

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

On the 14th day of February, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

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P R O C E E D I N G S

MS. JEFFRIES: Good afternoon and welcome back from your lunch break. I hope you all got a chance to relax and take a few minutes for yourself, and welcome back to those who are doing the live stream. I'm facilitator Cindy Jeffries. I'll be facilitating the session this afternoon. So, I'm not seeing any hands. David.

MR. SOCOLOW: Hi. Before we start the next topic.

MS. JEFFRIES: Well, let me just say this. We're going to go back to the section on gainful or on Ability to Benefit just so everybody knows, so go ahead.

MR. SOCOLOW: Okay well, I guess what I was going to ask is, in light of the direct questions that we heard during, the morning, I would like to request caucus with the Department in the weeks between this session and the one in March to talk about those issues on Ability to Benefit.

MS. JEFFRIES: We will discuss that with the Department, David, and let you all know, okay, what transpires with that. I appreciate that request. Let me just make one point clear here on protocols that we didn't we didn't cover real clearly this morning that

1 during this week, unless otherwise indicated, we are
2 only taking temperature checks. We are not taking
3 consensus checks. Okay? So the temperature check is just
4 so the Department gets a can get a feel of what you all
5 feel about what's out there, what's proposed after all
6 the discussion and hearing, you know, your questions,
7 comments and concerns. So, they are temperature checks,
8 not consensus. Alright? We most likely won't get into
9 any consensus checks, for the most part until week
10 three. Okay? That being said, I'm going to bring us back
11 to the Ability to Benefit, specifically section 668.157
12 where there were five, I believe it was five
13 negotiators, who were thumbs down on that. The
14 Department would like to have a conversation with you to
15 get more specific and a better understanding of what
16 your concerns are and what they need to consider. Okay?
17 So, the five people that I that we noted that were
18 thumbs down, that's not to say others can't weigh in,
19 but we do want to hear from the five people for sure.
20 Okay? We had Will, Barmak, David, Kelli, and Beverly, so
21 it doesn't matter to me who wants to start this
22 conversation. Will, thanks for jumping up there.
23 Appreciate it.

24 MR. DURDEN: Yeah, let's get going.
25 And with apologies, I just got a little confused on the

1 order when we were doing that and coming back to the
2 temperature check. I actually do want to very briefly go
3 back to 668.156. Sorry to slow us down, but I'll be
4 quick. That was on the state plan and I do have thumbs
5 down reservations on the state process as-is, looking at
6 the success rate. I talked about sticking to just the 1
7 percent cap instead of the success rate. If we have to
8 stick with the success rate, I would like to entertain
9 conversation on lowering that 95 percent. I would worry
10 that a state would get to 94 percent, which is still in
11 an educational parlance, and be shut down because they
12 were 1 percent off on that success rate. So, I would
13 like to see a lower success rate, maybe starting at 80
14 percent. I wanted to make sure that comment was there
15 and that I still have a thumbs down on 1.56, and nothing
16 to add on 157 at this time. I'll defer to others.

17 MS. JEFFRIES: Okay, thank you. Thank
18 you, Will for that. We will make a note of that so that
19 when we come back around in the third session, that and
20 the Department has that. David, you have your hand up.

21 MR. SOCOLOW: Well, I mean, the
22 Department is asking for more clarification on why I
23 indicated a thumbs down temperature check on 157. I
24 submitted a paper on February 1st. The Department's
25 written response that Greg was reading seems like not to

1 answer the question that's asked. It's not whether IET
2 is the only way to do career pathways for adults without
3 a high school diploma, but whether it's the best, most
4 effective and evidence-based way that would therefore
5 serve as an excellent way to meet the spirit of the
6 statute from 2014, adding career pathways as a limiting
7 factor for all ATB eligibility. And in my view, and in
8 the Department's own view, it is the best practice. It
9 is the gold standard. And so it doesn't seem that the
10 Department has engaged with that question. They've
11 engaged with a different question. Is it the only way?
12 That's not the point I'm making. In addition, as several
13 people pointed out, the language is inconsistent about
14 applying strong standards to all three methods. I think
15 the Department indicated a willingness to fix that, but
16 there's two places that have to get fixed. And then as
17 it relates to not only the IET, but also the whole
18 concept of partnership and also of defining what's a
19 valid high school diploma. I think the language in six
20 needs to be strengthened. So, there's a number of issues
21 that have been raised. And again, I and then the
22 Department have now raised a number of additional issues
23 relative to the approval process. So yeah, I think it
24 would be good to have a caucus on this between sessions
25 next week or the week after, but even better next week

1 so that we can pick up some speed and get a better
2 understanding of one another between now and March 14th.

3 MS. JEFFRIES: Okay, thank you for
4 that, David. And just to remind the negotiators that
5 caucuses take place during the negotiating sessions
6 themselves. Work groups are the potential for outside of
7 the negotiating sessions, so I just want to clarify
8 that.

9 MR. SOCOLOW: Okay. Excuse me. Then I
10 amend my request and ask instead for a workgroup.

11 MS. JEFFRIES: Thank you. Appreciate
12 it. Okay. Kelli.

13 MS. PERRY: Mine's a little simpler
14 than that. In 157(a), it says an institution
15 demonstrates to the Secretary that a student is enrolled
16 in an eligible career pathways program and then it has
17 in, you know, comma as required under 668.1563(a) of
18 this part by documenting that. I just think that in
19 between those commas, that reference to 668.156(a)(3)
20 needs to be removed because my understanding of the
21 section was that this is what institutions were going to
22 be held to as it related to the career pathway programs,
23 regardless of how the student was eligible to
24 participate. If that's not the case, and I'm
25 misunderstanding what this means, then I guess I need an

1 explanation of what the purpose of 157 is.

2 MS. JEFFRIES: Okay, Greg, I see
3 you're off mute.

4 MR. MARTIN: No, that's okay. I'm
5 sorry, can I ask to have that rephrased again? I didn't-

6 MS. MORELLI: This is Denise. I
7 [inaudible], Kelli, you're correct. 157 applies to
8 whether or not it's a state process or non-state process
9 career pathways program.

10 MS. PERRY: So, right, so [inaudible]
11 clarify. I just think that "as required under
12 668.156(a)(3)" needs to be removed from A. Because this
13 is meant to cover everything, regardless of how the
14 student is eligible. I think.

15 MS. JEFFRIES: Okay. Alright, thank
16 you, Kelli, for that. Mike, I should note that we picked
17 right up where we had left off with Mike Lanouette being
18 in for proprietary schools instead of Brad Adams, and
19 that Will Durden is in for two-year school institutions
20 in place of Dr. Anne Kress.

21 MR. LANOUETTE: Thank you. I did want
22 to go on the record, I did vote thumbs down. I don't
23 know if I was on the list when you went through that. I
24 did vote thumbs down for several reasons. Some of the
25 reasons brought up by David with respect to the

1 inconsistent standards with the importance of including
2 the IET. But there was an additional bit of
3 clarification I'd like on one 156(3). The draft language
4 indicates 1 percent of enrollment for each institution
5 participating, but I'm pretty sure I heard in the
6 narrative 1 percent of the state or something like that,
7 so I'd like to get a little more clarification on that.
8 And regardless of clarification, it does appear that 1
9 percent seems to be seems to be pretty arbitrary and
10 would certainly exclude smaller, smaller schools. So,
11 I'd like to get some more clarification on that.

12 MS. JEFFRIES: Okay.

13 MR. MARTIN: I just want to clarify
14 that, as written, it's by institution. We did ask for
15 comment on whether or not that's appropriate, or whether
16 it should be statewide, but as written, it was by
17 institution. Thank you, so you would be suggesting
18 another percentage greater than one percent? Just to be
19 clear?

20 MR. LANOUEETTE: Yes, yes, I think so.

21 MS. JEFFRIES: Yes. Thank you both for
22 that. Barmak and Beverly, you were also both thumbs
23 down. Could we get some further clarification from both
24 of you?

25 MR. NASSIRIAN: I was following

1 David's lead. It strikes me that his points are very
2 persuasive, and I'd like them addressed.

3 MS. JEFFRIES: Okay. Thank you,
4 Barmak. Beverly, are you here? Is Beverly here?

5 MS. SCHOFIELD: Beverly had to leave
6 the table. She'll be back around [inaudible].

7 MS. JEFFRIES: Okay, so. Greg, do you
8 have some additional questions or anything further that
9 you would like to get clarified on this, knowing that we
10 don't know from Beverly until she's back around 2:00,
11 but you can certainly reach out to her and get that as
12 well.

13 MR. MARTIN: No, not at this point. We
14 have, I thank everybody for their comments. We'll go
15 back and take a look at what's in A with respect to the
16 reference to 160, 156(a)(3), the IET issue we'll take
17 back and discuss as well. So, I am aware of the feelings
18 several negotiators have around that, I will take that
19 back, and I thank everybody for providing their reasons
20 for voting thumbs down. I don't want to say voting,
21 indicating that they had some issues with 157. So, we'll
22 take that back and see what we can do with that. No,
23 that's all I have for ATB.

24 MS. JEFFRIES: Okay, appreciate it.
25 One last call for comment on ATB on anything that hasn't

1 already been stated. Okay. Alright, with that, we are
2 going to move on to the next agenda item, which is
3 administrative capabilities, issue paper number two.
4 Greg, I'm going to turn it over to you to walk through
5 the document with the negotiators, please.

6 MR. MARTIN: Okay. And I'll wait for
7 the-

8 MS. JEFFRIES: There you go, Vanessa,
9 thank you.

10 MR. MARTIN: Thank you, Vanessa.
11 Appreciate that. So, we are looking at issue paper
12 number two: standards of administrative capability. And
13 again, you have your regulatory statutory cites up there
14 for you. And so, well, we'll just begin with some of the
15 changes. Here, we have put in, just to review to begin
16 and continue to participate in any Title IV HEA program,
17 the institution must demonstrate to the Secretary that
18 the institution is capable of adequately administering
19 that program under each of the standards established in
20 this section. The Secretary considers an institution to
21 have that administrative capability if the institution--
22 and we're skipping to where our changes begin with
23 paragraph H. So, we'll start there, provides adequate
24 financial aid counseling with clear and accurate
25 information to eligible students who apply for title IV

1 HEA program assistance. In determining whether an
2 institution provides adequate counseling, the Secretary
3 considers whether its counseling includes information
4 related to the source of the amount of each type of aid
5 offered, the method by which the aid is determined and
6 disbursed, delivered or applied to a student's account,
7 and the rights and responsibilities of the student with
8 respect to enrollment at the institution and receipt of
9 financial aid. The information includes the
10 institution's refund policy, requirements for treatment
11 of title IV HEA program funds, when a student withdraws
12 under 668.22, its standards of satisfactory progress and
13 other conditions that may alter the student's aid
14 package. I'm going to stop there with a couple of
15 comments here. We, in response to the negotiator
16 comments, have suggested additional language here.
17 That's with "clear and accurate information" in H. To be
18 clear, we believe this will provide important additional
19 information to support students' informed decision
20 making, so we have added there with clear and accurate
21 information. And I just want to make that point that we
22 had heard the concerns of negotiators with respect to
23 that. Any concerns about H? As I said, just that one
24 addition there, but I'll open it up to see if anybody
25 has any concerns about that because I do want to go

1 through it by paragraph.

2 MS. JEFFRIES: Thank you, Greg.
3 Vanessa, if you could stop share for just a minute.
4 Before we take hands, I need to make a couple of
5 announcements here. Debbie Cochran is in for state
6 agencies, Brad Adams is in for proprietary schools. Dr.
7 Anne Kress is joining back at the table with two-year
8 colleges. Ashley Schofield is in for minority serving
9 agencies and Jessica Ranucci is back at the table for
10 legal aid. With that, Amanda, you are up first.

11 MS. MARTINEZ: Okay, great. I want to
12 pose a question. I understand in H, there's this added
13 line of "clear and accurate information", and I'm still
14 a little bit concerned that's still broad and vague. And
15 you know, the Department goes further into offering
16 suggestions of what information should be provided. But
17 it can go further and be improved. So, my question is
18 why did the Department determine that, including in my
19 proposal, there was just additional minimum information
20 to be included, such as basic information like college
21 costs, which include direct and indirect college costs,
22 a distinction between grants and loans. Just a basic
23 calculation of net price of what that student is
24 expected to pay once the financial aid is taken out into
25 account. Why was that not appropriate in, at least, this

1 subpart when it comes to improving financial aid
2 counseling? That I mean, all those items that I
3 mentioned are in line with the information provided here
4 under subpart H.

5 MR. MARTIN: Well, I mean, I will say
6 that this the administrative capability, a rule that
7 that that references clear and accurate information and
8 what's been provided to the student. We have other areas
9 of the regulations that that do address this.
10 Institutions are already required, as a matter of
11 publishing consumer information, to give students
12 information on costs of the program. We do require under
13 our disbursement rules that an institution inform the
14 student through what is normally considered, what most
15 schools would call an award letter, but basically it's
16 just a notice by our regulations called a notice that
17 would inform the student the type of aid he or she is to
18 receive, when they can expect to receive it, whether
19 it's loans. So that is that is already covered as far as
20 the standardizing of financial aid offers. And that
21 being useful to this end, we do provide the college
22 financing plan to institutions, and we encourage
23 institutions to use it. If you've looked at our college
24 financing plan that we have out there, I'm pretty proud
25 of it, understanding that it's a one size fits all and

1 that there are constraints associated with that. We
2 don't have the statutory authority to mandate that
3 everybody use that. But many schools do, and to the
4 extent that they do, it makes it very clear what is
5 loans, what is grants, what the students are required to
6 pay out of pocket. So, I think we addressed those those
7 areas in many parts of the reg. And, so, you know,
8 building redundancies in here. We tried to make it very
9 clear that we require the schools to make that
10 information clear and to make it and to make it accurate
11 and, and we are and we do reference here the source type
12 of aid often so as far as like whether it's loans or
13 grants, I think that's already that's already covered
14 here and again stressed in the in the cash management
15 rules, the method that students will receive the aid,
16 the rights and responsibilities students have to it. So,
17 I would argue that we have a lot of that already.
18 However, that doesn't mean that we're not amenable to
19 looking at other suggestions, but I would open it up to
20 hear what anybody has to say about it.

21 MS. JEFFRIES: Thanks, Amanda and
22 Greg. Jessica.

23 MS. RANUCCI: I think I just want to
24 echo what Amanda said, particularly as to the grants
25 versus loans. I do think, just in a commonsense way,

1 like it is not an administratively capable financial aid
2 office if it cannot explain to students the difference
3 between a grant and a loan. So, I do think that at least
4 with that piece, this is an appropriate place to put it,
5 even if the actual disclosures are somewhere else in the
6 regulation. And I appreciate what you're saying that it
7 may be included in the language, but I thought Debbie
8 had a proposal that was maybe even clearer. That was
9 just something simple, like the nature of the aid and
10 whether it must be earned or repaid. So, I'd encourage
11 the Department to think about something really to
12 clarify that point here, because again, that's how
13 people end up in our office is they have loans they
14 didn't know were loans.

15 MS. JEFFRIES: Alright, thank you.
16 Alright, Greg, I don't see any more hands on that piece.
17 Do you want to move on?

18 MR. MARTIN: I'm trying to think of
19 how to do a temperature check. We're only dealing with
20 668.116. I mean, I know we just did the one thing, but
21 I'd like to go by paragraph because it makes it easier
22 than arbitrarily going back and saying, well, let's do
23 it for three paragraphs or four paragraphs. Why don't we
24 just see what people have to say about H. Let's take a
25 temperature check to see how people feel about it as it

1 is with the understanding that some folks would like to
2 see some clarifications.

3 MS. JEFFRIES: Okay. Can you define so
4 that the negotiators are all clear as well as the
5 public? 668.16 H, is that what you're doing?

6 MR. MARTIN: Yes, we're doing you know
7 what, though, before we do that- I want to make sure
8 I've covered all of it, and I don't think I did. So,
9 let's hold off on that for a moment. I'm just trying to
10 make sure we don't do too much in here at once, so we'll
11 hold off on that. And I don't think I went through the
12 entirety of H. So, I want to go down to three, when we
13 talk about the rights and responsibilities of the
14 student with respect to enrollment at the institution
15 that received financial aid. The information includes
16 the institution's refund policy requirements under
17 668.22, the standards of satisfactory progress and
18 other conditions that may alter the student's package.
19 So, yeah, I want to make sure we read all of that. So
20 yeah, with that in mind, then what we're looking at is
21 H, and that goes down to right there. Just to make sure
22 I have all that right down to where I began, so just
23 down to the bottom of where we say may alter the
24 student's aid package.

25 MS. JEFFRIES: Okay, so it would be

1 paragraph H 1, 2, and 3 inclusive. Okay, so can we see
2 your show of thumbs as to where the committee is on this
3 temperature check for that section only? Okay. Alright,
4 I see one thumbs down. Amanda, is there anything else
5 you'd like to add?

