sample as opposed to looking at
9 everyone.

10 MR. ROBERTS: Thank you, Greg. And
11 Emmanuel, anything that the Department notes, just feel
12 free to pop in the chat so we don't lose track of it.
13 And Greg, I'm not seeing any new hands or any additional
14 feedback for the Department. So do you want to? Oh,
15 Amanda, sorry, I spoke too soon.

16 MS. AMANDA MARTINEZ: Greg, can you
17 repeat for me what the why there's no explanation or a
18 kind of a bubble for the section B paragraph 1 or B
19 paragraph 1, the the withdrawal rates. Can you repeat
20 for me the the policy goal here, you said it was for
21 accountability?

22 MR. MARTIN: So, the policy goal here,
23 again, we have this two-year period before the general
24 standards are applied. And, you know, there is the
25 Department's needs that need to have something in place

1 to account for those two years as opposed to just
2 saying, well, you know, you come in for the two year,
3 you can have the program for the two year period and
4 there's no accountability established for that period of
5 time. We don't have any outcomes during that two-year
6 period where we can assess the program. So this is sort
7 of [inaudible] understand that this is not measuring the
8 outcome of the program, which we cannot do at that
9 point. So it's introducing a standard to apply so that
10 there are no standards. And you know, and it is, I
11 disagree with an assertion that it doesn't have any
12 applicability because we're looking at this with
13 withdrawal rate and I think that it does extent to which
14 students have withdrawn from those institutions
15 generally just tell a story of sorts about tuition and
16 does and does indicate sort of an upfront measure of
17 what types of success the school is or the programs that
18 the institution are or are seeing.

19 MS. AMANDA MARTINEZ: Okay, thank you.
20 And then I have a follow up, or Will; Brady, I don't
21 know if I should ask.

22 MR. ROBERTS: Is it okay if I jump to
23 Will and then I'll just come right back to you?

24 MS. AMANDA MARTINEZ: Yeah, that's
25 good.

1 MR. ROBERTS: Will, please go ahead.

2 MR. DURDEN: Just a quick
3 clarification because I think it'll help. Gregory, can
4 you say again, I think you did say where that 33 percent
5 came from and I just kind of missed it because I wasn't
6 aware of it before we started this morning. Can you say
7 again where that number comes from?

8 MR. MARTIN: Yes. Sure. It comes from
9 the administrative capability provisions in 668.16. And
10 I think it's in, let me just yes, it's applicable, it's
11 been there for a while, it's applicable, it's been
12 applicable to newly participating institutions.

13 MR. DURDEN: Thank you. That's the
14 part that I needed. That's really helpful. Appreciate
15 it.

16 MR. MARTIN: My pleasure.

17 MR. ROBERTS: Thank you. And then,
18 Amanda, please pick it right back up.

19 MS. AMANDA MARTINEZ: Well, my follow
20 up question was the reasoning behind the 33 percent. But
21 this is a new question because you already answered my
22 first question. Did the Department in deciding this 33
23 percent floor [phonetic], did it find utility that this
24 would, you know, yes, while it's cross-referenced in
25 other regulations is their utility in using this

1 specific number, and was there a new analysis made about
2 whether this would actually be helpful?

3 MR. MARTIN: Well, the utility of it
4 is for this purpose is, I think, how I phrase this at
5 this point sort of a philosophical determination that
6 this would be a useful standard. It's never been applied
7 this way before, so I don't know that I can address
8 utility in terms of looking at what's occurred in the
9 past because we we haven't done that. We find it that
10 there's utility in it as as as it's applied currently in
11 the administrative capability standards for new
12 institutions. It is a regulatory standard that we have
13 in place, which which which means it's not arbitrary. We
14 haven't just, you know, which, of course, we're not
15 allowed to do without some sort of backup for why we're
16 using it, either research as to why we're doing
17 something or we're looking at another regulation that we
18 have we have used. And the standard is one that we think
19 will, you know, say something about the programs, about
20 the institution in terms of what types of, it's
21 certainly not a complete measure of an institution's
22 success, but it is a measure when you're looking at with
23 the withdrawal rates of of students. So we do feel that
24 it will be a useful measure here. And again, there's no
25 perfect way to to look at these first two years that

1 we're going to permit participation before we have data
2 and because there's nothing to gauge outcomes by, so
3 we're stuck with having to introduce some some
4 accountability standard. This isn't accountability
5 standard; it just comes from administrative capability
6 and is yet to be applied here. So I think that it would
7 be disingenuous to say that we've applied it in this way
8 before because we haven't and obviously it's a new
9 thing, but we do believe it will be useful and will set
10 put some parameters around this for those first.

11 MR. ROBERTS: Okay. David.

12 MR. SOCOLOW: So not to belabor this,
13 but I mean, I do appreciate the idea of a two year
14 initial thing because, you know, it's been very hard for
15 states to try innovative career pathway initiatives to
16 foster this particular population of adults without a
17 high school diploma to get something that really will
18 help them with their career and academic success. And so
19 this two-year initial thing, followed by a five-year
20 renewal, the initial approval is a terrific change that
21 the Department is proposing to make here. And you know,
22 what the law says is you've got to take into account,
23 the Secretary shall take into account the effectiveness
24 of this state process in enabling students without high
25 school diploma or equivalent to benefit from the

1 instructions offered by the institutions that
2 participate in the state process. So I mean, that's, you
3 know, effectiveness is, you know, I mean, its outcomes
4 data, which was the prior rule was impossible. It's a
5 new program. How can there be outcomes data? So,
6 effectiveness? I think this is a good proxy for
7 effectiveness.

8 MR. ROBERTS: Great. Greg, I'm not
9 seeing any new hands if you want to pick us back up with
10 walking through modifications on issue paper number 1.

11 MR. MARTIN: And I just want to say
12 before we move on, you know that I think that it's
13 important to point out here that we're not, you know,
14 we've put in this protocol for the first two years.
15 Absent that, we would have to hold every institution to
16 the 95 percent success rate, which would be impossible
17 for anybody to demonstrate. So I think we need to view
18 this in that context. Okay, let's move on then, we're
19 looking at B and we just looked at B 1. And now I'd like
20 to move to B 2 and and I'm sorry, I want to move on to B
21 3, rather. The state agrees that the total number of
22 students that enroll in the initial period will total no
23 more than 1 percent of enrollment at each institution
24 participating in the state.

25 MR. ROBERTS: Just to briefly pause,

1 Greg, Vanessa will you just bring up the document just
2 so we can keep track of where we are?

3 MR. MARTIN: Oh, sorry about that.

4 MR. ROBERTS: That's okay.

5 MR. MARTIN: I'll pause for that.

6 MR. ROBERTS: She might be having
7 technical difficulties. Alright, there we go. Thank you,
8 Renee.

9 MR. MARTIN: Okay. Thanks. Okay, there
10 we are. Alright. Excellent. So here you see it on the
11 screen again that the state agrees the total number of
12 students that enroll in the initial period will total no
13 more than 1 percent of the enrollment at each
14 institution participating in the state process. You can
15 see here at each institution, the Department proposed
16 the number of students that can enroll in the state
17 process at each participating institution during this
18 period be capped, the cap is not after the initial
19 period, so I want to make that clear. The cap is only
20 intended to apply to the students' number of students
21 that are enrolled under the state process and has no
22 impact on total enrollment at the institution. Do point
23 out again that as written, this cap is only applying to
24 institutions who participate in the two year trial
25 period, and we do entertain any comment where we would

1 like to solicit any comments regarding whether or not
2 this should only apply during the two year period or
3 whether it should extend beyond that indefinitely. So
4 you see it as written, but we will take suggestions or
5 comment on that or other ways people might see it.

6 MR. ROBERTS: Alright, thank you.
7 Renee, if you wouldn't mind bringing down the document
8 and then Will we'll turn it over to you.

9 MR. DURDEN: Thanks. So approve of the
10 1 percent cap, but I think that it should apply at the
11 state level and not at the institutional level. I can
12 imagine a small technical college with a really strong
13 adult education program, they've got a lot of students
14 enrolled, they hit 1.1 percent, 1.2 percent. I would
15 hate to say stop serving students in this effective
16 process, whereas you might have a large, transfer
17 oriented community college down the road that serves
18 almost nobody in this process and it gets nowhere near 1
19 percent. So I would rather see the 1 percent applied at
20 the state level for the state process as opposed to the
21 institutional.

22 MR. MARTIN: Thank you.

23 MR. ROBERTS: Thank you. Anyone else
24 on this section, otherwise I'll ask that we continue
25 walking through the document. Okay. Greg and Renee, if

1 you wouldn't mind picking us back up.

2 MR. MARTIN: Thank you. Wait for the
3 document to come back up. Okay. Here we have just the
4 addition of allowing only the participation of those
5 students eligible under 668.32 (e) (3), that's the
6 student eligibility and does reference to state process
7 that we mistakenly showed this text as current during
8 the session one, but we've corrected to show its red
9 line text here. So and it also we have some renumbering
10 as a result, but this was just shown as being current
11 previously, but it was an addition we should have shown
12 at that time. And here under under 4, we have terminated
13 the institution from the state process if the
14 institution refuses or fails to comply with the state
15 process requirements, including exceeding the total
16 number of students referenced in paragraph B 3 of this
17 section. And this is just to reference the the
18 limitation that was imposed in B 3 that we just
19 discussed. We move down to F and G. You see those as
20 stricken. Now this language now appears in paragraph I
21 so we will be looking at that. And then the language
22 below that we've revised this language that now appears
23 in J 1. So all the stricken language here moving down
24 appears in paragraph J 2. Let's move down to to E. And
25 here, okay, after the initial two year period described

1 in paragraph B of this section, the state must reapply
2 for continued participation and in its application
3 demonstrate that the students it admits under the
4 process have a success rate as determined under
5 paragraph F of this section that is within 95 percent of
6 the success rate of students with high school diplomas.
7 Demonstrate that the state's process continues to
8 satisfy the requirements of paragraphs A, C and D of the
9 section. Report information to the Department on the
10 enrollment and success of participating students by
11 program, race, gender, age and educational attainment to
12 the extent that that is possible. And the state must
13 also calculate the success rates as referenced in
14 paragraph (e)(1) of the section by determining number of
15 students with high school diplomas who during the
16 applicable award year described in (g)(1) of this
17 section enrolled in participating institutions as
18 successfully completed their education or training,
19 enrolled in education or training programs at the end of
20 the award year, or successfully transferred and remained
21 enrolled in another institution at the end of that
22 enrolled year. So just some comments on this. We have
23 corrected the cross-reference that mistakenly set
24 paragraph G and that was appropriately identified as F.
25 We've retained the requirement that a state demonstrate

1 a success rate for its ATB students that is within 95
2 percent of the success rate of students with high school
3 diplomas. And we do seek feedback as to whether or not
4 this is an appropriate threshold. It's in current
5 regulation. It's been there for a while, but we do ask
6 the negotiators to consider whether or not this is the
7 right threshold for success. And we note here that, we
8 welcome, I'm sorry, David proposed adding Eligible
9 Career Pathways Program before this before program,
10 reasoning that the success rate metrics should be
11 disregarded by ECPP. This will allow calculations on
12 whether some Eligible Career Pathways Programs included
13 in the state do achieve success of the success rate
14 standard in (e) (1), even if other pathway programs do
15 not meet the standard. And I will continue with these
16 standards here under 2. And then we'll have a discussion
17 over that when we get to the end of the paragraph.
18 Determining the number of students with high school
19 diplomas who enrolled in education or training programs
20 in participating institutions during the award year.
21 Determining the number of students calculated in
22 paragraph (f) (2) of the section who remained enrolled
23 after subtracting the number of students who
24 subsequently withdrew or expelled from the institution
25 and received 100 percent of their tuition refund of

1 their tuition under the institutions refund policy, then
2 dividing the number of students determined the paragraph
3 (f) (1) of this section by the number of students in
4 (f) (3) of this section and making the calculations
5 described in paragraph (f) (1) through (f) (4) for
6 students without a high school diploma or its recognized
7 equivalent who enrolled in participating institutions.
8 So that's the calculation of the 95 percent rate. And we
9 also seek feedback on whether the comparison population
10 should include all other students that enrolled at
11 participating institutions. So with that, I'll open it
12 up for discussion before we move on to paragraph G.

13 MR. ROBERTS: Thank you. If we could
14 bring down the document. Any questions, comments, or
15 feedback for the Department? David.