6 MS. MARTINEZ: No, nothing, I'd like
7 to add. I think there definitely can be improvements,
8 and I think the Education Department should really
9 consider. I think the response of 'we already have, we
10 don't want to create redundancies.' I think clearly this
11 problem is large enough that clearly there needs to be
12 better alignment, even more redundancies and even more
13 clear guidance at a federal level in these regs as many
14 times as we can to actually try to close barriers in the
15 specific part, it's related to financing. It's related
16 to basic information that students are receiving. So
17 whatever parts we can include that in, I think
18 redundancy is actually a better thing than no
19 redundancy and we want to patch up the holes. So, I
20 think if the Department could go back and really look at
21 Debbie's comments and again, our comments with this in
22 mind, that would be helpful.

23 MS. JEFFRIES: Okay.

24 MR. MARTIN: And just to clarify, I
25 think what I'm hearing here is that, especially those of

1 you who've seen students come to you with the problems,
2 it is very important for students to know. Maybe in
3 addition to how they were packaged, when we look at what
4 a student actually has received, it's very clear what
5 portion of that for that student is grants and what
6 loans they have that need to be repaid. Right. So that's
7 a very important thing you want to see stressed here
8 because some students may be seeking help and saying
9 that they didn't know that- that wasn't that wasn't
10 evident to them. So, that's reiterated by schools, even
11 in addition to any award letter, or we could call a
12 funding notice, a student receives.

13 MS. JEFFRIES: Thank you, Sam.

14 MS. VEEDER: Thank you, I just wanted
15 to kind of make a counterpoint to that. I mean, we many
16 of the schools do use the template that is already
17 provided, and even if we don't, there are already
18 significant disclosure requirements that we do provide
19 to students that, you know, explain this. It doesn't
20 mean that they always read it, no matter how many times
21 we send them notices annually about how much they
22 borrowed so far and where they are at and that it's a
23 loan. I'm not sure that more regulations are the answer
24 to the problem you described Jessica.

25 MS. JEFFRIES: Thank you, Sam.

1 Jessica, you want to respond to that?

2 MS. RANUCCI: Yeah, I was just going
3 to say quickly, you know, I'm not I'm not a financial
4 aid professional. I defer to the Department, but to the
5 extent that the Department thinks that this is an
6 important thing to emphasize. I think that the grant and
7 loan distinction is one of the places where students are
8 just really hurt the most. So, I'd encourage the
9 Department when considering its own priorities to
10 consider that.

11 MS. JEFFRIES: Okay. Thank you.
12 Amanda, you have something new to add?

13 MS. MARTINEZ: Besides this point
14 about distinction between grants and loans, I think
15 generally a minimum requirement institutions to be able
16 to communicate to their students is college costs, both
17 direct and indirect, so they have control over that.
18 That should be something provided to students. And
19 really, I want to demystify for students when they're
20 getting this information, potentially maybe the
21 assumption that they don't read it. I'm not sure if
22 that's the right assumption. For instance, I recently
23 read a story about a Latina high school student that did
24 have when she entered college all this paperwork, and
25 she was running through it by herself. She's a first

1 generation college student. Her family only speaks
2 Spanish, so she's trying to communicate and understand
3 the information to herself and then also trying to go to
4 the high school. But the high school doesn't really
5 understand and is trying to communicate with the
6 institution. The institution didn't have sufficient
7 counseling, and that's a separate problem, like
8 financial aid counseling, and being able to respond to
9 students and their needs when they're at the moment in
10 time they're trying to make their decision. So really,
11 that shows a lot of gaps in systems, right? It depends
12 if you're a student that luckily you're going to an
13 institution that has all of those services available to
14 you at the right time, that you're fully equipped with a
15 family that understands all those terms that think,
16 hopefully, maybe you got a financial aid award letter
17 that uses this encouraging financing plan. We don't
18 really know how many institutions actually use that. As
19 you said, it just encourages, not necessarily required.
20 So, it's varied, right? So, the opportunity is not
21 equal. So really, this is a direct cost. Both direct and
22 indirect should be at least a minimum requirement, their
23 distinction, and then also the grants, the distinction
24 between grant, aid, and loans. And also, I guess I'll
25 put this in the chat, but I would really like a data

1 request for the college financing plan and how many
2 institutions are actually taking up this example or the
3 model.

4 MR. MARTIN: I'll take that back. I
5 don't know that we have that data anywhere. I know
6 outside entities have queried schools as to whether
7 they've whether they use it or not. I think NASFAA may
8 have done that at one time, but I'll go and take that
9 back. I do want to say one thing with respect to direct
10 and indirect costs. Certainly, the discussion we're
11 having here is a is a very good one, and any way that we
12 can get students to understand their aid is in a better
13 way is good. Whenever I step back from financial aid and
14 try to look at it from the perspective of somebody who
15 doesn't have any background in it at all, I think it
16 becomes a little bit difficult sometimes to think about
17 this concept of direct and indirect costs because it's
18 something you kind of know intrinsically if you deal
19 with it. But I think it's very confusing to students
20 because the indirect costs, you know, aren't billed to
21 them. They don't necessarily owe that in the form of a
22 of tuition fee to the school. Yet it's part of the way
23 that their aid was determined, and it becomes very
24 difficult, I think, to try to convey all these things to
25 students without adding levels of complication. I

1 struggle with that quite a bit. Yes, it does affect
2 disproportionately lower income students, first
3 generation college students and those kinds of those
4 families. But I think it's a lot of families, and this
5 runs the gamut. For instance, they wonder why if they
6 got an outside scholarship, their aid gets changed
7 because it's considered estimated financial assistance.
8 And people will say things to me like, why am I being
9 punished for getting another source of aid? All these
10 things become very difficult to explain to students in
11 how they how they come together and form a package.
12 Which is not to say that we shouldn't strive to do a
13 better job. But it is a complicated thing, and I think
14 we have to keep in mind as we think about regulations,
15 think about disclosures that we make them clear, concise
16 and helpful. And we don't confuse people further. But it
17 is an inherently confusing thing. I tried to read my own
18 daughter's financial aid offer going back to the last
19 year when we got it, and tried to view it in terms of
20 somebody who didn't know anything about it. And I
21 thought to myself, yeah, this is not easy to decipher,
22 you know? And so I do understand that as we move forward
23 here trying to think of ways that we can make these
24 disclosures or this counseling, you know, useful as
25 opposed to just requiring it. Okay, I'll stop there, and

1 any other comments we have?

2 MS. JEFFRIES: Okay, thank you.

3 Johnson, you'll be next. But I want to note that Yael
4 Shavit is joining us at the table for state attorneys
5 general.

6 Mr. Tyler: Hi, thank you. With
7 respect to H and adding 'with clear and accurate
8 information' below that in section three, the existing
9 rule has to do with providing a refund policy. And this
10 is, I know we're supposed to save a transcript
11 withholding for Wednesday, but this is this is a large
12 reason that people end up with institutional debt. They
13 don't really understand the refund policy. And so
14 anything that will help put more thought into providing
15 information to students to avoid that would certainly be
16 of great value to the institution as well as the
17 student. So, I just wanted to add that.

18 MS. JEFFRIES: Thank you, Johnson,
19 appreciate that. Yael.

20 MS. SHAVIT: Thank you. I wanted to go
21 back to the question of the nature of the information
22 that's conveyed to students. And Greg, I do appreciate
23 your comment that it's complicated to convey the
24 complexities of student aid to students. But I think
25 it's a Department imperative to ensure that we're doing

1 that and, frankly, our obligation to students to make
2 sure that their efforts to get an education don't result
3 in financial ruin because they didn't understand what
4 they were signing up for. And I wanted to note that,
5 frankly, the complexities that you're pointing to
6 conveying this information clearly and accurately
7 emphasizes the importance of ensuring that the
8 Department doing the work to ensure consistency in the
9 manner that schools convey this information to students
10 and that it's not left to the institutions on an
11 institution-by-institution basis to do so. And to the
12 point about students not reading the letters, I will
13 tell you that I have myself interacted with probably
14 hundreds of students, but our offices deal with you know
15 a large number of students that end up in trouble
16 because they didn't understand the aid. And by and
17 large, it's not students who aren't reading their
18 letters or trying to understand them. It's 18-year-olds
19 who don't have the tools to and 18-year-olds that might
20 come from families where they don't have familial
21 support to understand it. It is not laziness or
22 inattention- it's inability. And I think this is
23 somewhere where the Department has an obligation to
24 students and, frankly, to taxpayers as well to ensure
25 the investment. But as to the issue of redundancy, I

1 think that there are some elegant ways that redundancy
2 can be both helpful and uncomplicated, including cross
3 references to other areas and other regs where you may
4 believe that there are more, more detailed descriptions
5 of what information is required, where that's laid out.
6 To the extent it's not laid out, I think it certainly
7 could be laid out here, and if it's laid out elsewhere,
8 I think a cross-reference might solve this problem. But
9 I do want to kind of blend the State AG voice to the
10 importance of this issue and of specificity on this
11 issue.

12 MR. MARTIN: I agree with you that we
13 need to be we need to be mindful of what information we
14 can convey to students. And I'll make one final go on
15 record again as encouraging institutions to adopt the
16 college financing plan where possible. As I said, I'm
17 not going to go out there and say it's perfect in every
18 respect, but we look at it every year when we make a
19 concerted effort to craft it so that it's clear to
20 students and provides them with a true picture of what
21 their aid package will be. So, I'm very proud of it. I
22 didn't do it myself, but I have had some contact with it
23 and in reviewing it. So, I just want to go out there
24 again and encourage the use of that form.

25 MS. JEFFRIES: Thanks, Greg, and all

1 of the negotiators that spoke up. So that is section I.
2 Did you cover everything in that?

3 MR. MARTIN: I believe I did.

4 MS. JEFFRIES: Okay, so you want to
5 take-

6 MR. MARTIN: No, I didn't. Okay, so
7 we're looking at I: provides adequate career services to
8 eligible students who receive title IV HEA program
9 assistance in determining whether an institution
10 provides adequate career services. The Secretary
11 considers the share of students enrolled in programs
12 designed to prepare students for gainful employment in a
13 recognized occupation, the number and distribution of
14 career services staff, the career services the
15 institution has published to students and the presence
16 of institutional partnerships with recruiters and
17 employers who regularly hire graduates of the
18 institution. And we also have here provides students
19 with accessible clinical or externship opportunities
20 related to and required for completion of the credential
21 or licensure in a recognized occupation within 45 days
22 of the completion of required of required coursework.
23 So, we have added additional factors here related to the
24 types of career services that institutions public
25 publicize to their students. We do not believe we should

1 consider only job placement, and down here also
2 reference again that we have maintained that we have the
3 actual providing of the externship opportunity required
4 for completion of the program. Again, the Department
5 believes this is this is essential for students who are
6 in a program where the where that clinical opportunity
7 or externship is part of the program. It's one of the
8 reasons why students would take that program because it
9 is offered and we believe it's imperative that students
10 actually be given the opportunity to complete that
11 externship and have it provided by the school, not be
12 something that the institution says to the student well,
13 this is a required part of the program. We have seen
14 this happen before. The student is required to go out
15 and obtain the externship or clinical on their own and
16 here we want to make certain that is the school offering
17 this program. It's incumbent upon the school to also
18 provide the internship or clinical opportunity.

19 MS. JEFFRIES: Vanessa, can we get you
20 to please share the screen with that with section I so
21 negotiators can see it. There you go. Thank you. No,
22 section I. Scroll back up, please.

23 MS. MORELLI: I think Greg read I and
24 J, so.

25 MS. JEFFRIES: Okay.

1 MS. MORELLI: So, I first.

2 MS. JEFFRIES: Thank you.

3 MR. MARTIN: I'm sorry. You know what,
4 Denise, I did. I did read I and J. That was the problem.
5 I think the problem with this is that J was difficult to
6 see. I was struggling to find the J and just alighted
7 it. So yes, it was I and J. Thank you.

8 MS. JEFFRIES: So, the discussion will
9 be on section I and J. Barmak, you were first.

10 MR. NASSIRIAN: Yeah, I have issues
11 with both I and J, but let's talk about I first, and
12 then I'll come back to J when the time comes. I think
13 you heard from several negotiators that the whole
14 construct of the Department of Education judging the
15 adequacy of career placement is problematic at multiple
16 levels. And I don't think any of us object to the idea
17 that if an institution is marketing itself, and again,
18 we are here attempting to ensure good behavior.
19 Institutions that make representations about jobs, about
20 earnings, about career outcomes of their programs
21 certainly should be held accountable to those promises.
22 Most bad actors actually abuse those kinds of
23 representations, and it's entirely appropriate for the
24 Department to adjudicate that. But you know, honestly,
25 this is almost meaningless. Greg, with all due respect,

1 I have a lot of empathy for you because you struggled
2 during the first session to describe how the Department
3 would make the determination of inadequacy. And some of
4 us provided you language to suggest that the most
5 concrete way for the Department to articulate what it's
6 after and the most objective way for it to pursue
7 anybody who does the wrong thing is to focus on what the
8 institution promised and whether what it promised is
9 being adequately delivered. So that's my first objection
10 is just the platitude of just putting you have to have
11 adequate services. It's neither meaningful on the front
12 end nor particularly actionable in court. I don't think
13 you would have much success enforcing it so it becomes a
14 meaningless, just noise in the system. And then
15 secondly, I really do think you need to specify, even if
16 you were to say you're going to judge them on the basis
17 of what they promised, what exactly you will look at.
18 And it can't just be abstractions, like number and
19 distribution of career services staff, which is again, I
20 think we all understand what you're saying, but it's a
21 subjective judgment nobody can articulate. You can't
22 defend it in court. I think there are more specific,
23 more concrete ways to get at what you're trying to get
24 at. We don't disagree with where you're going, but this
25 isn't the way to get there. Thank you.

1 MS. JEFFRIES: Thank you. Vanessa, you
2 can take the screen down now, if you would please, your
3 screen share. Thank you. Okay, Anne, you are next.

4 DR. KRESS: Sure. My question has, and
5 I agree with everything Barmak just said, but my
6 question has to do with J, and it's with the use of the
7 word accessible. I'm a little concerned by the use of
8 that term because within higher education, accessibility
9 is typically aligned with ADA accommodations. And here,
10 I don't think that's how you're using accessible, but I
11 do think it raises a red flag when you use that word in
12 any Department of Education policy. So, if we're going
13 to keep that in there, I would just strongly encourage
14 the use of some other word.

15 MR. MARTIN: I will take that back.
16 You're right, though, I want to point out we didn't use
17 it within the context of ADA. We used it within the
18 context of these opportunities are provided that that
19 that the students actually get to them and take
20 advantage of the opportunity. We have seen situations
21 where what's being offered to the student is not
22 reasonably accessible, given where the student lives and
23 what measures the student has to go to to participate
24 in that. But we'll take that. And also acknowledge
25 Barmak's comment above.

1 MS. JEFFRIES: Thank you, and
2 certainly, Anne, if you have any suggestions on how to
3 reword that, please feel free to put it in the chat or
4 submit it. Thank you. Marvin, you are next.

5 Mr. Smith: Yeah, just wanted to
6 reiterate the support of Barmak's proposed language on
7 career services that isn't here, but I have a question
8 on J. Is this in particular trying to address gainful
9 employment programs because there's a lot packed in here
10 about accessible clinical and externship opportunities.
11 Wasn't sure what the 45-day requirement meant and
12 whether some type of program, a nursing program or a
13 specialty program, that started in summer with 60 days
14 after the end of a spring term, if that suddenly becomes
15 questionable. I think that this would be easier to
16 support if it said gainful employment, but it seems like
17 it might, well, I guess I'm just still trying to figure
18 out the problem you're trying to solve with this
19 particular one, J.

20 MR. MARTIN: The problem we're trying
21 to solve with it is the existence of some programs where
22 the- and what we're looking at here, just to be clear,
23 is clinical or externship opportunities required for the
24 completion of the credential or licensure. So, these are
25 not just programs where there's an externship or

1 internship available. These are required as part of the
2 programs. The student cannot graduate until and unless
3 this has been completed, and we have seen instances
4 where either it's not offered at all, whereas it's
5 required. But students are essentially expected to
6 obtain this opportunity on their own, and they don't
7 have the background or wherewithal to do that. And the
8 other issue we see with it is a huge timeframe is going
9 by where students have to complete the coursework, but
10 because of the lack of availability of the externship or
11 clinical aspect of the program, students are being
12 required to wait for inordinate periods of time. And I
13 could invite my counsel to respond, I think Denise might
14 be able to add to what I've said there.

15 MS. MORELLI: I would just add, I do a
16 lot of work in the field, so Greg's right, we're trying
17 to plug the hole where we have students that know
18 they'll be told they have to have an externship for the
19 program. They either can't get one they carried for
20 months and months. And then a lot of times they have to
21 go on and quit the school because they need to get a
22 job. They're put in provided externships that aren't
23 even related to the program of study, so they're not
24 meaningful. So then, they get out and they can't
25 actually work in the field because they don't have the

1 requisite. So, that's we're trying to make sure that the
2 schools are providing externships that are needed for
3 the program so that the students can get out and get the
4 job that they are expecting to get when they complete a
5 program. So that's what we're trying to do here.