16 MR. SOLOW: Okay, thanks. So you
17 mentioned the idea of just clarifying on the success
18 rate that we're talking about disaggregating it by
19 program because now we're doing the 5 year renewal
20 approval after the 2 year initial trial period. And it's
21 very possible that some of the experiments that the
22 state's proposed worked and some didn't. And it would
23 seem like an ability for the Secretary to say you can
24 have a 5 year renewal, but only with respect to those
25 that worked would be an appropriate use of the

1 Secretary's authority. The other point here is that the
2 sample that was discussed back in (a)(3) with regard to
3 the initial trial period is essentially seemingly just
4 repeated here, right? Because they've just got to
5 continue to satisfy the requirements in paragraph A,
6 which includes the sample. And so I guess the question
7 for the Department is why not at this point for the more
8 long term approval require the state to document that it
9 has eligible career pathways for all of the programs in
10 its state process going forward now that the two year
11 trial is over? So those are just my first two comments.

12 MR. MARTIN: Thank you.

13 MR. ROBERTS: Thank you, David. Will.

14 MR. DURDEN: Thanks. I'm still a
15 little unclear on I think the standard's been around for
16 a while, but I don't mean, it's not clear to me where it
17 really where it came from and why that 95 percent metric
18 was settled on is meaningful. And as we're sitting here
19 looking at this and thinking about this 1 percent
20 statewide cap, remember that this is a state plan. This
21 is something that's put together through a lot of
22 collaboration between a coordinating entity and the
23 colleges that would participate in it. It goes through
24 an approval process. I think there's a lot of checks and
25 balances, and I wonder if that 1 percent cap actually

1 isn't a better way to have some controls over it while
2 we implement it research to see how well it works. And
3 I'm curious about actually just removing the success
4 rate entirely and falling back on that 1 percent cap as
5 a way to keep this in check as we implement it and study
6 it. So I'm not sure I support the success rate at all.

7 MR. MARTIN: Thank you, we'll take
8 that back. There are some statutory considerations with
9 the success rate, so measuring success. So you would be
10 suggesting applying the 1 percent cap even after the two
11 year period like indefinitely?

12 MR. DURDEN: I'd have to think about
13 that, but I think I want to fine tune that a little bit
14 more. But yeah, I do think that that's a possibility.

15 MR. ROBERTS: Okay. Greg, anything
16 else to ask or else I'll turn it over to Johnson? Okay,
17 Johnson, go ahead.

18 MR. TYLER: You know, I appreciate
19 that states have the mission of educating people within
20 their states and that it is a public service mission
21 that they have. But I would be worried that students
22 might be beyond trajectories where there's not enough
23 self-analysis going on, and I think this provision here
24 is useful for that. With all due respect to Will's
25 comment. Thanks.

1 MR. ROBERTS: Any other questions or
2 comments for the Department otherwise Greg, I'll turn it
3 back over to you. Great. Alright. If we could re share
4 the document. Greg, I think we're on section G, correct?
5 Yeah.

6 MR. MARTIN: That's correct, section
7 G. So I'll wait for her to pull that back up. And there
8 it is very quickly. Okay, one second, please, oh, there
9 we go. Okay, soG, let's take a look at that. For
10 purposes of the paragraph F in this section, the
11 applicable award year is the latest complete award year
12 for which information is available that immediately
13 precedes the date on which the state requests the
14 Secretary approve its state process accept that the
15 award year selected must be one of the latest two
16 completed award years preceding the application date. If
17 no students are enrolled in an Eligible Career Pathway
18 Program through a state process, then the success rate
19 reporting will not be required in the subsequent
20 application as described in paragraph F of this section.
21 The state must submit reports on its State process in
22 accordance with deadlines and procedures established and
23 published by the Secretary in the Federal Register, with
24 such information as a Secretary requires. And the
25 Secretary approves the State process as described in

1 paragraph E of this section for a period not to exceed 5
2 years. The Secretary withdraws approval of the State
3 process if the Secretary determines the State process
4 violated any terms of this section or that the
5 information the state submitted as a basis for approval
6 was inaccurate. And the Secretary provides the state
7 with the opportunity to contest the finding that the
8 state process violated any terms of this section or that
9 the information that the state submitted as a basis for
10 approval of the state process was inaccurate. A couple
11 of notes here. We ask again a couple of questions here.
12 Should institutions who cannot report success rates
13 remain subject to the cap until they can report? Should
14 new institutions remain subjected to all new
15 institutions remain subjected to the withdrawal rate
16 beyond the two year period? Should states remain in the
17 trial period with extensions until the success rate can
18 be reported? When should the Department withdraw
19 approval of a state program? For example, if a State
20 process does not remove repeat ineffective institutions
21 after 3 years, the State process loses approval and
22 cannot reapply for 3 years. That's just a suggestion. We
23 welcome feedback on how many years to allow a failing
24 institution to come back into compliance. So with that,
25 I'll open it up for comment on paragraph G.

1 MR. ROBERTS: Anything new for the
2 Department to consider on section G? David, please.

3 MR. SOCOLOW: Well, just that list of
4 things that you suggested we consider is that something
5 the Department could provide in writing because that was
6 a whole lot of things that I didn't take notes quickly
7 enough. Those were not included in issue paper 1,
8 revision.

9 MR. MARTIN: No, these are just
10 questions that we ask, just directed questions, so I'll
11 go over those again. Should all new institutions remain
12 subject to the withdrawal rate? Should states remain in
13 the trial period with extensions until a success rate
14 can be reported? And when should the Department
15 withdrawal approval of a state process? And that was
16 just an example. It was not anything we were proposing.
17 It was just, you know, for example, if a state, if a
18 State process did not repeat, did not remove ineffective
19 institutions after 3 years, would the state lose
20 approval and cannot reapply? We currently don't have
21 that stipulation here. We just throw that out and ask if
22 there should be more of a definition of that process.
23 And we are welcoming feedback as to how a failing
24 institution could come back into compliance. So
25 there's nothing in here that we've proposed that you

1 don't see. These are just just directed questions.

2 MR. ROBERTS: David, did you have a
3 follow up?

4 MR. SOCOLOW: Yeah, I mean, I just
5 either take that under advisement and not respond right
6 in the moment or maybe have a caucus or something, but
7 you know, don't have an immediate response to those
8 interesting questions. Thank you, Greg.