6 Mr. Smith: And not just gainful
7 employment programs, but all programs?

8 MS. MORELLI: Programs that are
9 requiring the externship for the credentials, so it
10 would probably cover your nursing situation as well. I'd
11 have to go back and talk to my colleagues on that, but
12 it's the programs that are requiring the externship or
13 completion of that program.

14 MS. JEFFRIES: Okay, thank you. Brad.

15 MR. ADAMS: Hi, thank you. I'll stick
16 to I for the time being, and then I can get back in line
17 on J. But I want to second Barmak's comments here, and
18 both of us provided text, although different, somewhat
19 similar in concept that I'll put back in the chat. But
20 just having the word adequate is still vague and very
21 undefined. You know, we do support the additional subset
22 three, requiring an institution to offer career services
23 consistent with what they publicize because institutions
24 should be doing what they say they do. But the rest of
25 this section is very problematic. I don't understand

1 what it means on the number and distribution of career
2 services staff. Or is the Department going to set some
3 sort of metric here that they want us to hit? And what
4 does the phrase presence of institutional partnerships
5 mean? Is having one institutional partnership enough, or
6 is the Department looking for more? Maybe explain what
7 is in one, two and four what you mean there?

8 MS. JEFFRIES: Okay, Greg, you took
9 your mute off?

10 MR. MARTIN: Yeah, I just briefly, I
11 mean, I know that there's no number in distribution of
12 staff. We've not proposed any type of a formula here to
13 hold schools accountable for, and I don't think we have.
14 any intention of doing so. And I do realize that there
15 is some area of room for interpretation, I should say
16 when it comes to this. The intent is to give us the
17 ability and authority to look at the schools, especially
18 with schools where none of this is offered. Where
19 institutions have clearly abrogated their responsibility
20 to help students in this regard. So, I don't think
21 anybody would want us to put into place some type of a
22 metric to calculate this. But it does give us some way
23 of holding the institution accountable, especially for
24 those instances where we've seen this happen where no
25 support in this area is given to students.

1 MR. ADAMS: Well, Greg, I would kindly
2 request that you'd state that. Say, you know, you have
3 to have support. None is unacceptable. Sorry, go ahead.

4 MR. MARTIN: Yeah, I get that. We do
5 have a similar requirement for financial aid staffing.
6 Some entities have put a staffing model in place, but
7 the Department does not do that. And if we have ever
8 written schools up for that, I would imagine it's in
9 cases where it's pretty egregious. I don't think we've
10 ever gone to a school and said, you know, based on the
11 way I'm looking at this, you've got three financial aid
12 staff and I, representing the Department, believe you
13 ought to have five. We've never done that. And the
14 standard that applies to financial aid is moving that
15 over here into offering career services. But I will say
16 that I've heard your your thoughts on it, I will take
17 that back.

18 MR. ADAMS: And thank you. I'll put
19 the language in the chat that we submitted. Thank you.

20 MS. JEFFRIES: Thank you. Jamie.

21 MS. STUDLEY: Thank you very much. I
22 agree wholeheartedly with Barmak that this seems an odd
23 way to come at this issue, although I certainly agree
24 that if there is misleadingness or failure to provide
25 what's promised or committed, that the Department needs

1 to be able to do that, and if it wants to include this
2 example, fine. It is the way it's described here is
3 really a quality issue that belongs in other hands, and
4 if others are not doing their job, the Department has
5 tools for that. I am told that professional and
6 specialty accreditors, for the most part, specifically
7 look at career services. Laura, the alternate, is
8 available if you have questions about that. She's looked
9 into it, and institutional accreditors look broadly at
10 the question of career services as one element of
11 student services. In any event, picking up on the last
12 discussion, that notion of the number and distribution
13 of staff is not really a good way to evaluate adequacy,
14 anyway. And I appreciate your comments, Greg. The
15 Secretary could consider the number or absence of staff
16 if he or she wanted to without putting it into the
17 regulation. But putting it there, I think is confusing
18 to the field. It makes Marvin and his colleagues wonder
19 if they're supposed to be counting noses. I think there
20 is a distinction between the previous one, financial
21 aid, where the Department is in the best position to
22 judge financial aid service provision, and career
23 services, which is something else, and for many
24 institutions, is an education program. So, I don't see
25 an inconsistency between respecting the prior provision

1 and considering a change in this one. Maybe it would be
2 clearer for all of us. I'm going to double back to the
3 basics right now. If Greg or you and/or Denise and your
4 colleagues could tell us a little bit about how
5 administrative capacity works, because this isn't saying
6 the Department will review every school for career
7 services. Do you do you look when something is triggered
8 or there is an issue on an element like that? Or if
9 there is a misleading, this issue that brings this to
10 your attention? I think that might speak to some of the
11 things that Marvin, Brad, and others were raised.

12 MS. JEFFRIES: Okay, thank you, Jamie.
13 If you have if you want to put any of those questions
14 into the chat, that would be most helpful. Jessica.

15 MS. RANUCCI: I just have a minor
16 point on J, but I can hold it if we want to finish I and
17 then go back.

18 MS. JEFFRIES: Oh, that's fine, I
19 think a number of people are holding comments on J and
20 there was a request to separate the two out. Greg, are
21 you okay with that or?

22 MR. MARTIN: I am. Yeah, I apologize
23 for the confusion before. It's just I don't know what it
24 is with my mind and Is and Js when it comes to
25 regulation. They just kind of meld together sometimes. I

1 was desperately searching for J and thought it was
2 there, but I'm very thankful to Denise. Denise got my
3 mind back there. So yes, we can look at them separately,
4 that's not a problem. If we can look at what people have
5 to say about I, and we'll move on to J.

6 MS. JEFFRIES: Okay. I don't see any
7 more hands on I. The ones that were up went down, so I'm
8 assuming those were for J. Do you want a temperature
9 check on I or?

10 MR. MARTIN: Yeah, let's go ahead and
11 do it. I know it's kind of small, but it keeps us going
12 paragraph by paragraph.

13 MS. JEFFRIES: Okay, sounds good. So,
14 if we could see a show of your thumbs on 668.16 section
15 I, 1, 2, 3, and 4. I'm seeing I think three thumbs down,
16 I believe. Okay.

17 MR. MARTIN: I think we have a pretty
18 good idea. We already have a pretty good idea of why
19 those people feel the way they do there, so I thank
20 everybody for the very good conversation on that.

21 MS. JEFFRIES: Okay, thank you,
22 everyone. Appreciate it. Alright. So, moving on to
23 section J, and you weren't the only one who didn't see
24 that Greg, because a lot of red and that bottom of the J
25 always gets cut off by the underline. So, I'm right

1 there with you.

2 MR. MARTIN: I've been looking at it
3 for 30 years, so it should have been clear.

4 MS. JEFFRIES: Well, it happens.
5 Alright. Jessica, your hand is up.

6 MS. RANUCCI: Thanks. This isn't just
7 a minor point, but I don't understand the "related to"
8 language. Obviously, the Department had a reason for
9 adding it. I'd be curious to know what that is, but both
10 Denise and Greg, when you were speaking, it sounded like
11 you were really thinking about [inaudible] required for
12 graduation or licensure. And is the idea that not all
13 programs required for that would be related to the
14 program? So, I just don't understand, so if you could
15 clarify.

16 MS. MORELLI: Greg, I'll jump in. I
17 think what Jessica related was an example that I was
18 talking about before. We've seen situations where a
19 student, let me say surge tech, and then the school puts
20 them in an externship and all they're doing is filing
21 medical billing kind of things. So that's what we're
22 trying to get at. And if you have a different way to
23 word that that'd be great. That's what I'm trying to get
24 at with the "related to" so that it's actually related
25 to the training. And not that they're just throwing them

1 into some kind of job just so they can say they had a
2 job where it actually isn't related to the training and
3 what the credential they're trying to get is.

4 MS. RANUCCI: I think it just might
5 need a clause rather than adjective.

6 MS. MORELLI: Okay. Anything in that
7 area, just let us know we can come up with.

8 MS. JEFFRIES: Okay. I want to
9 announce that Dr. Laura Rasar-King is in for accrediting
10 agencies. Carolyn, you are up next.

11 MS. FAST: Wanted to say a quick word
12 in support of including section J. I think it is a very
13 important issue that comes up a lot for students who may
14 find it really difficult to find an internship slot.
15 Sometimes the institution actually puts the
16 responsibility on the student to somehow figure out how
17 to do an internship, and this puts students in a very
18 difficult position. And in fact, in many cases, prevents
19 them from graduating. And it's very frustrating for
20 students who really did everything that they were
21 supposed to do. But the institution let them down in
22 that way.

23 MS. JEFFRIES: Thank you, Carolyn.
24 Brad.

25 MR. ADAMS: Yes. So, the Department's

1 changes here, I believe, are an improvement over what it
2 had previously proposed. However, it still may be
3 difficult for institutions to determine if they're
4 meeting the standards set here. The Department wants the
5 institutions to provide students with accessible
6 clinical or externship opportunities. The word
7 "accessible" typically means obtainable, but is the
8 institutions need to put students in a position where
9 they could reasonably hope to obtain a clinical
10 externship opportunity? Is the Department looking for
11 something more like some sort of guarantee of placement?
12 Many programmatic accreditors, especially in healthcare,
13 already require this practice. I think the Department
14 still needs to consider building in some language so
15 that labor market conditions are factored in. It might
16 be fairly reasonable for institutions to help line up
17 externships. Those opportunities could dry up in a
18 recession or during a pandemic. We know what just
19 happened in nursing and hospital systems when they
20 stopped accepting nursing students during COVID-19. But
21 I'll drop some language that just adds the words "under
22 the circumstances" to what's already there to kind of
23 protect against the pandemic piece of this.

24 MS. JEFFRIES: Thank you, Brad.

25 MS. JEFFRIES: Laura.

1 MR. ADAMS: I guess, to my question,
2 though, is can someone address what the Department may
3 be looking for here, are they looking for a guarantee of
4 placement?

5 MR. MARTIN: Certainly, if a student
6 didn't meet the academic requirements, that's
7 understandable and not something we're addressing here.
8 But what this has to do with is where these are offered
9 as part of a program. Often, schools advertise these
10 opportunities because students rightly assume that a
11 program that has an internship, externship or clinical
12 opportunity is one that will help them to secure
13 employment. Right? So, if I have an internship or
14 something like that, that's going to give me an end
15 towards getting a job, which it often does. So, if it's
16 going to be advertised as part of the program, as we
17 said here, required for completion or credential of
18 licensure. You're training a student for this
19 profession. It's required for part of that profession.
20 Therefore, it is as integral to the program as any of
21 the coursework the student takes. So, it needs to be
22 there as we expect the coursework to be there. This has
23 to be there as well. So, we understand full well the
24 effects of the pandemic and what effect it's had on
25 society and the availability of many things. And so I

1 think we have to acknowledge that. But also to
2 understand that we are regulating here in general, not
3 to the pandemic. And we are you know, on fairly firm
4 ground here and saying that that if it's part of the
5 program, it needs to be there. =If the student has met
6 their side of the bargain by doing what they are
7 supposed to do academically, and they've done everything
8 they're supposed to do, and then there should be no
9 impediment to that internship or externship opportunity
10 based on the school saying, well, you know, we know that
11 it's part of the program, but we can't find a place to
12 place you or employers aren't out there or whatever
13 because it has been marketed to the student as part of
14 the program. So that's where we are with it. I'll let
15 Denise add to that or say anything she wants to.

16 MS. MORELLI: No, I think you covered
17 it Greg. Like I said, it's part of the program. The
18 student needs it to graduate from the program to get the
19 credential. So, we expect the institutions to provide
20 those externships and provide meaningful ones. And the
21 accessible question where students may be going to
22 cities and public transportation and they provide a list
23 of externships that are 50 miles away from the student
24 or from school. Those are the situations where we're
25 going to [inaudible] accessible. So, we need to revise

1 that to not get it confused with ADA. But that's what
2 we're looking for, if anybody has any additional
3 thoughts on that language. But that's the situation
4 we're dealing with. We're trying to deal with the word
5 accessible.

6 Ms. JEFFRIES: Okay. Laura, you're
7 next, but I just want to point out, Denise, your audio
8 seems to be very distorted, so I don't know if you
9 logged in with voice or not, but if you go to your
10 private chat, Brady will work with you on that.

11 MS. MORELLI: Yeah, he was trying to.
12 So, we'll see if I can. I may just have to call in and
13 not be on video then. I will figure out how to do this.

14 MS. JEFFRIES: Okay, thank you.
15 Alright. Laura, you are next.

16 DR. KING: Thanks. So I'm plus one to
17 Greg's concerns. Absolutely. I think this is really
18 critical and just really important to have in the
19 regulations. I wanted to clarify something that concerns
20 me about a potential other kind of iteration of this
21 problem. So, in many programs that require clinicals,
22 the clinicals are actually part of the required
23 coursework. Or they're integrated throughout the
24 required coursework. And what I have seen in some
25 programs is that they are slow walking, providing the

1 internship or whatever it is that's needed throughout
2 the program so that it lengthens the program and
3 potentially the cost of the program. And so it's not
4 only following the completion of required coursework,
5 it's actually if it's part of the required coursework,
6 if that makes sense. And I don't want there to be a
7 loophole that says that that would be allowable either
8 because I think it could increase time and cost. So, I
9 was thinking something like an "if then" statement. So,
10 if the clinical or externship components are integrated
11 into the required coursework and adequate clinical
12 placements are not available to students that may not
13 increase program length by X time or X percent or
14 something like that might be a way to address that. But
15 I'm not a regulation writer. I just wanted to raise that
16 issue.

17 MS. JEFFRIES: Okay, thank you.

18 Alright, I don't see any further hands on section J. So
19 why don't we go ahead. Greg, do you have what you need?

20 MR. MARTIN: I believe so. Yes, thank
21 you very much.

22 MS. JEFFRIES: Okay, so you want to go
23 ahead and take a quick temperature check on J to stay
24 consistent with paragraphs?

25 MR. MARTIN: Yes, please.

1 MS. JEFFRIES: Okay. Alright. If I
2 could kindly see the negotiators' thumbs. Okay, I'm
3 seeing one thumb down, I believe. Is that correct?
4 Anybody, okay.

5 MR. ADAMS: Yeah, you know, I made my
6 comment. I'll think about it. It may not be substantial,
7 so let me think about it. I may be a sideways.

8 MS. JEFFRIES: Okay. Alright.

9 MR. ADAMS: "Under the circumstances"
10 would be helpful for us. It's not a yes/no, it's a yes.
11 But you know, there could be another issue out there.

12 MS. JEFFRIES: Okay. Appreciate that
13 statement, Brad. [Audio] Not sure what that was. There's
14 a number of good suggestions in the chat as far as
15 possibilities. I want to remind the negotiators that in
16 between sessions is a great time to develop some text of
17 your own and send it in to the Department for
18 consideration. Just to back that up in the chat, okay?
19 So, with that, Greg, you want to move us on to K?

20 MR. MARTIN: K, correct, yes. And I
21 see K coming up here, that's great. So, K is "disburse
22 funds to students in a timely manner consistent with the
23 with students needs as required in 34 CFR 668.164",
24 that's subpart K, cash management. Violations of which
25 may be assessed using student complaints, high rates of

1 withdrawals attributable to delays and disbursements,
2 disbursements delayed after the withdrawal date
3 requirements in 34 CFR 668.22 B and C, disbursements
4 delayed with the effect of ensuring an institution
5 passes 90/10 or other methods. So, in response to the
6 negotiators' suggestions, we have made this "students'
7 needs" plural rather than student needs. We've also
8 added the cross reference there to add to add clarity.
9 So, entertain any comments related to paragraph K.

10 MS. JEFFRIES: Okay. Vanessa, if you
11 could stop share, I'd appreciate it. Thank you. Alright,
12 Jamie. Oh, you forgot to put it down. No worries. Not a
13 problem. Marvin.

14 MR. SMITH: Does the Department have
15 in mind what is a high rate of withdrawal?

16 MR. MARTIN: I didn't specify anything
17 particular here. But remember, we're looking at the
18 timely disbursement of funds, but then looking at
19 violations of that and just looking at areas that might
20 come up to indicate violations of student complaints,
21 high rates of withdrawal that are attributable to delays
22 and disbursement. So, we're not looking for a particular
23 figure here or a bright line, but where we see that
24 schools delaying disbursements have resulted in students
25 withdrawing as a result of that. That would be an

1 indication that the disbursement protocols the schools
2 operating under are not consistent with administrative
3 capability.

4 MS. JEFFRIES: Okay. Anything else,
5 Marvin? Oh, okay, Brad.

6 MR. ADAMS: Thank you, and plus one to
7 Marvin's question, I had the same thing, so I'll add to
8 that. On the other piece, you know, we noticed the
9 Department has amended to reference funds under 668.164,
10 and we agree with that and appreciate that. But if
11 that's being added, then why would the rest of this
12 provision even be necessary? If institutions are
13 complying with the disbursement rules under 668.164,
14 then why have all these other measures here?