9 MR. ROBERTS: Sounds good. Anyone else
10 on section G?

11 MR. MARTIN: Yeah, and you may not,
12 that's fine if you want to consider how to respond to
13 that. That's fine. We, you know, obviously this is
14 something people might want to think about and come up
15 with.

16 MR. ROBERTS: And this is maybe
17 relevant, but once we're done with issue paper number 1,
18 we're going to take another consensus check section by
19 section sort of in keeping with the pattern of week one.
20 No, this is not an official consensus check because
21 obviously there's still some unanswered questions. But
22 that would be the time to raise potential responses or
23 other issues you might have with the reg text as it
24 currently stands, knowing that we have another another
25 week to discuss Ability to Benefit, bt anything else on

1 what's been outlined so far. Alright, Greg, do you want
2 to walk us through the remainder of the document? I know
3 we have section 668, what is it, 157.

4 MR. MARTIN: I'm sorry, I was on mute.
5 Before we go on there, I just also want to say that when
6 we, I don't know if in F, we're talking about the 95
7 percent, wanted to clarify that we do seek feedback on
8 whether the comparison population should include all
9 other students enrolled at participating institutions.
10 As opposed to what we currently have, those with high
11 school diplomas enrolled in education or training
12 programs and participating institutions, so we just
13 throw it open for that, I want to reiterate that. So
14 we're moving on to 668.157, the Eligible Career Pathways
15 Program and here are the standards. So we'll look at
16 these. An institution demonstrates the Secretary that a
17 student is enrolled in an Eligible Career Pathways
18 Program, as as required in 668.156 (a) (3) of this part,
19 by documenting that the student has enrolled in or is
20 receiving both an eligible postsecondary program as
21 defined in 668.8 and coursework training or other
22 supportive services that enable an individual to attain
23 secondary school, a secondary school diploma or its
24 equivalent. Program aligns with the skill needs of
25 industries in the State or regional labor market in

1 which the institution is located based on research the
2 institution has conducted, including government reports
3 identifying occupations with the greatest hiring demands
4 in the State or regional regional labor market, and
5 surveys, interviews, meetings or other information
6 obtained by the institution regarding hiring needs of
7 employers in the state or regional labor market. And we
8 have revised this requirement so that institutions must
9 evaluate both the government reports and other surveys,
10 or research obtained by the institution regarding the
11 state or regional labor market. We seek feedback from
12 negotiators on how this language should be strengthened
13 to ensure career pathways aligned with the labor market.
14 Ideas to consider include requirement of direct
15 engagement with industry, curriculum development with
16 industry partners, or employment partners for
17 recruitment. And here we also ask whether it would be
18 appropriate where we say that they must look at
19 government reports, this is in 2 romanette 1, government
20 reports identifying occupations with the greatest hiring
21 demand. Would it be more appropriate to say in demand as
22 opposed to the greatest hiring need? So we point that
23 out as well, and that's a question for the committee to
24 consider. And we did make a correction here in 4 a
25 technical correction to say identifies instead of

1 identifying. Okay, and so I'll move on here to 3. The
2 skill needs described (a)(2) of this section align with
3 specific coursework and postsecondary credential
4 provided by the postsecondary program or other required
5 training. The program provides career counseling
6 services that assist students in obtaining jobs aligned
7 with skill needs described in paragraph (a)(2) of this
8 section. And as we've said before, we changed
9 identifying to identifies individuals providing the
10 career counseling services. The education is offered
11 concurrently with and in the same context as workforce
12 preparation activities and training for specific
13 occupational cluster. And the program is designed to
14 lead to a valid of high school diploma as defined in
15 668.16 (v) of this part or its recognized equivalent.
16 And the Eligible Career Pathways Programs that do not
17 enroll students through a state process as defined in
18 668.156, rather, for those programs, the Department will
19 verify the eligibility of career pathways programs for
20 Title IV HEA purposes, and the Secretary provides an
21 institution with the opportunity to appeal any any
22 adverse decision. We do ask, well, we do ask here for
23 comments on whether the notion that it's better to
24 synchronize HEA career pathways with WIOA career
25 pathways. However, under WIOA, we do not currently take

1 the position that again, IET is the only way to to to do
2 that. We mentioned that before. We do want to say
3 though, we agree it is an important way. And that is it
4 for the comments on G, I'm sorry, 157 rather. So we'll
5 take that section in its entirety and open up for
6 comments.

7 MR. ROBERTS: Alright, David, please.

8 MR. SOCOLOW: Yeah, so not to beat the
9 dead horse. I appreciate your response that it is an
10 important way, and I guess I would just suggest that,
11 you know, the language of (a)(1) in general seems to
12 sort of miss the particular idea of the career pathway
13 not being something the postsecondary institution does
14 on its own. Career pathways are, by definition,
15 partnerships among multiple institutions and the sort of
16 the idea that the higher ED institution is on its own
17 running the career pathway that the student can just
18 also be enrolled in something else isn't coordinated. I
19 know that's possible now under ATB, but it shouldn't be.
20 And the career pathways language makes it now possible
21 for you to restrict that. That was the intention of
22 Congress in doing so. And again, these are the standards
23 by which you're going to evaluate not just any old
24 career pathway, but whether a career pathways eligible
25 for the specific purpose built idea of allowing

1 individuals without a high school diploma to receive
2 Title IV aid. And so you've got a chance here to add
3 that they're not just documenting that the student has
4 enrolled or is receiving both, you know, could be
5 completely not even talking to one another. No, you
6 could document that there was a true partnership here in
7 one, a true partnership between WIOA Title II adult
8 education and services and the postsecondary institution
9 to do it together. And so that's again, what I would
10 urge that you do as it relates to the in-demand
11 occupations. One of the reasons for, I mean, you
12 mentioned government reports identifying occupations
13 within demand. I think that's right. And I think that
14 even better would be to specifically say, go talk to
15 your partners, make a partnership real. This could be a
16 way to have that partnership reified through the higher
17 ed institution having to prove it's an eligible career
18 pathway again for Title IV financial aid purposes. That
19 it's done that in partnership with those government
20 reports that were done as part of a WIOA State Plan or
21 Perkin State Plan showing what industry is demanding in
22 terms of skills and occupations. And then finally.