15 MR. MARTIN: Well, you know, obviously
16 668.164 is where we have our cash management rules. So,
17 we felt the need to reference that. 668.164, if I recall
18 correctly, the only requirement there is that
19 institutions disperse funds at some point during the
20 payment period, and that was done to give to provide
21 latitude where such latitude may be necessary and may
22 well be in accordance with students' needs. There are
23 instances where schools divide up payment periods into
24 modules, and, as most of you are probably aware, we do
25 allow payments for a payment period to be broken up into

1 multiple disbursements. So, it might be that that the
2 school breaks up that payment for the payment period
3 into disbursements for each module, which may well be in
4 keeping with the student's needs, but that that
5 particular section does not address how that meshes with
6 the needs of students. Nor does it address areas where
7 we feel there have been disbursement procedures at
8 schools that don't mesh with the needs of students where
9 there's delay and that delay is attributable to
10 institutional concerns or the desire of institutions to
11 avoid certain regulations rather than to be consistent
12 with student needs. So, that's why we believe it is
13 necessary here to add that element to it that not only
14 do you have to look at what is required is 668.164 with
15 respect to the procedural rules for disbursement, but
16 also a line that disbursements with student needs such
17 that they are timely. Students need this these funds not
18 only to pay tuition and fees, but to pay for their
19 indirect expenses. They have to pay rent, many of them
20 without this money have no means of paying rent or
21 securing food or transportation. So, it's we believe
22 it's important that these funds be disbursed to students
23 timely and hence this requirement.

24 MS. JEFFRIES: Sorry about that, thank
25 you. Kelli, you are up next.

1 MS. PERRY: Alright. And I put this in
2 the chat. I wasn't sure if I should say it out loud as
3 well, but I would suggest removing "consistent with
4 students' needs" because I'm unsure how that relates to
5 what's in 668.164. I know, Greg, you just talked about
6 the fact that you want people to consider both: what's
7 in that regulation on top of what the students' needs
8 are. But if that's the case, my first recommendation is
9 to "remove consistent with students' needs". If you need
10 to have them both in there, I think this needs to be
11 reworded because it makes it sound like 668.164 talks
12 about students' needs, which it does not. I would
13 recommend taking that out.

14 MR. MARTIN: Okay. Okay, we'll take
15 that back.

16 MS. JEFFRIES: Thank you. Kelli. Greg
17 and the Department, I just wanted to- Oh, never mind.
18 Denise is back, I was just going to point out Denise had
19 gone into a breakout room with Brady to try to fix her
20 audio, but she is back. So, Jamie, your hand is up. And
21 you are on mute, dear.

22 MS. STUDLEY: This is maybe a very
23 quick question. Is K meant to say disperses funds to
24 students as required in 668.164, and here are some
25 examples and 164 reflects students' needs? Or is it

1 meant to raise the bar and do something beyond what 164
2 now does? I think that's what you've got us into
3 thinking about, Greg. This isn't even on the merits. The
4 Department may feel that 164 is not sufficient, but I
5 think we're confused here about whether this is
6 descriptive, in which case none of the language for
7 violations is needed because the Secretary can determine
8 164 violations anyway she wants, or he currently. Or
9 it's just restating current law and maybe creating
10 confusion in doing so.

11 MR. MARTIN: Yeah. Again, yeah. On
12 164, you're correct in pointing out 164 does not address
13 students' needs. 164 cash management is more of an
14 accounting view of disbursements. I think that I would
15 point out that the Pell regulations have always had a
16 provision about disbursing Pell in a way that meets
17 students that's in accordance with students' needs. So,
18 I think this is not completely uncharted territory
19 we're in here and not completely novel for the
20 Department to consider that. We've given some examples
21 of what schools do, what schools have done, some schools
22 that's not in accordance with student needs, which used
23 to be a bigger problem than it is now. But we used to
24 have a lot of schools that just didn't want to do R2T4.
25 They just thought it was administratively burdensome,

1 didn't want to do it. So, they waited until 68.1 percent
2 point to disburse funds to students. That's certainly
3 not in accordance with student needs, though. If you
4 would look at 164, just verbatim without anything else,
5 it could be argued that 164 gives us the flexibility to
6 disburse at any time during the payment period, and
7 that's what we did. The Department believes, I believe
8 as well, is that getting these funds to students in a
9 timely manner is a compelling issue. Especially since
10 many of them cannot find a way to pay expenses without
11 this money. And it was factored into their award. The
12 award the student is given is inclusive of these costs
13 that students incur, often up front, not 50 percent and
14 not 60 percent in.

15 MS. STUDLEY: I think that answers my
16 question. This is meant to do something more than 164,
17 and so the "timeliness consistent with students' needs"
18 is actually saying something that is not just parroting
19 another regulation.

20 MR. MARTIN: I would agree with that.

21 MS. STUDLEY: Thank you.

22 MS. JEFFRIES: Thank you. Brad.

23 MR. ADAMS: You know, I just think
24 back to many schools for new students have 30-day holds
25 on pulling down funds as required actually under HCM1,

1 so I'm still confused on what is the definition of a
2 timely disbursement based on a student's need. It's,
3 tough for me to without putting a date on it, I fall
4 back to 668.164. I just think undefining it is wide open
5 and needs a benchmark there to measure against.

6 MR. MARTIN: Well, as I said, we're
7 certainly willing to take any comments anybody has with
8 respect to reimbursement. I would say that or you
9 mentioned HCM, whether it's HCM1, HCM2 reimbursement,
10 that with those provisions, those rules affect when an
11 institution can actually draw title IV funds. And
12 remember that under those provisions, the institution is
13 still required to disperse in advance of requesting
14 those funds from the Department. So, I don't view a
15 disbursement date and when the institution can request.
16 reimbursement issues as negating this or in any way
17 getting in front of it. The institution can still
18 disperse at a timely point, irrespective of when it has
19 actually drawn title IV funds. But I take the points,
20 and we will consider them.

21 MS. JEFFRIES: Okay. I don't see any
22 additional hands. So, let's go ahead and take a
23 temperature check on K. Jamie, I can't see. Need a
24 temperature check on K, please, Jamie. Okay, I'm seeing
25 one thumbs down. Anything additional, Brad?

1 MR. ADAMS: No, not other than what
2 I've said, but I did want to point out, I think there
3 were two thumbs down.

4 MS. JEFFRIES: Yep, I did see that.
5 Yep.

6 MR. ADAMS: Alright.

7 MS. JEFFRIES: Kelli, do you have
8 anything additional?

9 MS. PERRY: I do not. I'm going to put
10 additional language in the chat based on the description
11 and what Greg said he was trying to accomplish.

12 MS. JEFFRIES: Okay, great. Thank you.
13 Alright. It is 2:24. I do intend to give the team about
14 a 10 minute break this afternoon. Greg, do you want to
15 do it now or do you want to move on with a couple more?

16 MR. MARTIN: Let's do M next.

17 MS. JEFFRIES: Okay. L has no changes
18 from the-

19 MR. MARTIN: Right. So, seeing I don't
20 think I've made any blunders there this time. We'll move
21 on, but stay tuned. We'll move on to M for an
22 institution that offers gainful employment programs
23 subject to the requirements in subpart Q. For this part,
24 which would exist under these proposed rules but doesn't
25 now, receives at least half of its title IV revenue in

1 eligible programs from such programs that are passing
2 under subpart Q, or has at least half of its regular
3 enrolled students enrolled in such programs that are
4 passing under subpart Q. We're just going paragraph by
5 paragraph.

6 MS. JEFFRIES: Okay, appreciate it.
7 Vanessa, could you please stop share for discussion? I
8 want to note that Adam is coming back to the table for
9 state attorney general. So, any questions, comments?
10 Brad.

11 MR. ADAMS: Yeah, so I know we'll
12 spend all day tomorrow on gainful employment, but given
13 that the administrative capabilities issue paper covers
14 all schools I'm wondering why the Department's adding a
15 gainful employment rule that is applied to approximately
16 25 percent or less of other programs that are subject to
17 gainful employment. If they're passing a debt to
18 earnings ratio for 50 percent of the programs, it's
19 important not to link administrative capability. Then it
20 should apply to all programs and not just those that
21 lead to gainful employment. Also, the GE issue paper, as
22 currently drafted, allows for programs to fail for at
23 least two years out of three before you lose your title
24 IV funding. So, does this proposed statement then push
25 that threshold to losing title IV eligibility after just

1 one year? It says if more than 50 percent of your
2 programs failed, then it looks like you could lose your
3 title IV, and that would be after one year. There's a
4 disconnect there. But also, how did the Department
5 settle on a 50 percent threshold?

6 MS. JEFFRIES: Okay, Greg.

7 MR. MARTIN: Yeah, well, again, we
8 could have the discussion about which programs fall
9 under gainful employment. The whole idea of the
10 accountability being in this respect, limited to gainful
11 employment programs and why we view those as different
12 from other types of programs. Here, for an 'institution
13 that offers gainful employment programs subject to the
14 requirements of subpart Q receives at least half its
15 revenue in eligible programs from some programs that are
16 passing or has at least half its regular students
17 enrolled in this. What's in subpart Q does affect actual
18 eligibility, like there's a built in, loss of
19 eligibility for that program after two failing years.
20 Here, this is just an indication of administrative
21 capability, not a standard for removal of a program's
22 eligibility. I would point out that as far as the 50
23 percent is concerned. We have settled on that as a
24 reasonable, and I think any time you look at a
25 percentage to look at 50/50, we've just built in here at

1 least half of half of the programs is the standard that
2 we've used. We are open to whether or not that is an
3 appropriate standard or any other suggestions
4 negotiators may have.

5 MR. ADAMS: So, can I add to that?
6 Then why just apply it to gainful employment programs
7 here in administrative capabilities? What's the thought
8 behind that?

9 MR. MARTIN: Well, gainful employment
10 programs are the only programs that are where it is
11 required that they that there be a test of what the
12 program. Does the program lead to gainful employment in
13 terms of the metric that we that we have established.
14 Currently these are the only programs that are that are
15 that are measured that way. And this is n looking at
16 whether such an institution that has those programs is
17 administratively capable, just looking at when you have
18 an inordinate amount of revenue from the institution
19 coming from programs which don't pass that measure, that
20 that is an indication of administrative issues at the
21 institution.

22 MR. ADAMS: Okay, the last comment
23 here, and I just want to clarify that I know it doesn't
24 always happen, but if a school is deemed not
25 administratively capable, it could lose its title IV

1 funding. So, in theory, after one year of GE, a school
2 could be deemed not administratively capable, but still
3 allowed to have those GE programs continue, but lose
4 title IV under administrative capabilities. Just want to
5 clarify that.

6 MR. MARTIN: Technically, the
7 Department can always take action to remove an
8 institution's eligibility. It would be like- maybe
9 Denise would be the better one to address this.
10 Administrative capability is generally looked at
11 holistically. We generally do not move to limit, suspend
12 or terminate an institution's eligibility for failure of
13 one administrative capability of standard. So, usually
14 when you see an administrative capability finding, it's
15 the institution has problems in several areas. So, while
16 technically, yes, the Department could move to remove
17 the participation of any institution under for a
18 violation of the rules. But we don't. I don't think we
19 ever generally do that, and it would not be our
20 intention here to use this for that purpose. It
21 actually would be a longer path to that through this
22 than it would be if a school's programs lost eligibility
23 under the GE rules. I don't know if Denise wants to
24 address that or not.

25 MS. JEFFRIES: Denise, you're on mute.

1 MS. MORELLI: I'm having a heck of a
2 time. I think Greg is correct. We look at administrative
3 capability as a holistic issue, not that you have to
4 meet the standards, but in terms of us taking an action.
5 Usually, it's a school that violates more than one
6 provision of administrative capability. But I do think
7 we can, Brad, we can certainly look at what you were
8 discussing and see if we determine if there's any
9 conflict with the absentee provision.

10 MS. JEFFRIES: Okay, thank you,
11 Denise. I want to note that Adam is back at the table
12 for state attorneys general and that Emmanuel Ezeugo
13 will be coming in to ask a question. Barmak, you are
14 next.

15 MR. NASSIRIAN: First, I want to
16 express some sympathy for Brad's sense of injustice
17 because he understands that what we're talking about
18 here is almost entirely limited to the for-profit sector
19 because as of now, while gainful does apply to all
20 institutions, it is very unlikely that most nonprofit or
21 publics would derive more than 50 percent of their
22 revenues from GE programs. But having said that, it's
23 remarkable how it says something about the ethos of this
24 Department, historically, that it extends the benefit of
25 every doubt to the institution, instead of to the to the

1 students who are making a decision that could really
2 adversely affect them for the rest of their lives. It
3 makes perfect sense to me. I don't see how there is any
4 inconsistency in suggesting right or wrong. We have a
5 gainful mechanism such as it is that has made a
6 determination that a set of programs fail. So, the idea
7 that you have, that's that you allow entities, half of
8 whose offerings or that shoddy to still participate
9 strikes me as overly generous and exceedingly charitable
10 in the wrong ways. If it were me, I would draw the line
11 at 75 percent pass rate. You know, we have an odd system
12 in which we trust institutions under title IV programs
13 instead of focusing on the programs. But I got to tell
14 you, an institution, half of whose products are rotten,
15 probably shouldn't be trusted with offering any products
16 until it cleans up its act. So, you know, I appreciate
17 Brad's point. We need to judge all programs on the basis
18 of ability to service the debt. But right now, we have
19 this mechanism and, and the 50 percent threshold strikes
20 me as more than generous, quite inappropriately so under
21 the circumstances.

22 MS. JEFFRIES: Okay, thank you. We
23 have one, two, three, four hands up, and then I do want
24 to take a break. It's been a long session and let you
25 stretch your legs. So, Jessica.

1 MS. RANUCCI: Thanks. I want to echo
2 Barmak's point that I do think that there are important
3 protections to build in here, and I think that this is
4 among many ways in which the Department has a tool to
5 protect students who need protecting, and I really
6 support that. As a drafting matter, I wonder a little
7 bit about the [inaudible] that are, quote unquote are
8 passing here just doesn't seem to be quite how the GE
9 rules are. If I'm understanding them correctly. And I'm
10 just wondering, when the Department goes through a
11 program review, like what time period are they talking
12 about? Are they talking about now and how the students
13 now will do on GE in the future? Or are they talking
14 about how past students did on the latest GE metrics?
15 So, I just would ask the Department to think about that.
16 I don't have a good solution. I'm not the expert here,
17 but it led to some confusion in my head.

18 MS. JEFFRIES: Okay. I don't know if
19 the Department has an immediate response to that,
20 Jessica, so they will take a look at that and get back
21 to you. Jamie.

22 MS. STUDLEY: Oh, my-I was sort of
23 thinking about out loud about the purpose of the
24 administrative capacity rules. It's a little
25 philosophical, but we can't let Barmak have a monopoly

1 on that approach. It seems to me, but the Department can
2 correct this if I'm off base, that what they're looking
3 for here is the competence to manage the institutions,
4 programs, services, finances and so on, and that this
5 provision could be seen as saying that the ability to
6 design programs that can pass GE is one factor that the
7 Department could take into account about whether it can
8 do the job for which they are responsible. There may
9 even be an element also of the financial fragility that
10 affects the administrative capacity of the institution,
11 even if the Department thinks financial fragility or
12 sustainability is a separate question. This does go to
13 the ability to design, operate, respond to rules, manage
14 the program of the institution at a level as promised
15 that suggests that it can continue to do so on a quality
16 level in the future. So, the provision seems reasonable
17 to me if that's the foundation.

18 MS. JEFFRIES: Thank you, Jamie, for
19 that. Debbie.

20 MS. COCHRANE: Thank you. I wanted to
21 make a couple of points. The first one is very similar
22 to what Jamie was just saying. I think I really
23 appreciate what the concept that the Department is
24 trying to get at here. And I think it makes sense that
25 the administrative capability of an institution would be

1 called into question if most of the students or the
2 revenue was being derived from programs that weren't in
3 compliance. So that seems, as a general matter,
4 appropriate. I actually also, just with respect to what
5 the right thresholds are, which I think are important
6 questions. I guess I will just also flag that the
7 Department, of course, put out a proposal for the
8 gainful employment rule for this session, which we
9 haven't yet gotten to. I knew that proposal stems from
10 the 2014 rule, but also there's a lot of foundational
11 questions that were in the paper around additional
12 metrics. I think it's hard to have some of the questions
13 around what the specifics should be until we really have
14 that other discussion about the GE rule.

15 MS. JEFFRIES: Okay, thank you.
16 Emmanuel, first, I want to apologize for mixing up your
17 name when I announced it, it is Emmanuel Guillory who is
18 at the table. Thank you.