23 MR. WAGNER: You have 30seconds.

24 MR. SOCOLOW: Well, 30 seconds. So, on
25 B if you could just please clarify, is it the

1 Department's intent to apply these standards in
2 subsection A to all of the other, to the other two
3 methods of ATB eligibility, passing a test or completing
4 the 6 credits or clock our equivalent?

5 MR. MARTIN: Oh, okay, I apologize my
6 connection, I think, is not as good as it might be so
7 some of that broke up. Yeah, and I thank you for your
8 comments, David. I want to ask anybody else on the
9 committee to comment on what you heard there or any of the
10 other directed comments we have. We are interested in
11 whether or not we should be looking at institutions
12 documenting fields with the greatest demand or those
13 that are in demand. And we welcome any comments related
14 to the IET requirements, whether or not we should be
15 stricter about that. And these Eligible Career Pathways
16 Program requirements here do apply to any way in which a
17 student has demonstrated the ability to benefit because
18 currently under current statute, the Eligible Career
19 Pathways Program is the only Title IV aid. Ability to
20 Benefit, so it's applicable, whether it's demonstrated,
21 via test, the credits or the the state process. So I'll
22 open it up for other comments.

23 MR. SOCOLOW: So just to follow up,
24 though, on that response to my immediate question. In B,
25 where it says that for things that are not a state

1 process, the Department will verify the eligibility of
2 career pathways. Can't you just say pursuant to the
3 standards in A, 157 A, so that's crystal clear? Because
4 without that, there are no standards for that Department
5 verification.

6 MR. MARTIN: So okay, so we're saying
7 for Eligible Career Pathways Programs that did not
8 enroll students to a state process defined in 156, the
9 Department will verify the eligibility of Eligible
10 Career Pathways Programs for Title IV purposes. The
11 Secretary provides an institution with the ability to
12 appeal. I mean, so are you saying you want it noted
13 specifically noted what the other means?

14 MR. SOCOLOW: No, I want you to say.

15 MR. MARTIN: That Ability to Benefit
16 are?

17 MR. SOCOLOW: No, that those others
18 there said others so we know what they are. There are
19 the other two. If you could just say they're to make it
20 100 percent clear. What I think you just said is the
21 Department's intent is that you will use the standards
22 immediately above in 157 A, to make those evaluations.

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

25 MR. ROBERTS: Great, thank you. Will.

1 MR. DURDEN: Thanks. We do think that
2 this Eligible Career Pathways Program section is a great
3 place to really fine tune what it means to do Ability to
4 Benefit well and to give institutions the guidance and
5 the structure that they need to feel confident that
6 they're meeting those requirements and to help states
7 monitor this appropriately. So zeroing in on that
8 counseling requirement, which I believe is mostly, I
9 think according to the definition is career and
10 education counseling, we are interested in a proposal.
11 This is language we could send in later, interested in a
12 proposal to really expand that to include information on
13 financial assistance, specifically other public benefit
14 programs that can help meet any component of the
15 student's cost of attendance. So I think that as
16 colleges have looked at implementing, you know, they
17 don't think of themselves as offering Eligible Career
18 Pathways Programs because that's a unique term. So when
19 we work on Ability to Benefit, we're thinking about,
20 okay, what do you already have and how do those
21 components come together to create an Eligible Career
22 Pathways Program? And the counseling requirement can
23 feel ambiguous to some. How do we know that we're
24 offering appropriate counseling? How do we know that
25 that meets definition? And at the state level to make

1 sure that we're counseling students not just on the
2 federal assistance that's available to them, but the
3 whole range of public benefit programs that the student
4 could draw from to support themselves. Staying enrolled
5 and completing the program would be really beneficial,
6 so we'd be interested in opening this up and clarifying
7 it a little bit more to include that piece.

8 MR. MARTIN: Thank you for that. And,
9 you know, we certainly would welcome any suggestions you
10 have related to those counseling requirements, if you
11 would provide those to us. Going back before I just
12 wanted to clarify again for purposes of the previous
13 discussion we had about about B, that just reiterate that
14 we absolutely will apply all standards of A to where we
15 say career pathway program is not participating through
16 a state process, we will verify the eligibility of that
17 for Title IV HEA program purposes by applying A. So we
18 can take that back and see if we can reword that a
19 little to make that more clear. But I just want to
20 clarify that for our purposes here. Brady, do we have
21 any other comments?

22 MR. ROBERTS: We do. Amanda, I see
23 your hand next.

24 MS. AMANDA MARTINEZ: I just have a
25 clarifying question. For programs that are approved

1 through this process as outlined here in this paper
2 going to the question of financial aid counseling,
3 wouldn't the next issue paper, which deals with
4 administrative capability, where outlines financial aid
5 counseling, do those regulations not apply to those who
6 go to the Ability to Benefit process?

7 MR. MARTIN: No. Those regulations
8 absolutely apply to any institution that participates
9 because admin capability requirements are ubiquitous
10 unless it's specifically clarified that it's a certain
11 group. There are some things that have been apply to,
12 you know gainful employment programs, but you're the
13 answer to your question is yes, across the board. And I
14 think what was being discussed here is what requirements
15 might be made in context with career pathways programs
16 in particular. So I think if I don't want to speak for
17 that individual, but I think that's what we're talking
18 about here. So, but yes, to clarify what is an admin
19 capability is broadly applicable.

20 MS. AMANDA MARTINEZ: Okay. Just
21 clarifying, I do think it brings into question, right, I
22 think Will's bringing up a problem is that clearly our
23 current status quo, just financial aid counseling and
24 what is required of the Department or what the
25 Department often tries to give guidelines for when it

1 comes to financial aid or understanding clear and
2 adequate information of the difference between different
3 age and how it's applicable to different programs or
4 what students are eligible for is clearly the status quo
5 is not really working and I think will bring up a
6 problem. Even in this specific instance, when students
7 are deciding on this specific pathway for additional
8 education is still not really clear. So I think there
9 are different ways to improve what is the clear guidance
10 provided to institutions. I think if there's a way to
11 improve that in Ability to Benefit great, but I think
12 there's also clearly still a gap that is needed and a
13 problem that's still needed in the next issue paper. But
14 I just wanted to bring that attention up to the
15 education department. Clearly, there's a problem in
16 multiple areas when it comes related to financial aid
17 counseling. That's all.