19 MR. GUILLORY: Thanks for that. My
20 question was really around the drafting. So how I read
21 this particular paragraph. Basically, it's putting the
22 GE programs into another sub part. So, what I mean by
23 that is, "receives at least half the title IV revenue in
24 its eligible GE programs". I'm assuming that's what
25 that's referring to [inaudible] programs, it's eligible

1 GE programs from such programs that are passing for the
2 overall institution. I think about in our sector, you
3 know, we may have, let's say we have 10 programs that
4 are GE programs on a campus. And out of those 10, then
5 at least half of the title IV revenue from those 10
6 should be coming from passing programs within the 10
7 programs on our on the campus. If that is indeed
8 accurate in how I'm interpreting that, then the
9 remainder of that sentence, I believe, needs a little
10 bit of tweaking to basically read "or has at least at
11 least half of its regular enrolled students enrolled in
12 such eligible GE programs enrolled in such programs that
13 are passing" just to keep that subpart there. So
14 basically, you have the example I give is that our
15 campus has 10 GE programs. Out of those 10 programs, at
16 least half of the title IV revenue is coming from
17 programs that are passing within those 10 and then
18 students, at least half of students are enrolled within
19 eligible programs within those 10 that are passing. Does
20 that make sense? Yes, Greg, does that make sense.

21 MR. MARTIN: I was reading it again
22 with you, yeah, we'll take that back. I want a chance to
23 mull that over a bit, but I see what you're saying.

24 MR. GUILLORY: Yeah, and I can put the
25 suggested language in the chat.

1 MR. MARTIN: Yeah, go ahead and do
2 that.

3 MR. GUILLORY: Just to clarify. I want
4 to make sure I understood that that is indeed how it
5 should be interpreted. Is that accurate?

6 MR. MARTIN: Yeah. So, it's half, the
7 revenues, at least half the revenues have to come from
8 those programs that are that are eligible. So, you would
9 look at whichever of those 10 programs you have that are
10 that are that are eligible programs that are passing
11 under subpart Q, the revenue would have to come from
12 those passing programs. You know, irrespective of how
13 many there are, right? So, I don't know if I break you
14 down in the numbers, it would just be looking at the
15 revenue. Where was the revenue derived from which
16 programs? At least half that revenue have to come from
17 those programs that have passed. That's the way I view
18 the reg that was intended.

19 MR. GUILLORY: Okay, I just wanted to
20 clarify. For non-for-profit, you know, for the public
21 and the private nonprofit institutions out there. All of
22 our programs are not going to be GE programs on our
23 campuses. And so some campuses may have, and I use the
24 example of 10 GE programs. So from this language, only
25 those 10 programs.

1 MR. MARTIN: Oh, I see what you're
2 saying, only those programs are subject to subpart Q.
3 Yes, yes. Now you're looking at your all your revenue.
4 You know, the fewer obviously, the fewer programs you
5 have are subject to subpart Q, the more of your revenue
6 will be derived from those that aren't subject to
7 subpart Q at all, irrespective of passing or failing.
8 But yes, it would only be in looking at the revenues
9 would be at least half the revenues from those programs
10 that are passing.

11 MR. GUILLORY: That are GE programs.

12 MR. MARTIN: So I think I see what
13 you're saying. You're looking at it from the standpoint
14 of how that's going to mesh with overall number of
15 programs, right? Yeah. Well, I'll take that back and
16 look at it. Thank you. I appreciate that.

17 MR. GUILLORY: Thanks.

18 MS. JEFFRIES: Alright. Thank you.
19 Brad, do you have something new because I do want to
20 move on?

21 MR. ADAMS: I do think that's what
22 Emmanuel just asked is very important for me to
23 understand as well if we're talking about half of its
24 students from just the subset of GE programs or if only
25 10 percent of your revenue is coming from GE programs,

1 would you automatically pass?

2 MR. MARTIN: I think that's a very
3 good point, and I thank Emmanuel for bringing that up
4 and we'll definitely clarify that.

5 MS. JEFFRIES: Thank you. Alright.
6 Let's go ahead and take a temperature check on this, and
7 then we'll take a quick 10 minute break and come back
8 and wrap this up before public comment starts at 3:30.
9 For the public, for the people who have registered for
10 public comment and those on the wait list, I'd like to
11 invite you to log in early to get into the waiting room
12 so that when we get into the public comment period, we
13 can get to as many of you as is possible. So, with that,
14 let's go ahead and take the temperature check on M.
15 Okay, I see one thumbs down, is that correct?

16 MR. ADAMS: That's correct, but I'm
17 wondering if it'd be more thumbs down once you define
18 whether or not what we just talked through.

19 MS. JEFFRIES: It may, Brad. Oh, that
20 gave me a kink in my neck, Brad. Alright, it is 2:44,
21 let's go ahead and take a 10-minute break. Let's come
22 back at five minutes to three and finish up with the
23 administrative capabilities. Thank you. Welcome back.
24 So, let's continue on with moving forward in issue paper
25 two, administrative capabilities. And that brings us to

1 section N, Greg.

2 MR. MARTIN: Section N, right, and
3 before we move on, I want to correct one more thing I
4 said earlier today. I think earlier we were talking
5 about ATB, and we were talking about the completion
6 rate. I referenced 668.16 where the withdrawal rate was
7 found, and I said it was 668.16 I. It's actually
8 currently in 668.16 L. But given my difficulties today
9 with I's, L's, and J's, that's not surprising. So, I has
10 to do with something with compliance with fiscal
11 reports. It's actually L. So again, I want to apologize
12 for that. Just remembered to correct myself there. So,
13 we are now, as Cynthia said, looking at N and because
14 it's so small, if I can beg the indulgence of the group,
15 why don't we look at N and O together? I try to go
16 paragraph by paragraph. But in this case, it would seem
17 to be in the interest of expediency to do both. So,
18 we'll do that. We'll look at N and O. N does not engage
19 in misrepresentations, including as defined in subpart F
20 of this of this part or aggressive recruitment included
21 in as defined in subpart R of this part. Moving on to O,
22 has not been placed under significant negative action by
23 state or federal agency or an accrediting agency, and
24 has not lost the ability to participate in another
25 federal educational assistance program due to

1 administrative action against the school. So, we'll look
2 at those two areas, excuse me. At the suggestion of
3 negotiators, we have clarified this item could be
4 inclusive of misrepresentations or aggressive
5 recruitment practices that are not included in the
6 regulations if such situations arose. Let's open it up
7 for discussion, then, with respect to N and O.

8 MS. JEFFRIES: Okay. Thank you for
9 that. Brad.

10 MR. ADAMS: I'll start with N, and
11 then I'll get back in line for O. But the term, and I
12 mentioned this in week one, but the term aggressive
13 recruiting is still not defined in the regulations, and
14 the previous negotiated rulemaking panel did not come to
15 consensus on the definition. I'm struggling to know how
16 the Department expects negotiators to agree on a
17 definition that doesn't exist in the regs. On the second
18 piece around misrepresentations, I do believe we need to
19 have a "substantially" threshold for misrepresentations.
20 Institutions should not be deemed administratively
21 incapable for minor and accidental misrepresentations.
22 So, I'm going to suggest we add the word substantial in
23 front of misrepresentation within this part and then
24 delete the comment on aggressive recruitment. And I'll
25 submit that in the chat. Thank you.

1 MS. JEFFRIES: Thanks, Brad. Carolyn.

2 MS. FAST: I just wanted to offer
3 support for the changes the Department made in adding
4 the word "including" which addressed some significant
5 concerns that we had, that we didn't know what the
6 language was going to be and that it potentially be even
7 narrower than what would, for example, be considered a
8 misrepresentation under state law. So, I think this
9 change is really helpful in M. I'm sorry, in N, that
10 added the word including. That really made it a lot more
11 acceptable in my mind. And I also wanted to offer
12 support for O, which I think is a very useful addition
13 and will create a really useful and meaningful
14 protection for consumers, for students.

15 MR. MARTIN: I just want to clarify,
16 because we said as defined in subpart F, that is the
17 subpart that deals with of the general provisions, that
18 is misrepresentations, and I should have pointed that
19 out.

20 MS. JEFFRIES: Thanks, Greg, for
21 clarification. Barmak.

22 MR. NASSIRIAN: Yeah, I also want to
23 support the language, including as a more expansive
24 construct here under N. And then I wanted to raise an
25 issue under O, which is that I know the VA does not

1 render judgment, unlike the Department of Education,
2 about the entire institution. The VA deals with specific
3 programs, so loss of eligibility does not necessarily
4 have to be institutional. It could be programmatic, and
5 it could be due to significant compliance issues. So, I
6 would suggest you somehow need to wordsmith O to clarify
7 that loss of eligibility of any program offered by the
8 institution due to noncompliance could be a trigger for
9 loss of institutional eligibility for a judgment of lack
10 of administrative capability under this section.

11 MS. JEFFRIES: Okay, thanks, Barmak.
12 Brad, you are next.

13 MR. ADAMS: Yes, on O, the reference
14 to significant negative action by a state or federal
15 agency or an accrediting agency. I wanted to confirm,
16 are we talking about a programmatic accreditation? Are
17 we talking about something else? Are we getting down to
18 the programmatic level here?

19 MR. MARTIN: We've not specified that
20 here. We simply say, is not is not subject to a negative
21 action by a state or federal agency. That could be any
22 negative action. I think with respect to a program or
23 the school where we say has not lost eligibility to
24 participate in another federal assistance program due to
25 an administrative action against the school. So, the way

1 it's worded here, I know Barmak had just asked that be
2 that be tightened up. But the way it's worded here, that
3 would refer to an action against this. That would be the
4 loss of eligibility due to an action against the school.

5 MS. JEFFRIES: Okay. Thank you.

6 Barmak.

7 MR. NASSIRIAN: Brad, you shouldn't
8 have asked that question, because this sort of brings me
9 back to Jamie's earlier excellent point. If an
10 institution loses programmatic accreditation of one of
11 its offerings, isn't that a reflection of poor
12 institutional capabilities? I mean, to me, this concept
13 of all or nothing doesn't make sense. To me, it seems
14 like the institution has voluntarily, to the extent that
15 programmatic accreditation is not a mandatory
16 requirement for participation in title IV under most
17 circumstances, the institution has subjected itself to
18 the jurisdiction of an accreditor. That accreditor is
19 finding not insignificant noncompliance. That says
20 something about the administrative capabilities of that
21 institution, if nothing else about their poor judgment
22 in seeking that accreditation in the first place. So, it
23 seems to me like that's a fairly relevant thing, and you
24 really do need to be fairly granular here.

25 MR. MARTIN: Okay, we'll take that

1 suggestion back.

2 MS. JEFFRIES: Okay, thank you. Brad.

3 MR. ADAMS: I think the word
4 significant is helpful here, but to Barmak's point, I
5 mean, if you had an issue with a program that's less
6 than 1 percent of your total students, or maybe it's at
7 one location out of 20. Again, I don't think it would
8 raise the level of significance, so hopefully that will
9 be better defined, but you know I think it should not be
10 at the programmatic level.

11 MS. JEFFRIES: Thank you. Alright.
12 Seeing no additional hands in sections N and O, Greg, do
13 you want to go ahead and take the temperature check?

14 MR. MARTIN: Sure. Thank you.

15 MS. JEFFRIES: Alright. So, this
16 temperature check will be on N and O. Can I please see
17 your thumbs? Okay, I see one thumbs down. Brad, anything
18 additional or new you thought of?

19 MR. ADAMS: Just let me ask the
20 question, are we going to have a definition of
21 aggressive recruiting by March?

22 MR. MARTIN: We will not have final
23 regulations by March. You're right, that there was no
24 consensus reached on that. The Department will provide
25 an NPRM and then there will be comments. I cannot say

1 exactly what the wording of that will be, but there will
2 be a definition of aggressive recruiting there.

3 MS. JEFFRIES: Okay, thank you. So,
4 Greg, that brings us up to section P. You want to take
5 us through however many of these you think make sense?

6 MR. MARTIN: Yeah, sure. I think we
7 need to move down to, if I've got my lettering correctly
8 here, Let's go down to Q where we actually have some
9 changes. Oh, no, that is P. You're right. I should stop.
10 I should quit while I'm ahead. Nothing in P. We are
11 going to Q. Q is not and does not have any principal or
12 affiliate of the institution, as those terms are defined
13 in 2 CFR parts 180 and 3485. This is an addition that we
14 did at the suggestion of negotiators: a former director,
15 officer, executive or principal of an institution whose
16 misconduct or closure resulted in liabilities to the
17 federal government in excess of 5 percent of its title
18 IV HEA program funds. So, I'll open it up for
19 discussion.

20 MS. JEFFRIES: Alright. Thank you,
21 Vanessa. Brad.

22 MR. ADAMS: I'm going to start with,
23 I'm happy to see a threshold, I'll just go ahead and say
24 it, Greg. That's good that we have a defined number
25 here. The concern I have is we need the language to be

1 clear that the person was actually employed by the
2 institution at the time of the misconduct or closure.
3 What if the executive left the institution years before
4 the misconduct or closure occurred? And then the second
5 piece is, I don't think the Department means every
6 director or officer, executive or principal of an
7 institution, but really, they're really looking at here,
8 in my opinion, is those that exercised substantial
9 control over the institution. So, I think this would be
10 necessary [inaudible] the Department's past performance
11 regulations at 666.15 C. So, I can submit my proposed
12 language in the chat to those two points.

13 MR. MARTIN: Okay, thank you.

14 MS. JEFFRIES: Thank you. Jessica.

15 MS. RANUCCI: And I don't necessarily
16 disagree with Brad on principle that there could be
17 lines drawn here, but I really want to push back against
18 the idea that, for example, someone would have had to be
19 employed by a school at the time of closure. I think
20 someone who bails early on a sinking ship is often the
21 person who knows that the ship is sinking. And I think
22 that you know people don't have a right to a job in a
23 title IV program. So, I would just encourage the
24 Department to think about this broadly to make sure that
25 the [inaudible] are effectuated.

1 MS. JEFFRIES: Okay.

2 MR. ADAMS: Sorry, I don't recall the
3 section, but isn't that already addressed somewhere that
4 if a company goes out of, a school goes out of business,
5 isn't the executives forbidden from being an executive
6 at any schools going forward?

7 MS. MORELLI: [Inaudible] if they owe
8 liabilities to the Department. At least currently,
9 that's 174. The past performance provisions of 174.

10 MR. ADAMS: I'll need to go read that
11 [inaudible].

12 MS. JEFFRIES: One second, Barmak.
13 Jamie, you put a question in the chat that I'm not sure
14 you articulated to the Department. So, you may want to
15 get in queue and bring that up. Thanks. Barmak.

16 MR. NASSIRIAN: Yeah, I just wanted to
17 echo Jessica's point and encourage the Department to
18 think expansively about this provision. I mean, you
19 know, sadly, the track record of this Department has not
20 been particularly spectacular over the course of the
21 decades when it comes to preventing massive fraud
22 against students and against the taxpayers of this
23 country. And one of the reasons, obviously, is you don't
24 have any, you know, there are no criminal penalties here
25 that we can apply to folks who do the wrong things. And

1 it seems to me that most of your triggers are set too
2 late in the process to really recover anything. But the
3 one effective thing you can do is stop this sort of
4 group of itinerant fraudsters from setting up shop on
5 their new corporate banners to basically do the same
6 thing over and over again. So I agree with Jessica.
7 There is no entitlement to employment in a title IV
8 participating institution. And if you want to change the
9 institutional behavior, you need to change people's
10 behavior and exclude people that have demonstrated
11 pretty horrific past behavior. So please think broadly
12 because you know the ugly little truth we're all dancing
13 around here is that none of the stuff you're doing here
14 would have stopped most of the most spectacular
15 failures. I think this is one of those things that, if
16 done right, could really make a difference. So, I would
17 encourage you to think very broadly about it. Thank you.

18 MS. JEFFRIES: Thank you, Barmak.
19 Jamie has a question, and I see no hands after that, so
20 perhaps we'll take a temperature check at that point.
21 Jamie.

22 MS. STUDLEY: Well, at your
23 invitation, Cindy, the point I was making there related
24 to an earlier discussion about whether an institution
25 can say, wait, that wasn't significant or sorry, Mr.

1 Secretary, we don't think that's something that should
2 stand for a determination that we're not
3 administratively capable. So, I think to the extent that
4 these things are determined, but then the institution
5 can respond that may address some of those special
6 circumstances that Brad was talking about. Two quick
7 thoughts. I thought when I signed a program
8 participation agreement for an institution, I actually
9 thought that there was criminal liability. Maybe it's
10 not for all the elements of it, but I thought, Barmak,
11 that there was a very high bar. GC can answer us later.
12 It may not be relevant right now. But I thought some of
13 those protections were in place. But difficult to meet a
14 criminal standard or no longer available, there are all
15 sorts of other reasons, but I thought that was one door
16 of the barn that had been at least considered, and there
17 was a lot.