18 MR. MARTIN: We appreciate that. I
19 think you're right, certainly that oh, I'm sorry,
20 there's a yeah, there we do recognize the need for, you
21 know, for robust financial aid counseling [phonetic] and
22 I don't want to downplay that at all. I do want to point
23 out in the context of what is here that we're talking
24 about, so we go back to 4, the program provides career
25 counseling service that assist students in obtaining

1 jobs aligned with the skills described in paragraph 2 of
2 this section and identifies individuals providing the
3 counseling. So what we have here, which is not to say
4 that there couldn't be other requirements, but this is
5 specific to career counseling. So we're very concerned
6 about students in these programs. These are, what's the
7 very definition of these programs, a career pathway
8 program. So this is specifically a pathway to a specific
9 career. Which is not to say that employment counseling
10 isn't a very necessary part of any college or university
11 or postsecondary education, but especially here where
12 it's a career pathway. So we want to make certain that
13 their students are really being assisted to obtain jobs
14 that these institutions have basically attested that
15 their educations provide. So I think that's a very
16 direct tie in here, which is not in any way to downplay
17 the need for other types of financial or specifically
18 financial aid counseling. But I want to be clear that
19 that was our intention here, to specifically focus on
20 the career aspect of this and when this program is
21 complete, which is what we want students to successfully
22 complete, that they go out and obtain a job and that the
23 institution assists with that and more than just a
24 cursory way of saying, you know, well, we provide, we
25 provide counseling, and at least here we are requiring

1 that they identify the individuals, you know, who
2 actually are providing that counseling so that we can
3 hold an institution to it being a tangible thing.

4 MR. ROBERTS: Great, thank you. And
5 Johnson, I see your hand.

6 MR. TYLER: Yeah, I'm actually going
7 to put my hand down, I can't articulate my question.

8 MR. ROBERTS: Thank you. Appreciate
9 it. Greg, let me ask you this before I turn it back over
10 to you to walk us through a sort of section by section
11 temperature check to see where our committee is on issue
12 paper 1, is there anything else the Department needs or
13 would like more feedback on in the Ability to Benefit
14 issue paper?

15 MR. MARTIN: Well, we had those
16 directed questions, I mean, I think that if people have
17 other opinions about, you know, I'm trying to, I don't
18 want to go back and reiterate all of them. Certainly the
19 cap. Do we want to apply that, you know, for
20 institutions other than those or in the first two years
21 of participation? We also asked about the success rate
22 calculation of the 95 percent success rate calculation.
23 Is that something that is I mean, somebody we did have
24 one, we did have one individual ask, one negotiator
25 asked about that rate. So I opened it up to people and

1 said, is there another rate that might be applicable
2 that we can tie to or find a support for? So those are
3 two areas that that we certainly seek feedback in. And
4 obviously any other area of this that the negotiators
5 want to address before we take the pulse of the
6 committee.

7 MR. ROBERTS: Good, Johnson, your
8 hands back up. Go for it.

9 MR. TYLER: Thanks. And now I can try
10 to articulate this question. So looking at (a)(6) Greg,
11 I'm just looking at the citation at the end, it says,
12 the program is designed to lead to a valid high school
13 diploma is defined and 668.16 V, as in Victor. I'm not
14 sure what that is, I think, but it doesn't exist now.
15 And even in the proposal we didn't get as far as V in
16 the news thing. So I'm just trying to understand what
17 you're [inaudible]. Because a lot of that is designed to
18 detect bogus high school diplomas when you're entering,
19 trying to get into school, it seems to me. And this is
20 all related to the trajectory you're trying to put the
21 student on so that they will actually get a meaningful
22 diploma. So, do you understand my question?

23 MR. MARTIN: I think so. You're not,
24 you didn't characterize what that is incorrectly, but I
25 would say this when we reference a valid high school

1 diploma as defined 668.16, and we're going in I don't
2 want to address that now because we'll be looking at
3 that a little later. But we have attempted to clarify
4 what a legitimate diploma is. And I think that by
5 putting this reference in here in 6, that we're tying
6 that back to here and we are making it clear that the,
7 you know, the Department is aware of instances where
8 some unscrupulous institutions have made arrangements
9 with what we would refer to as diploma mills, not real
10 high schools to provide a bogus high school diploma and
11 that certainly happened, we have documented instances
12 of that. And I think this acknowledges that we are aware
13 of that and that this needs to be a legitimate high
14 school diploma as defined in in 668.16. So I feel that
15 it's not obviously, it's not a silver bullet of any
16 sort. But it does tie back to what we believe to be a
17 legitimatediploma. And so a school that didn't do that
18 would have problems with administrative capability, and
19 they would have issues with their with eligible career
20 pathways. We're very concerned. What we're trying to do
21 here, I think you've seen that throughout this proposal
22 is to make this something other than what I think I've
23 heard it described as currently some school, it's
24 possible to say, yeah, we have a career pathways
25 program, sure we do. You know, it's we've talked to a

1 couple of employers, you know, we've in a cursory way.
2 We're trying to make sure that it's real and a real part
3 of a career pathways program is that tie in between the
4 the postsecondary education aspect of it and a student
5 and making it, well we don't require that the student
6 have obtained a high school diploma for the program to be
7 eligible, that pathway has to be there for the student
8 to get that. It has to be real and that credential has
9 to be a real credential. So I think that's what we're
10 getting at here.

11 MR. TYLER: Thank you.

12 MR. ROBERTS: Great. So just as we
13 move into the temperature check, just two very brief
14 notes. First is a very sincere thank you to the folks
15 who've been utilizing the chat for us wanting comments
16 they agree with, adding new proposals, asking questions
17 of the Department for them to get back to you on. And
18 then second, just to mean it bears repeating this is not
19 an official final check on anything. This is just to see
20 where the committee is on the document as it currently
21 stands. And as always, anyone expressing serious
22 reservations with the document will be invited to share
23 their reservations for the benefit of the committee and
24 the Department. So with that, Greg, do you want to, we
25 can re share the document and then run through section

1 by section and we'll use your discretion as to when you
2 want to pause the run through to take a quick check?

3 MR. MARTIN: Well, we've pretty much
4 run through each each one, I will go back and I can
5 just, you know, we can do it by section and just ask
6 people, I'm not going to read through them again. I
7 think we've done that. I can go back through. We can
8 give people one last opportunity to comment and then we
9 can take the temperature check on each, on each, on each
10 section as a whole. How's that sound?