18 MS. MORELLI: Cindy, I'm going to go
19 ahead and answer. Jamie, you're correct that the
20 Department determines either that they're going to take
21 action to deny certification, terminate a school, revoke
22 a participation agreement. The school, based on
23 administrative capability grounds or any other grounds,
24 the school has a right to appeal within their different
25 mechanisms. And even if it's an administrative

1 capability finding in a program review determination, a
2 final determination, the school has a right to appeal
3 that to us. They can bring up any of those other issues
4 in terms of whether it's, you know, material, or all the
5 different things that have been raised that could be
6 raised in the appeal process.

7 MS. JEFFRIES: Thank you, Denise,
8 appreciate it. So, Greg, seeing no further hands. Okay,
9 to go ahead and take the temperature check?

10 MR. MARTIN: Yes.

11 MS. JEFFRIES: Okay. And that is on
12 cue. So, could I please see your thumbs? Okay I see one
13 thumb down. Brad, have you articulated everything you
14 wanted to put out there?

15 MR. ADAMS: I put the language in the
16 chat.

17 MS. JEFFRIES: I see that.

18 MR. ADAMS: Thank you.

19 MS. JEFFRIES: Great. Thank you.

20 Alright, Greg, you want to keep moving here?

21 MR. MARTIN: Yeah, we have 15 minutes
22 until public comment, right? So, let's move on. We have
23 some numbering changes throughout, but the next area of
24 change is in V, as in Victor. And so let's move to the-
25 I may make mistakes sometimes in this lettering

1 sometimes but I do know my NATO phonetic alphabet. That
2 I will not make any mistakes, I don't think. Okay, so
3 here we are with V. This has to do with high school
4 diploma. So, let's look at that. Develops and follows
5 adequate procedures to evaluate the validity of a
6 student's high school diploma if the institution or the
7 Secretary has reason to believe that the high school
8 diploma is not valid or was not obtained from an entity
9 that provides secondary school education. And we have
10 revised the language here to refer consistently to high
11 school diplomas. So, the adequate procedures to evaluate
12 the validity of a high school diploma must include
13 obtaining documentation from the high school that
14 confirms the validity of the high school diploma,
15 including at least one of the following transcripts,
16 written descriptions of course requirements or written
17 in signed statements by principals or executive officers
18 at the high school attesting to the rigor and quality of
19 coursework at the high school. And if the high school is
20 regulated or overseen by a state agency confirming with
21 or receiving documentation from that agency that the
22 high school diploma is recognized or meets requirements
23 established by that agency. Looking at two, a high
24 school diploma is not valid if it is not recognized, or
25 does not meet the requirements established by the

1 appropriate state agency in the state where the high
2 school is located, has been determined to be invalid by
3 the Department, the appropriate state agency in the
4 state the high school is located or through a court
5 proceeding, was obtained from an entity that requires
6 little or no secondary instruction or coursework to
7 obtain a high school diploma, including through a test
8 that does not meet the requirements for a recognized
9 equivalent of a high school diploma under 600.2, or was
10 obtained from an entity that maintains a business
11 relationship or is otherwise affiliated with the
12 eligible institution at which the student is enrolled
13 and is not accredited. So, some things we've done here.
14 We, at the negotiators' suggestion, have replaced
15 education with instruction to clarify the meaning of the
16 provision and specify that it is secondary instruction.
17 Also, at negotiators requests, we have expanded the list
18 to include unaccredited high school diploma providers
19 with which the institution maintains a business
20 relationship in that list of what makes a high school
21 diploma not valid. So, with that, I will open the floor
22 for discussion.

23 MS. JEFFRIES: Okay, thank you very
24 much, I want to make note that Beverly Hogan is
25 returning to the table for minority serving

1 institutions. Welcome back, Beverly. Barmak.

2 MR. NASSIRIAN: So, I kept thinking
3 about this, and it may just be me. But it strikes me
4 that you're attempting to deal with two distinct
5 problems, and that the legitimate solution to one
6 problem becomes a pretty big loophole for the other. The
7 two issues that I suspect the Department is concerned
8 with are a) the possibility that the student has not
9 legitimately graduated. The student attended seemingly
10 like a regular high school or legitimate high school,
11 and there is some doubt as to whether the student
12 actually graduated and has a diploma. The cure to that
13 would typically be a transcript. By the way, a written
14 description of courses is neither here nor there. In
15 registrar circles, the proof of graduation is not the
16 diploma, which is a decorative instrument, but rather
17 the transcript. You make the additional accommodation in
18 case there are extenuating circumstances that are
19 written, signed, statement by the principal, etc., etc.
20 That's cure to suspicions about the student.
21 Unfortunately, that's also a loophole if your second
22 concern comes to pass, which is that the school is a
23 sham because if the school is a sham, they will issue a
24 transcript, they will sign a statement, they'll provide
25 you with whatever you want. They'll go out of their way

1 to convince you that the student graduated, so I would
2 separate the two if I could. Maybe I'm reading it wrong,
3 but I would absolutely separate. Typically, by the way,
4 suspicions about students tend to, you know, we always
5 talk about official transcript. People think it's just
6 like how lawyers talk about null and void, but there are
7 two distinct notions. Transcript describes the
8 formatting of the document. It has to include certain
9 things to be considered the transcript. Official means
10 it hasn't been tampered with. So, typically if there's
11 suspicions about a student, it's because the school has
12 reason on the basis of the initial transcript it
13 received, not the final transcript- at the application
14 point that there's something fishy going on. So, I would
15 separate the two. I would focus on solving the diploma
16 mill problem. You know, you can't have the "out of
17 submission of transcripts" because diploma mills will
18 submit transcripts to you.

19 MS. JEFFRIES: Alright. Thank you,
20 Barmak. Brad, you are up next.

21 MR. ADAMS: So, I'll start with one
22 romanette 1, and I'll come back in for 2. Under one
23 romanette 1, I do think we need to add in language here
24 that if the high school is still open, you'll get either
25 ABC, and I'd like to add a new one under transcript,

1 written description of course, or written statements. I
2 think just getting a copy of your diploma or other
3 official record from that high school should suffice as
4 an option. I submitted that in the chat after our first
5 week session and didn't get a response. Is there a
6 reason why we would not want to get a diploma or other
7 official record as one of the four options under one
8 romanette 1?

9 MS. JEFFRIES: I'm not sure that the
10 Department-.

11 MR. NASSIRIAN: Can I answer that?

12 MS. JEFFRIES: Go ahead.

13 MR. NASSIRIAN: Diplomas, in registrar
14 land, diplomas are not proof of graduation. Transcripts
15 are. Diplomas are given to people so they can hang them
16 on the wall. They're not proof of graduation.

17 MR. MARTIN: If we go back to one, the
18 adequate procedures to evaluate the validity of a high
19 school diploma itself- we're talking about obtaining
20 documentation from the high school to confirm the
21 validity of the of the diploma. So, if the diploma is in
22 question, then the diploma would not validate the
23 diploma. I think that's what we're looking at here. And
24 in these cases these are cases where the institution or
25 Secretary has reason to believe a high school diploma is

1 not valid. So, we're generally not looking here at
2 instances where the school already is in possession of
3 transcripts. In many cases, schools don't routinely
4 require anything beyond students' indication on the
5 FAFSA, that he or she completed a high school education,
6 and we are looking at two things here. I recognize the
7 complexity that you're looking at the student, the
8 possibility of the student being at issue and also the
9 school. So, we've tried to work that into one and two to
10 go back to Barmak's point. Looking in two that a high
11 school diploma is not valid if it doesn't meet the
12 stipulations that we have below there. So, I guess
13 that's how I would describe our effort to make sure that
14 we address both of those both of those concerns.

15 MS. JEFFRIES: Thanks, Greg. Brad.

16 MR. ADAMS: So, just to confirm Greg,
17 so under this, what you just described, the assumption
18 is you already have the diploma and you believe it's not
19 valid. So, because of that, you're doing steps ABC. Is
20 that- I just didn't read it that way. I just want to
21 make sure.

22 MR. MARTIN: I think it could be. I
23 mean, maybe Denise has some comments here. It could also
24 mean that- see and before we had high school completion.
25 The issue that comes in here with diploma, because the

1 school may or may not be in possession of the diploma,
2 it could be in a possession of a diploma which indicates
3 that it's from a less than above board institution,
4 there could be to be no diploma, there could be a
5 student that may have indicated that that they have
6 completed high school, you know, via what's on the
7 FAFSA. And then it could be other conflicting
8 information at the school, which would indicate
9 otherwise it would necessitate the school going out and
10 getting something else. I think what you're asking,
11 Brad, is if that were the case and the school got that
12 diploma, if once in possession of the diploma, it had no
13 reason to believe that there was a problem, could they
14 stop there? Yeah, I think if they had no cause to
15 believe beyond that, if the issue were a completion
16 issue and the student provided the diploma and the
17 school had no reason to question the validity of that, I
18 don't think they would have to go further. But =I'll ask
19 Denise for her take on that.

20 MS. JEFFRIES: Denise, go ahead.

21 MS. MORELLI: Well, I actually was
22 going to ask because I think Anne, Barmak and Anne both
23 said the same thing. So, you're saying that the
24 transcript is what you would be looking at, which is, I
25 think, what we were talking about as backup because the

1 students could self-certify and a lot of schools, they
2 don't, but some schools allow self-certification. So,
3 this is what we're looking at, if we doubt that or the
4 school doubts that, the diploma. So, I just want to make
5 sure I was understanding what Barmak said, that the
6 transcript is really the valid document for completion.
7 Okay. And then, Brad, did Greg clarify what you were
8 talking about? I mean, basically we added on to the
9 provision that was already in the regulation. It was
10 very simplistic before that: we would have the ability
11 to look behind if either the Department or the school
12 didn't think that the diploma was valid, that we would
13 be able to look behind it. So, we wanted to add some
14 more things to clarify what we would be doing to look
15 behind it and what we don't consider valid, which 2 is
16 really getting at. I think it's 2, what Barmak was
17 talking about or what we consider not to be valid
18 diploma situations that we run into for what we would
19 call diploma mills, high school diplomas.

20 MS. JEFFRIES: Brad.

21 MR. ADAMS: Yeah, so I'll just let
22 Greg come back to that, you know, at a later point in
23 time, just confirming that it would only if you've got
24 the diploma and have reason to believe that it's
25 invalid, which I read there with Victor. Then you would

1 do steps ABC. And so I'm good on that. On 2 though, I
2 did want to make a point on 2 romanette 4. Help me
3 understand what a business relationship means in this
4 context. And then, on the accreditation piece, you know,
5 accredited by who? I'm not following, I guess A and B
6 under romanette 4, 2 romanette 4.

7 MR. MARTIN: In the time we have left,
8 I know we're getting down to the wire here, so we're
9 talking about a business we have seen. This is to
10 address situations that we have we have seen, and
11 Denise, obviously more so than I have because she works
12 there in the field, where schools maintain a
13 relationship with an unaccredited, basically a mill
14 where they funnel students from that entity. And then,
15 there's not really a high school education taking place
16 there. It's brief, the tests are minimal. It's just
17 meant to stamp someone's eligibility so they can go on
18 to the school. And in these cases, the post-secondary
19 institution had an actual relationship with that entity
20 to funnel those students in which both benefit from the
21 mill and presumably get some type of payment, or the
22 fact that the school has referred students to it and
23 then the post-secondary entity benefits in that it gets
24 students who wouldn't otherwise have a high school
25 diploma funnel to it through this through this nefarious

1 entity that's sending students over to it. And I'll just
2 say to Denise in that 30 seconds, did I describe that
3 correctly?

4 MS. MORELLI: Yes, you did, and I
5 think number romanette 4 we were trying to address,
6 Barmak, I think you raised it with the business
7 relationship. I think it was critical because we have
8 run into it in the field where they're steering people.
9 And I think you said accredited. We were struggling with
10 it. And if anybody has any additional comments, we would
11 appreciate them. Because we had looked at just saying if
12 there's a business relationship. But I but some of my
13 colleagues believe that there were some legitimate
14 business relationships too, so we added the unaccredited
15 part. So we want to make sure we're covering our
16 concerns, and we've been seeing it a lot where they hook
17 up with some buddy down the street that has a computer
18 test or something, and then they funnel everybody. So, I
19 want to make sure we were we want to make sure we're
20 covering all that.

21 MS. JEFFRIES: Alright. I'm going to
22 defer all the rest of the comments. Debbie right now,
23 you're the only one with your hand up. So, first thing
24 tomorrow morning because we must move to public comment.
25 I do not want to spend much time on questions with this

1 because you have a very full day tomorrow with gainful
2 employment as well. Okay? So, with that, we are going to
3 move to our public comment period. Brady, can you
4 please- Amanda-

5 MS. MARTINEZ: I apologize. Before we,
6 this is on the topic of public comment. I know that
7 we're going to switch into that, but I was hoping, in
8 the spirit of open democracy and just getting in as many
9 public comments as we can, we've been hearing that
10 there's been waiting lists. I know there's a wait list
11 in the past. So, how do we ensure that those on the
12 waitlist are able to also-

13 MS. JEFFRIES: They only get, they,
14 Amanda, they only get called upon if there's extra time,
15 like maybe a scheduled person does not show up or they
16 don't take their full time. If they're not called on
17 when they're on the wait list, then they need to try to
18 reregister the next day. Okay, we must-

19 MS. MARTINEZ: Is it possible for this
20 committee to extend one like one person for two minutes
21 to add so that they can have [interposing] speaking
22 time?

23 MS. JEFFRIES: Amanda, please, we need
24 to move on. We are taking up time from the public
25 commenters. I'd be happy to discuss this. It is

1 published in federal registry from 3:30 to 4:00, and we
2 must adhere to that. Okay. But I'd be happy to have more
3 conversation with you. But at this point, I need to move
4 to public comments. Thank you, though. Brady, who is
5 first?

6 MR. ROBERTS: I just admitted Nathan
7 Arnold, who's here representing the Education Council.

8 MS. JEFFRIES: Okay, welcome, Nathan.
9 He is connecting his audio. And then he's good to go.
10 Welcome, Nathan.

11 MR. ARNOLD: Can you hear me okay?

12 MS. JEFFRIES: Yes, we can. You have
13 three minutes to speak and that starts whenever you're
14 ready.

15 MR. ARNOLD: Hi, there. My name is
16 Nathan Arnold. I'm a senior advisor with Education
17 Council. We work to advance policy that improves
18 outcomes for students, particularly those that have been
19 poorly served by our system of higher education. And
20 before that, I was actually at the Department of
21 Education for about eight years, where I mostly did what
22 you're doing right now, writing regulations governing
23 the student aid programs. I'm here today to alert you to
24 a new, statutorily required risk-based review system to
25 protect GI Bill recipients and to report on this new

1 system with findings and policy recommendations we
2 released a few weeks ago with the American Legion. You
3 can find the report, which has direct applicability to
4 this rulemaking linked from the front page of our
5 website EducationCouncil.com, and there's a five-page
6 summary there if you don't have time to review a full
7 30-page report plus appendices. But in this work, we
8 were able to successfully predict bad outcomes based on
9 public data and in a context that is directly analogous
10 to what the Department is trying to do right here. So,
11 there is direct legal and research support for the
12 policies the Department is trying to achieve with these
13 proposed rules, and there are three clear policy
14 recommendations supported by our work that apply to the
15 rules you're writing. First, on gainful employment, we
16 found that one of the metrics the Department's
17 considering, earnings above a high school graduate, were
18 strongly predictive of harm to students. Schools with
19 fewer students earning above a high school graduate were
20 much more likely to have students making complaints to
21 oversight agencies, much more likely to have complaints
22 directly related to academic quality and much more
23 likely to be subject to a state or federal
24 investigation. So again, there's both legal and
25 empirical support for using the high school earnings

1 threshold as an indicator for gainful employment.

2 Second, on financial responsibility, we found six public
3 metrics that successfully predict whether an institution
4 has sufficient cash on hand, current assets and net
5 worth to withstand an adverse financial event. So, for
6 this reason, we recommend that you add the following six
7 metrics as discretionary triggers for financial
8 responsibility: low completion rate, low completion rate
9 among Pell recipients, high net price, large year to
10 year changes in tuition prices, big swings in year to
11 year enrollment, and high cohort default rates. Finally,
12 we recommend that if an institution hits any
13 discretionary trigger, regardless of whether the
14 Secretary imposes a letter of credit, the Department
15 must require the institution to submit its most recent
16 financial information, including its balance sheet, cash
17 flow statements, and income statement. These schools
18 have demonstrated a sufficient risk that the Department
19 should know how their current financial status is in
20 detail and use that information to determine how likely
21 it is the school could suddenly close. Again, these
22 findings and recommendations can be found linked
23 directly from our website EducationCouncil.com. Thanks
24 for the opportunity to share these recommendations.

25 MS. JEFFRIES: Thank you very much,

1 Nathan, for your comments. We appreciate it. Who do we
2 have up next?

3 MR. ROBERTS: Cindy, I just admitted
4 to Tashani Gaskins, who is a former student at Walden
5 University.

6 MS. JEFFRIES: Great. Thanks, Brady.
7 Tashani, can you hear me?

8 MR. ROBERTS: It looks like she's
9 still joining, so she just has to accept, but she was in
10 the waiting room before. You want me to move on while
11 she gets connected?