11 MR. ROBERTS: Sounds good to me.

12 MR. MARTIN: Okay. So we'll just
13 start, the first one we did was the the definitions we
14 walked through those so as I said, we had a pretty
15 exhaustive conversation about that, so I would say two
16 things. Just briefly open it back up if anybody has any
17 final thing they want to say. If not, we can, take a
18 temperature check on 668.2, general definitions
19 definition of an eligible.

20 MR. ROBERTS: Alright, not seeing
21 anything new, we could bring down the document, and then
22 I know it's been a few weeks, but if you have those
23 thumbs right in the center of the screen. And again,
24 thumbs up, love it, sideways, you can live with it,
25 thumbs down, serious reservation. If we could get all

1 constituency groups voting.

2 MR. TYLER: I'm sorry, could you
3 repeat what we're thumbing up for?

4 MR. ROBERTS: I think we're looking at
5 668.2, but only the Eligible Career Pathways Program, so
6 1 through 7. So on page 1 up until the section break.
7 Okay. Thank you. I do see a thumb down. Johnson anything
8 new you'd like to add for the committee's consideration
9 in terms of your severe reservation?

10 MR. TYLER: No, I'll just say we've
11 added in our comments what we think should be in
12 subsection 6 on high school diplomas so that we can make
13 sure it's meaningful.

14 MR. ROBERTS: Alright, much
15 appreciated. Thank you. Greg, ready to go to the next
16 section?

17 MR. MARTIN: Yes. So we'll move on to
18 the next section would be 668.32. That's student
19 eligibility general. And if nobody has any final
20 comments on that, we can [inaudible] time.

21 MR. ROBERTS: So you'd like the
22 committee to look at the entirety of 668.32 down to the
23 section break for 156?

24 MR. MARTIN: Correct. Right. As we
25 discussed under student eligibility.

1 MR. ROBERTS: Alright, thank you.
2 Renee, if you could just bring down the document
3 briefly. Committee's temperature on section 668.32,
4 student eligibility general. Much appreciated, I'm not
5 seeing any thumbs down. Thank you very much. And Greg
6 and Renee, if you could re share the document for the
7 approved state process.

8 MR. MARTIN: Thank you. The next one
9 we're looking at is the approved state process, that's
10 668.156. And I'll open it up for anybody who has any
11 final comments on 156.

12 MR. ROBERTS: If you could you bring
13 that document up again. David, please.

14 MR. SOCOLOW: We did have this
15 discussion about whether the success rate applies to
16 programs or to, you know, to specifically to each
17 disaggregated by each eligible program and whether the
18 approval of the 5 year renewal could be partial based on
19 which programs actually succeeded and which did not.

20 MR. MARTIN: Could you phrase that a
21 little bit more, I didn't quite get all that. Some of it
22 broke up in transmissions. I'm sort of having a few
23 problems here. So you were suggesting that the renewal
24 be partial?

25 MR. SOCOLOW: Yeah, you took notice of

1 the question with the data right about the 95 percent.
2 And that essentially the state process at that point
3 considered for approval of renewal on a 5 year basis.
4 And if you disaggregated those reports on the basis of
5 each eligible career pathway program, which is not what
6 it says now, it just says, the students, it admits under
7 the process of a success rate, rather than splitting
8 that out so that you could say to a state that has 10
9 career pathway programs in its state process and you're
10 looking at renewal and 5 of them are terrific with great
11 results and 5 or not to give partial approval. So that's
12 a recommendation that I just would renew.

13 MR. MARTIN: Okay, thank you.

14 MR. ROBERTS: Okay, great. With that
15 if we could bring down the document and just see the
16 committee's thumbs on section 668.156, approved state
17 process. Correct me if I'm wrong, but I'm not seeing any
18 thumbs down. Much appreciated. And then moving right
19 along, if you would like to briefly tee up the next
20 section that we will be taking a temperature check on.

21 MR. MARTIN: The next and final
22 section for this issue paper would be 668.157, the
23 Eligible Career Pathways Program. And this is
24 demonstrating to the Secretary that the student is
25 enrolled in the career pathways program as required in

1 156. So this is the standard. So we'll take a check on
2 668.157.

3 MR. ROBERTS: Great. Once we're done
4 scrolling through that.

5 MR. MARTIN: Oh, I'm sorry. Before we
6 do that, I should have asked if anybody had any final
7 comments. I wanted to do that before we move on.

8 MR. ROBERTS: Sure. If we could bring
9 down the document. Any final feedback or comments for
10 the Department? Not seeing anything, Greg, if I could,
11 for the last time on issue paper 1 this week, see
12 everyone's thumbs front and center? Alright, seeing a
13 few thumbs down, so if folks want to just come off of
14 mute and raise their hands for anything new for the
15 Department to consider with regards to their opposition
16 in the current state of section 668.157. Kelli, please.

17 MS. PERRY: And I put this in the
18 chat, so I'm just kind of reiterating it, but my
19 understanding of this section is that it applies to all
20 Eligible Career Pathways Programs, not just state
21 approved process. So the reference to 668.156 (a)(3) is
22 specifically in that state of group process. So I think
23 that needs to come out of that section. Because this in
24 my mind should be more generic to all of the
25 requirements, not just specifically to the states,

1 specifically.

2 MR. ROBERTS: Okay. Anyone else? I
3 know there were several thumbs down, but I know we did
4 have a robust discussion on this earlier. So anyone else
5 have anything new for the Department to consider? Ok,
6 great. Thank you so much for a productive early morning
7 session. I didn't get any one hearts for the holiday,
8 but I did get you something better, which is about three
9 minutes extra of lunch. Is there anything else the
10 Department or my team would like to share before we
11 transition into a lunch period? We'll pick right back up
12 at one with issue paper number 2: admin capability.
13 Excuse me. But Cindy, Greg, anything that you wanted to
14 add before we head to lunch?

15 MS. JEFFRIES: No, but I just I want
16 to thank Greg for and the Department for the hour worth
17 of lunch this week. I'm sure the negotiators appreciate
18 it and can use it.

19 MR. ROBERTS: Excellent. We will see
20 everyone at 1:00. And again, thank you very much for the
21 morning discussion.