12 MS. JEFFRIES: Yes, if you could,
13 please.

14 MR. ROBERTS: I just admitted Marc
15 Jerome, who is the president of Monroe College.

16 MS. JEFFRIES: He's connecting to his
17 audio. Good afternoon, Marc. Welcome to the public
18 comments. Can you hear me okay?

19 MR. JEROME: I hear you fabulous.

20 MS. JEFFRIES: Perfect. You will have
21 three minutes to speak, and that three minutes will
22 start whenever you are ready.

23 MR. JEROME: Ready now.

24 MS. JEFFRIES: Okay. Go ahead.

25 MR. JEROME: Hi, my name is Marc

1 Jerome, I'm the president of Monroe College in the
2 Bronx. Thank you for allowing me to share my perspective
3 today and actually thank you for your work. I was a
4 federal negotiator twice, and I'm actually still
5 recovering from the experience. There are a lot about
6 good policy protecting students and holding institutions
7 accountable, and the Department has repeatedly
8 identified high student debt and low earnings to be a
9 major crisis. I really couldn't agree more. I really
10 believe students should have a reasonable expectation
11 that if they take a student loan, their earnings will be
12 enough to pay the debt and colleges should be held
13 accountable if debt is too high and salaries are too
14 low. Yet that is not happening across higher ed. You,
15 the negotiators, have an opportunity to address the
16 student debt crisis that can be found all over the
17 country, and I believe you can tackle it in three areas.
18 The first is standards of administrative capability. The
19 second is certification, and the third is when you
20 revisit gainful employment. I have three requests for
21 you today. The first, bring more transparency to the
22 student debt crisis by openly and honestly examining the
23 data about the programs that saddle students with the
24 most debt relative to their earnings. The facts in the
25 data actually need some sunlight. Number two, consider

1 how the Department can use the eligibility process to
2 identify and improve programs that have too much debt
3 and earnings that are too low. And three, something very
4 important to me, consider how we can assure that
5 students and their families have relevant information to
6 compare degree programs across institutions and sectors.
7 I believe the Department has the authority to do these
8 things and to protect students and consumers from any
9 program that has too much debt and earnings that are too
10 low. Now, I've been tracking this data for over a decade
11 since my first gainful employment negotiation, and I
12 really believe the policies have not caught up with the
13 data. Whether you look at programmatic debt and earnings
14 or institutional debt and earnings, the problem of high
15 debt and low earnings can be found across all of higher
16 ed. And this should lead you to question the 8 percent
17 rate that you're looking at because huge swathes of
18 higher education wouldn't pass it. And maybe most
19 importantly, to me, some really great programs that have
20 the best earnings and the lowest debt would be closed
21 while some of the worst programs would continue to
22 welcome students. This is not just theoretical for us.

23 MR. WAGNER: Excuse me, Marc, you have
24 30 seconds remaining.

25 MR. JEROME: My institution actually

1 has students that come look at our criminal justice
2 program and Grambling State's criminal justice program.
3 At a programmatic debt level, our program for borrowers
4 has a 9 percent rate and Grambling has a 23 percent
5 rate. The Department and the federal government wouldn't
6 want to close ours and have students go to the other
7 program with high debt and low earnings. It's not just
8 good policy. We have a chance to get this right. It's
9 really important. I thank you for your time.

10 MS. JEFFRIES: Thank you, Marc,
11 appreciate it. Brady.

12 MR. ROBERTS: I'm going to try to
13 Tashani again. Okay, it looks like she's able to join
14 this time. She's just waiting to- there we go. She
15 should be able to hear us now.

16 MS. JEFFRIES: Okay.

17 MR. ROBERTS: And this is Tashani
18 Gaskins representing, she's a former student at Walden
19 University.

20 MS. JEFFRIES: Thank you. Hi Tashani.
21 Can you hear me okay?

22 DR. GASKINS: Yes, I can. Can you hear
23 me?

24 MS. JEFFRIES: Yes, we can. You will
25 have three minutes to speak Tashani, and whenever you're

1 ready, your three minutes will start.

2 DR. GASKINS: Okay, so as you guys
3 mentioned, my name is Dr. Tashani Gaskins and I'm from
4 Raleigh, North Carolina. Thank you for allowing me to
5 speak today at the negotiated rulemaking session. My
6 understanding is that you're interested in how schools
7 who take federal loan money are being responsible to the
8 students who take on that debt. And I think it's
9 important for you all to hear from the students
10 directly. So, I do welcome the opportunity to speak with
11 you today. So, in 2019, I graduated with a Doctorate of
12 Business Administration degree from Walden University,
13 which is an online for-profit college. I had to borrow
14 almost 100,000 dollars in order to from the federal
15 government in order to go to Walden. I also have private
16 loan debt, so, you know, earning a doctorate degree was
17 important to me, so I completely prepared to borrow the
18 money and to do the coursework. However, Walden misled
19 me, and I ended up borrowing almost as twice as much as
20 I needed debt in order to finish at Walden. So, what
21 happened was when Walden recruited students, it
22 described a program where we had coursework and a
23 dissertation process that was supposed to be completed
24 over five course periods with 20 credit hours. I had no
25 problem getting through the coursework. However, the

1 problem came when I went through the dissertation
2 process. The full program was supposed to cost about
3 \$60,000. I did commit again to borrow that money and to
4 pay tuition, and I was prepared to do the work. But
5 Walden kept me and many students like me in the program
6 much longer than it represented, and I ended up in debt
7 much deeper than I planned. Again, no problem completing
8 the coursework, but the dissertation process was dragged
9 out. It's much longer to get feedback than was promised,
10 and because of the delays, it took me three times as
11 long and three times as many credits to finish my
12 dissertation. And of course, I was charged by Walden for
13 all that extra time and that's something they never told
14 me or other students when we enrolled. From what I could
15 see, most of the students in the program were older
16 students, students of color, and women. Once I enrolled
17 and the process was dragged out, I had no way out. I had
18 to continue to keep paying to finish the process or all
19 the time and money that I already spent had been wasted
20 would be wasted. This has been going on for years, and I
21 think students like myself need the Department of
22 Education to watch closely for high schools like Walden
23 run up the cost for students. There are many other
24 former students that I've talked with who have a huge
25 amount of debt to the Department, and that this is not

1 what we signed up for, but it is heartening to hear that
2 there's a possibility for rules to change and protect
3 future students.

4 MR. WAGNER: Tashani, you have 30
5 seconds remaining.

6 DR. GASKINS: Sure. So again, it's
7 great that you know there's a possibility that this
8 might change for future students. So, my question to you
9 is, what are you going to do about this? And that's all
10 I have for today.

11 MS. JEFFRIES: Brady, who do we have
12 next?

13 MR. ROBERTS: Thank you for the
14 comment. I'm now admitting Ella Azoulay representing
15 Generation Progress.

16 MS. AZOULAY: Hello.

17 MS. JEFFRIES: Hi, Ella, can you hear
18 me alright?

19 MS. AZOULAY: Yes, sorry, I just think
20 there's an echo. Hello. Okay, can you hear me?

21 MS. JEFFRIES: Yes, we can. So, Ella,
22 thanks for joining us today. You will have three minutes
23 to speak and that begins whenever you're ready.

24 MS. AZOULAY: Thank you. Thanks for
25 the opportunity to comment today. I'm speaking on behalf

1 of Generation Progress, and I'll be sharing the stories
2 of some of the thousands of student loan borrowers we
3 hear from who have been misled or scammed by predatory
4 for-profit institutions. I want to make it clear, these
5 student experiences are the rule and not the exception.
6 Any policy process that aims to be equitable must center
7 the experiences of those who are most harmed by existing
8 structures. In this case, we see Black and brown
9 borrowers and students from low income backgrounds being
10 disproportionately targeted by low quality for-profit
11 institutions. The Education Department must instate a
12 strong, gainful employment rule. Some colleges care more
13 about their profits than the quality of education
14 they're providing for students, and the Department must
15 hold those schools accountable. Due to the current lack
16 of accountability, students are taking on debts they are
17 unable to repay, and graduates are not qualified for
18 jobs in their fields. Please remember the following
19 student stories as you discuss the gainful employment
20 rule tomorrow. Students have granted permission for
21 their names and stories to be shared. A successfully
22 implemented gainful employment rule would have prevented
23 Orinda F from Florida from suffering at the hands of the
24 Art Institute. Her story would have ended entirely
25 differently. Orinda owes around 70,000 dollars in

1 student loans, and her loans are in forbearance due to
2 her autoimmune disease and limited income. Orinda, a
3 parent from a low-income background, wanted to be quote
4 "the first Hispanic person in my family to get a higher
5 degree. I wanted to better my life and do something for
6 a career I've always dreamed of." But instead, she was
7 targeted by a predatory institution with low quality
8 programs. She says, "My experience at the art institute
9 was so scarring that I burned out and had to stop. Loans
10 were piling up while I felt I hadn't earned enough.
11 Their work assistance consisted of sending Craigslist or
12 other links instead of the help they said they would
13 provide me. I have a 20 something percent interest rate
14 on a car because of my student loans. I can barely pay
15 for my car health insurance and what it takes to keep my
16 autoimmune disease in check. If I paid those student
17 loans, I wouldn't have any money for any other things.
18 We've been fighting for years to get our loans
19 dismissed, like what's happened for other schools, but
20 that went down to no avail. I would like to be able to
21 go back to a reputable university to get a higher
22 education, but I can't keep piling on debt." Another
23 borrower, Christina H. from Pennsylvania, is a first-
24 generation student and parent who attended Ashford
25 University and owes 160,000 dollars in student loans.

1 Christina pursued a degree in mental health so that she
2 could help others, and she's now a school counselor. As
3 a first-generation student, she was unfamiliar with the
4 differences between nonprofit and for-profit schools.
5 She was a stay at home mom, working overnights to
6 support her family while attending school full-time so
7 she could live the American dream. Christina says, "My
8 debt to income ratio is so high that I'm not able to get
9 a decent credit card, car loan, or if I wanted to leave
10 my marriage, I could not because of that debt to income
11 ratio. That debt will hang over my head for the rest of
12 my life."

13 MR. WAGNER: Excuse me, Ella, you have
14 30 seconds remaining.

15 MS. AZOULAY: That's okay because I'm
16 all done. Thank you so much for your time.

17 MS. JEFFRIES: Thank you very much,
18 and we do appreciate the use of first names only. We
19 just don't want people to be personally identifiable if
20 they're not present. So, we do appreciate the fact you
21 use the first name only. Have a great day.

22 MS. AZOULAY: Thanks, you too.

23 MS. JEFFRIES: Who's next, Brady?

24 MR. ROBERTS: Cindy, I just admitted
25 Sergio Solorza, who is a former University of Phoenix

1 student.

2 MS. JEFFRIES: Okay. Hello, Sergio.

3 How are you today?

4 MR. SOLORZA: Good, how about
5 yourself?

6 MS. JEFFRIES: Just wonderful. Thanks
7 for joining us. You have 30 minutes to address the
8 committee with your public comments and that three
9 minutes- did I say 30?

10 MR. SOLORZA: Yes, 30.

11 MS. JEFFRIES: I meant three. I got 30
12 on the mind. You got three minutes. I'm sorry. And that
13 will start whenever you're ready to begin.

14 MR. SOLORZA: I'm ready already
15 [inaudible].

16 MS. JEFFRIES: Alright, go for it.

17 MR. SOLORZA: Hello, my name is Sergio
18 Solorza, and I'm here today to speak about my experience
19 as a student of the University of Phoenix MAOM Program,
20 or Master of Arts in Organizational Management Program.
21 My experience to enroll in this school was much like the
22 other stories I'm sure you've heard. The school's
23 financial counselors were quick to offer loans with the
24 promise of finding gainful employment after graduation.
25 Well, it never happened. They lied about their

1 employment rates and promised me a career that could
2 never be possible with their name on my diploma. After
3 several years, I found out that the University of
4 Phoenix actually discontinued their master's degree
5 program I was enrolled in. When I called to inquire as
6 to why, all they would say was times had changed without
7 further explanation, probably because it didn't work.
8 I've tried to apply to jobs and use my degree to start
9 my degree, my career, I'm sorry, like you're supposed to
10 do after college. But employers never took it seriously.
11 All they knew was that the University of Phoenix had a
12 bad reputation, especially when a lot of military
13 students from my area near Fort Bliss Army base in Texas
14 had also complained of being defrauded by the school. My
15 degree has only harmed my prospects of employment, and
16 my debt makes it almost impossible to move forward with
17 my life. I am currently retired and only receiving
18 Social Security while living and taking care of my 92-
19 year-old mother. I'm renting my house that I can't
20 afford to live in because the mortgage payment is too
21 high and I am stuck with over 70,000 dollars of debt.
22 I've tried to refinance my home, only for there to be
23 red flags all over my credit check because of the mess
24 it involved the student loan. It feels criminal that I
25 have to pay for a degree that doesn't exist, and it's

1 not respected in any way. I have been turned down for a
2 government contractor jobs because of my extensive
3 student loan debt. The University of Phoenix has forced
4 me to put parts of my life on hold, the exact opposite
5 of why I had signed up in the first place. I need a way
6 out, and I am not alone. The Department of Education has
7 an opportunity to right the wrongs this school has done
8 to me and thousands of students like me. We've all
9 suffered at the hands of the [inaudible] college, and
10 it's just not right. That's it.

11 MS. JEFFRIES: Sergio, thank you very
12 much for sharing with the committee. Brady, who is next,
13 please?

14 MR. ROBERTS: I am admitting Adnan
15 Medic, who's representing themselves. Looks like their
16 camera is not working.

17 MS. JEFFRIES: Adnan, can you hear me?
18 Adnan, can you hear me? Brady, do you want to admit
19 someone else and work with Adnan on that connection?

20 MR. ROBERTS: I'll message them. I
21 just admitted Emily Escobar, who's here representing the
22 United State of Women.

23 MS. JEFFRIES: Emily, are you there?

24 MS. ESCOBAR: Yes, I'm here.

25 MS. JEFFRIES: Okay. I don't know if

1 you have video capability or if you feel like turning it
2 on, you're more than welcome to do that. Otherwise, you
3 have three minutes for your public comment and that will
4 start whenever you're ready.

5 MS. ESCOBAR: Okay, thank you for the
6 opportunity to comment. I'm speaking today on behalf of
7 the United State of Women, an initiative of Civic Nation
8 which aims to create a world in which women and people
9 of all marginalized genders can thrive. I'd like to
10 share the stories of student loan borrowers who fell
11 prey to predatory bad actors and are now in a financial
12 hole without a decent paying job, without a quality
13 degree, with no way out. The students gave me permission
14 to share their names and stories. Heather, from
15 Washington, is a multiracial Latina LGBTQ student loan
16 borrower from a low-income background who attended
17 Argosy University until 2009. She says, "I thought I'd
18 graduated and then found out after they had gone
19 bankrupt that they withdrew me and did not notify me, so
20 my degree is useless." Interest accruing over the years
21 has caused her student loan balance to balloon from
22 140,000 to around 283,000 dollars. She is struggling to
23 afford payments. Heather says, "I think about my future
24 daily. What if I get sick? What if I injure myself? I
25 can't afford healthcare and I work on my feet as a

1 server. If I get hurt, I don't get paid and there is no
2 backup plan for restaurant people. If I'm paying off my
3 debt for the next 30 years, I'll be in my seventies when
4 they're paid off. No one should be in the position that
5 I am in. I'm one of many that was taken advantage of by
6 a for-profit college. We were kids brushing our
7 adulthood [phonetic]. We were not prepared to take on or
8 understand how these colleges were going to take
9 advantage of us. I want to get on a bullhorn and warn
10 everyone to stay away from those types of colleges."
11 Heather's story is a perfect example of why for-profit
12 colleges must be regulated. We need to ensure they're
13 able to give their students the education needed to
14 succeed in their field and have a fighting chance of
15 paying off their loans. No one should be stuck in
16 Heather's position. Ellie is low-income first-generation
17 student who graduated from the Art Institute of
18 Pittsburgh. Ellie now owes \$130,000 in student loans and
19 is struggling to afford payments. The predatory behavior
20 by the Art Institute has had a monumental impact on
21 Ellie and changed the course of her life. She says,
22 "Because of my debt, I cannot afford to move away from
23 my home and be independent. Because of where I currently
24 live, I'm not able to get high-speed internet that would
25 allow me to telecommute for a better paying job or to

1 work from home and minimize my exposure to COVID 19. My
2 student loans cost so much each month. There is no
3 possible way I could afford to live, even if I cut all
4 possible corners financially up to, and including, not
5 eating and not taking necessary medication every day. If
6 I stopped paying, my cosigner will suffer the
7 consequences." To prevent future students from falling
8 into the same trap. I urge the Department to pass the
9 strong gainful employment rule. Thank you for your time.

10 MS. JEFFRIES: Thank you very much,
11 Emily. We appreciate it. Brady, who do we have next?

12 MR. ROBERTS: I'm admitting the last
13 person in our waiting room right now, Alphi Coleman,
14 representing themselves.