22 MR. MARTIN: Thank you.
23

24 **Department of Education, Office of Postsecondary Education**
25 **Zoom Chat Transcript**
26 **Institutional and Programmatic Eligibility Committee**

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Session 2, Day 1, Morning, February 14, 2022

From Cindy-FMCS Facilitator to Everyone:

I will be doing tech today. cjeffries@fmcs.gov if you need assistance

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

Michael Lanouette will be on camera for me negotiating on ATB this morning.

From Debbie Cochrane to Everyone:

David Socolow will be the negotiator for state agencies for ability-to-benefit.

From Beverly Hogan Primary/MSI to Everyone:

I will leave the table at 12:30 at which time Ashley will come to the table. I will return at approximately 2:00 pm.

From Anne Kress (P) Comm Colleges to Everyone:

As noted previously, Will Durden will be at the "virtual" table for the discussions on ATB for community colleges.

From Barmak Nassirian (Alt - Servicemembers & Vets) to Everyone:

I also strongly endorse Johnson's argument: withholding transcripts is not an appropriate debt collection tactic.

From Jamiene Studley (P) (Accrediting agencies) to Everyone:

+ agree with Johnson & others about adding these prohibitions on transcript withholding

1 From Debbie Cochrane to Everyone:

2 I too strongly support including a clear prohibition
3 on transcript withholding in the rules under discussion. As
4 mentioned, such a prohibition could be included in multiple
5 places.

6 From David Socolow (A) State agencies to Everyone:

7 +1 to all the comments on prohibiting transcript
8 withholding to collect students' institutional debt

9 From Beverly Hogan Primary/MSI to Everyone:

10 +1 to the comments of transcripts

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

12 +1 to all the comments in the chat and in this meeting
13 on transcript withholdings

14 From Johnson (P) Legal Aid to Everyone:

15 Jessica is going to sub in to comment

16 From Will Durden (A) Comm Colleges to Everyone:

17 +1 to David -- I would like to hear the Department's
18 response to David's proposal as well

19 From Mike Lanouette (A) Proprietary Institutions to
20 Everyone:

21 +1 to David's Socolow's comments with respect to
22 addition of IETs as a standard for an ECPP

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

25 +1 on David Socolow's comments

26 From Will Durden (A) Comm Colleges to Everyone:

27 I would like a status update on the request for data
28 on ATB use nationally.

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

2 Johnson will be subbing back in for this morning.
3 Thanks.

4 From Mike Lanouette (A) Proprietary Institutions to
5 Everyone:

6 +1 on Will Durden's data request for the Department
7 to publish outcome data for all ATB Career Pathway
8 programs.

9 From Beverly Hogan Primary/MSI to Everyone:

10 +1 to Jessica's comments. The intent is clarifying
11 language that improves accountability, integrity and
12 fairness for participating students. +1 also to David's
13 comments.

14 From Cindy-FMCS Facilitator to Everyone:

15 For those of you that cannot find the issue papers
16 that were sent out to all of you last Monday please look
17 for an email from Brady with those as I was unavailable to
18 send them.

19 From David Socolow (A) State agencies to Everyone:

20 +1 on request that the Department respond to our data
21 request about ATB

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

24 +1 to Johnson, David, and Jessica's comments

25 From Cindy-FMCS Facilitator to Everyone:

26 A question was raised on the schedule this week. We
27 are on the 10:00am-4:00pm schedule this week with public
28 comment from 3:30-4:00 daily

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

1 Emmanuel will be coming to the table for a question.

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

3 I would like to hear ED respond to Will Durden
4 questions

5 From David Socolow (A) State agencies to Everyone:

6 agree that the 1% cap should only apply during the 2-
7 year trial period

8 From Johnson (P) Legal Aid to Everyone:

9 I agree with Will too on 1% state wide

10 From Mike Lanouette (A) Proprietary Institutions to
11 Everyone:

12 +1 to Will's comment about 1% referenced to the
13 "State."

14 From David Socolow (A) State agencies to Everyone:

15 +1 to Will's comment about applying the 1% cap to the
16 State level

17 From Emmanuel Guillory (A-PNPs) to Everyone:

18 I appreciate the Department's response regarding the
19 question I raised about the new clock-to-credit conversion.
20 I would like to suggest that the Department use consistent
21 language in on page 2 of this issue paper so that there
22 will be no confusion regarding the clock-to-credit
23 conversion changes. as of now, 30 clock hours = 1 credit
24 hour, which would mean that 180 clock hours = 6 credit
25 hours.

26 From Mike Lanouette (A) Proprietary Institutions to
27 Everyone:

28 +1 David's comments about "partnerships"

29 From Barmak Nassirian (Alt - Servicemembers & Vets) to

1 Everyone:

2 I strongly endorse David's argument

3 From Barmak Nassirian (Alt - Servicemembers & Vets) to
4 Everyone:

5 I also endorse the use of the term "reification" in
6 the discussion of these regs

7 From Jamiene Studley (P) (Accrediting agencies) to
8 Everyone:

9 Detail: the language "program aligns with the skill
10 needs of industries.." seems ok. The phrase "greatest
11 hiring demand" as written only describes the govt reports,
12 not the state test for alignment.

13 From Beverly Hogan Primary/MSI to Everyone:

14 I also agree that the Depart needs to use clear and
15 consistent language to avoid confusion in interpretation.

16 From Beverly Hogan Primary/MSI to Everyone:

17 I lean toward the use of "in demand" but not sure of
18 the significant difference from "in greatest hiring
19 demand".

20 From Jamiene Studley (P) (Accrediting agencies) to
21 Everyone:

22 +1 to Beverly preferring in demand to greatest hiring
23 demand

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

26 I think this point was already made but I believe the
27 reference to 668.156(a)(3) needs to be removed from
28 668.157(a). My understanding is that 668.157 applies to
29 all ECPP

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

1 Everyone:

2 not just those approved by the states

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

4 I agree with Kelli's reading and that the cross-
5 reference needs to be removed.

6 From David Socolow (A) State agencies to Everyone:

7 Agree with Kelli's point, given that the Department
8 has agreed that the standards in 157(a) apply to all 3 ATB
9 eligibility methods. The Department should add clarifying
10 language to 157(b) that the Department will use the
11 standards in 157(a) to verify the eligibility of career
12 pathways programs that do NOT enroll students through a
13 State process, too.

14 From Mike Lanouette (A) Proprietary Institutions to
15 Everyone:

16 +1 David comments

17 From Beverly Hogan Primary/MSI to Everyone:

18 +1 to Keli's comments