15 MS. JEFFRIES: Okay. Alphi, can you
16 hear me?

17 MS. COLEMAN: I can. Can you hear me?

18 MS. JEFFRIES: Yes, thank you. And we
19 see you as well. Welcome.

20 MS. COLEMAN: Perfect. Hi, how are
21 you?

22 MS. JEFFRIES: Good, good. Alphi, you
23 will have three minutes to address the committee this
24 afternoon, and that three minutes starts whenever you
25 want to begin.

1 MS. COLEMAN: Okay, I am ready to
2 begin.

3 MS. JEFFRIES: Okay. Go right ahead.

4 MS. COLEMAN: Good afternoon. My name
5 is Alphi Black, and I am an Army veteran who used my GI
6 Bill to attend the University of Phoenix. I graduated in
7 2018, but this did not provide me the fulfillment and
8 access the university promised. I wanted to share my
9 story because not enough people are comfortable with
10 speaking out. I am lucky to be self-employed, not
11 because of my University of Phoenix degree, but despite
12 my degree. Not a single employer has valued my
13 University of Phoenix education. I even had an
14 interviewer laugh in my face when I brought up the fact
15 that I went to that school. In fact, I took University
16 of Phoenix off my resume because I showed that I got
17 more responses. When I first started school, I was
18 working with the Department of Defense while also
19 serving as a reservist. The DOD kept telling me that I
20 needed to get my degree to move up. University of
21 Phoenix seemed to be reputable, but they were also
22 authorized to recruit at my DOD facility, and they had
23 recruiters there on a regular basis. They even carried
24 around military coins in order to give the impression
25 that they were supported by the DOD. I later heard that

1 the school got in a lot of trouble for that, but at the
2 time I didn't know that it was not authorized. I felt
3 pressured to enroll from University of Phoenix,
4 recruiters who told me that I needed to enroll quickly
5 or I'd miss out. So, I signed up right away. But when I
6 arrived, I found out the classes started every week. I
7 was- they also claimed that their alumni went on to be
8 executives for companies like Microsoft and that they
9 had partnerships with government agencies and AT&T. I
10 never saw those or any other job placement services. I
11 went I went in thinking that I would do well and
12 flourish because of what the recruiter said to me. But
13 once they got me in, the school constantly changed the
14 rules. My tuition was not locked in as it was promised.
15 They kept adjusting my program requirements, and I had
16 to travel to multiple campuses in order to meet those
17 new requirements. They also claimed that I would finish
18 in two years and that my GI Bill would cover every cost
19 that I had. That also turned out to be a lie. Phoenix
20 was constantly canceling required courses, which forced
21 me to then take involuntary breaks when classes that I
22 needed weren't available. During one break-

23 MR. WAGNER: Excuse me, Alphi, you
24 have 30 seconds remaining.

25 MS. COLEMAN: Okay. During one break,

1 I tried to transfer it to another college, and they told
2 me that my credits were subpar and would not transfer.
3 These breaks prolonged the time and it took me more than
4 two years to finish my degree, and I exhausted my GI
5 bill and I am nearly \$90,000 in debt. Phoenix does not
6 treat its students right. I was aggressively recruited,
7 lied to about the length and the cost of my program,
8 promised career services that were nonexistent. I hope
9 the Department of Education will make sure that schools
10 like this, like University of Phoenix, cannot continue
11 to lie to their students and other veterans. Thank you
12 for your time.

13 MS. JEFFRIES: Thank you very much,
14 Alphi. You have a great day.

15 MS. COLEMAN: You, too.

16 MS. JEFFRIES: Okay, so that we have
17 now gone through, we heard from everyone that logged
18 into the meeting, including wait list people. So, I'd
19 like to take this couple of minutes and circle back to
20 you, Amanda, with your request and your concern. I do
21 want to remind everyone that people will have another
22 opportunity to comment on the NPRM when, that will have
23 a public comment period once the NPRM is published, so
24 that is an additional opportunity for public comment.
25 So, this is not the only forum for that public comment.

1 Also, just I'd like to share with you that we are
2 already providing more public comment time than
3 previously has been done. In prior negotiated
4 rulemaking, up to the 2021/22 session that took place
5 just before this, they typically only had three days of
6 public comment in a week. Now we're doing the full five
7 days and for a full half hour, so we do need to balance
8 the public comment with time for the committee to
9 discuss the proposals. And we'd like to let you know the
10 members know of the public that you can also contact the
11 negotiators themselves to provide input. So, I wanted to
12 share those things with you that we have been able to
13 provide more time for public comment than has been
14 allowed in the past. The virtual environment has enabled
15 that. And as I stated, we went through everyone who
16 registered that logged into the meeting, as well as the
17 waitlist people who logged into the meeting. So, I don't
18 know if that helps address your concerns, Amanda.

19 MS. MARTINEZ: Yes and no. I think
20 that yes, while given we have an opportunity in an
21 online environment to open and expand public comment,
22 and it's kind of opened up this process for the public
23 in great [inaudible], potentially this could be actually
24 the standard. This should have been the standard
25 previously, and due to the chain of opportunity the

1 pandemic has now created, such a great standard. We
2 should try to expand that process and expand open public
3 comment. I guess my question here is, while the examples
4 you've provided are additional examples of where the
5 public can input their story and input their opinions, I
6 think it's important as we are deliberating in real-time
7 that we hear stories. And yes, while you know each of us
8 can bring up stories, there's nothing like hearing
9 specifically from people who are impacted by the
10 decisions we are making. So, and the decision is in
11 real-time versus when the NPRM comes out, the decisions
12 and deliberations have already been made. So how is that
13 really being able to truly input in the process coming
14 after the fact? So, my question really is to the
15 Education Department, is there you know, and maybe the
16 best way to ask this question to and maybe we can have a
17 discussion tomorrow morning. I don't think it's harmful
18 to the discussion to potentially ask if there is a
19 waiting list, maybe one or two people, if we're willing
20 to be on here for three minutes more, 4:03, like 4:03 as
21 we are now, or 4:10 just to hear those additional
22 people. Maybe there are two people on the wait list. I
23 don't think that's harmful for our deliberations, and I
24 would like to hear whether the Education Department
25 would allow the committee to make that decision. And

1 maybe we can have a discussion about it tomorrow morning
2 if you would support something of that nature. But if
3 the ideal is that we stick to this very strict standard
4 and you already think that there's enough public comment
5 and there's already the rules in place, I can understand
6 that. I'm just asking an appeal for those on the wait
7 list.

8 MS. JEFFRIES: I will speak to that,
9 Amanda. As I stated today, and I think that we've been
10 consistent in stating this, we have been getting to the
11 people on the wait list that have logged in. Okay? We
12 will consult with the Department. FMCS sets the agenda.
13 We but we have to abide by what is published in the
14 public in the Federal Registry, as well as what is
15 published on the website as far as when these things
16 take place. But nevertheless, I will consult with them,
17 and I will give you a response tomorrow morning. We
18 unfortunately, the schedule is not going to allow for
19 another discussion on this in the morning. But we will
20 take it under advisement this evening with the
21 Department and give you a response in the morning. Okay?
22 So, with that, like I said, we can wrap up quickly in
23 the morning on the administrative capabilities. You all
24 are doing a great job moving through these issue papers.
25 And then we will jump immediately into what will be most

1 likely a robust discussion on gainful employment. And
2 that is the only issue paper that is scheduled at this
3 point for all day tomorrow. So, rest up. Enjoy your
4 evening and we will see you in the morning.

1
2 **Department of Education, Office of Postsecondary Education**
3 **Zoom Chat Transcript**
4 **Institutional and Programmatic Eligibility Committee.**
5 **Session 2, Day 1, Afternoon, February 14, 2022**
6

7 From Johnson (P) Legal Aid to Everyone:

8 I agree with David on the usefulness of a caucus.

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

10 +1 to the usefulness of an ATB caucus as well

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

13 michael voted no, so I will let him come back to the
14 committee

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

17 I echo David's concerns here

18 From Anne Kress (P) Comm Colleges to Everyone:

19 The two year colleges would ask to be part of this
20 work group, @David and Dept.

21 From Mike Lanouette (A) Proprietary Institutions to
22 Everyone:

23 Potential revision to the 1% language,

24 From Anne Kress (P) Comm Colleges to Everyone:

25 I'm coming back in for CCs and replacing Will Durden.

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

1 "The State agrees that the total number of students
2 that enroll during the initial period will total no more
3 than 5 percent of enrollment at each institution
4 participating in the State process or 50 students,
5 whichever is higher."

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

7 I will be coming back for state agencies.

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

10 I am also coming back to the table

11 From Ashley Schofield (A) - MSIs to Everyone:

12 I am at the table for MSIs replacing Beverly Hogan.

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

14 I'll be at the table for legal aids

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

16 I would echo Jessica's comments about the importance
17 of calling out the grant/loan distinction, in particular.
18 The blurring of that critical line is a source of abuse.

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

20 +1 to Amanda's and Jessica's point that stds of admin
21 capability should include "clear and accurate info" that
22 makes a distinction between grants and loans and makes it
23 clear to students that loans have to be repaid.

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

26 +1 Amanda's point.

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

29 +1 to Amanda and Jessica's point

1 From Ashley Schofield (A) - MSIs to Everyone:

2 +1 to Amanda's point.

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

4 The proposed language Jessica referenced would have
5 (1) read as follows: The source and amount of each type of
6 aid offered, the nature of the aid and whether it must be
7 earned or repaid, and instructions and deadlines for
8 accepting, declining, or adjusting award amounts;

9 From Anne Kress (P) Comm Colleges to Everyone:

10 +1 to Sam

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

12 In response to Sam's point, many award letters and
13 financial aid packages blur the distinction between grants
14 and loans, and sometimes don't even use the word "loan" to
15 refer to loans: [https://www.uaspire.org/News-](https://www.uaspire.org/News-Events/uAspire-and-New-America-Release-Decoding-the-Cost)
16 [Events/uAspire-and-New-America-Release-Decoding-the-Cost](https://www.uaspire.org/News-Events/uAspire-and-New-America-Release-Decoding-the-Cost)

17 From Anne Kress (P) Comm Colleges to Everyone:

18 Rather than adding on to disclosures—I'd strongly
19 suggest user testing existing disclosure templates to
20 ensure they are designed for the intended audience vs.
21 higher ed professionals.

22 From Jamiene Studley to Everyone:

23 +1 to Anne's suggestion

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

25 Consumer testing is great, but it isn't either/or if
26 the disclosure templates aren't required.

27 From Adam Welle, P -- State AGs to Everyone:

28 Yael Shavit will be coming in for state AGs

29 From Jamiene Studley to Everyone:

1 True, Debbie, not either/or.

2 From Sam Veeder, (P) FA Administrators to Everyone:

3 +1 to Anne's suggestion

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

5 I do not see this as adding onto disclosures. Anyone
6 using the College Financing Plan would not need to do
7 anything more.

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

10 +1 Amanda's earlier point, +1 Yael's point here.

11 From Jamiene Studley to Everyone:

12 can we see the revised text?

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

14 Data request for the share of institutions that use
15 the College Financing Plan

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

17 Ideally by sector

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

19 In section 685.304, there is language regarding what
20 is needed when conducting entrance counseling for
21 borrowers. Perhaps a reference to a portion of this or the
22 pulling of this language may be helpful to address concerns
23 were expressed regarding the financial aid counseling.

24 From Anne Kress (P) Comm Colleges to Everyone:

25 +1 Barmak

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

28 +1 Barmak

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

3 +1 Barmak

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

5 Can we take down the redline now so we can see the
6 speakers/group?

7 From Jamienne Studley to Everyone:

8 +1 Barmak

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

10 +1 Anne

11 From Jamienne Studley to Everyone:

12 respectfully suggest we separate (i) and (J) -- it's
13 confusing to toggle between the two diff topics

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

16 I previously submitted wording to the Department that
17 I will drop in the chat. I think we should delete
18 subparagraphs (1) through (4) and rewrite subsection (i) to
19 state:

20

21 Provides adequate career services to eligible students
22 who receive Title IV, HEA program assistance consistent
23 with how the institution advertises or describes its career
24 services.

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

27 Laura Rasar King will take the chair to make a comment
28 on item (i)

29 From Laura Rasar King (A) Accrediting Agencies to

1 Everyone:

2 For Accrediting Agencies

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

5 +1 Jamienne

6 From Jamienne Studley to Everyone:

7 Laura Rasor King will step in to contribute to this
8 item

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

10 +1 Carolyn

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

13 +1 Carolyn

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

15 +1 Carolyn

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

18 Provides students with accessible clinical or
19 externship opportunities under the circumstances related to
20 and required for completion of the credential or licensure
21 in a recognized occupation within 45 days of the completion
22 of required coursework.

23 From Jamienne Studley to Everyone:

24 Brad's "under the circumstances" point could/should be
25 handled under federal waiver provisions like the COVID
26 emergency or a local FEMA emergency condition, not school-
27 determined

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

1 Suggest j should include misrepresentation language,
2 i.e., "as the school advertised"...

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

5 +1 Jamie

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

8 668.16(k) - suggest changing language from "Disburses
9 funds to students in a timely manner consistent with
10 students' needs as required in 34 CFR 668.164" to
11 "Disburses funds to students in a timely manner consistent
12 with the requirements in 34 CFR 668.164" I am unsure how
13 "consistent with students' needs" relates to 668.164.

14 From Sam Veeder, (P) FA Administrators to Everyone:

15 +1 Kelli

16 From Anne Kress (P) Comm Colleges to Everyone:

17 +1 Kelli

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

19 +1 Kelli

20 From Jamienne Studley to Everyone:

21 +1 to Kelli re dropping the needs reference.

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

23 Maybe it should say "instances" instead of "high rate"
24 based on Greg's response

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

27 +1 to Kelli

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

1 +1 to Kelli

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

4 +1 Jamienne

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

6 Adam is coming back for State AGs

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

9 668.16(k) - As a follow-up based on the conversation
10 we had with regard to student needs being in addition,
11 would suggest the following, "Disburses funds to students
12 in a timely manner consistent with the requirements in 34
13 CFR 668.164 and in consideration of students' needs."

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

16 Emmanuel will be coming to the table to ask a
17 question.

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

20 +1 Debbie on point that it is hard to review a rule
21 that has not been defined.

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

24 I endorse Jamie's very thoughtful analysis of the
25 rationale here: "if you can't manage to ensure that at
26 least half of your institution's programs pass, you lack
27 the requisite sophistication to run any programs"

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

29 +1 to Jamie/Barmak

1 From Adam Welle, P -- State AGs to Everyone:

2 +1 to Jamie and Barmak's comments

3 From Ashley Schofield (A) - MSIs to Everyone:

4 +1 Jaime/Barmack's comments

5 From Anne Kress (P) Comm Colleges to Everyone:

6 +1 Jaime

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

8 Oops, Jamie

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

11 Does not engage in substantial misrepresentations as
12 defined in subpart F. delete reference to aggressive
13 recruitment.

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

15 To Brad's point, the Affordability and Student Loans
16 neg reg committee did not reach consensus on the borrower
17 defense language that included aggressive recruitment;
18 however, the Department did say that they would agree to
19 honor the language as if it did reach consensus.

20 From Adam Welle, P -- State AGs to Everyone:

21 +1 to Carolyn

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

23 +1 to Carolyn

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

26 +1 Carolyn re: "including" language and the addition
27 of 'o'

28 From Jamiene Studley (P) Accrediting agencies to

1 Everyone:

2 This would leave to the Secretary whether the action
3 is significant in terms of what it means for the
4 institution's admin capacity

5 From Jamienne Studley (P) Accrediting agencies to
6 Everyone:

7 Greg: what is the process for an institution to rebut
8 if the Sec determines it is not administratively capable?

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

11 (3) A former director, officer, executive, or
12 principal of an institution who exercised substantial
13 control over the institution, was employed by the
14 institution at the time the misconduct or closure occurred,
15 whose misconduct or closure resulted in liabilities to the
16 federal government in excess of 5 percent of its title IV,
17 HEA program funds and those liabilities remain outstanding.

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

19 Suggested language for 668.16(m): For an institution
20 that offers gainful employment programs subject to the
21 requirements in subpart Q of this part, receives at least
22 half of its title IV revenue in its eligible programs from
23 such programs that are "passing" under subpart Q, or has at
24 least half of its regular enrolled students, who are
25 enrolled in such eligible programs, enrolled in programs
26 that are "passing" under subpart Q.

27 From Beverly Hogan Primary/MSI to Everyone:

28 I am returning to the table.

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

31 under 1 romanette i - I would like to add in the words
32 if the high school is open and then add in a new subsection

1 A that states "(A) A copy of the diploma or other official
2 record confirming that the high school conferred a diploma
3 to the student" as a valid document a school can obtain.

4 From Beverly Hogan Primary/MSI to Everyone:

5 +1 to Barmak's comment about diploma

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

8 +1 to Barmak's comment about diplomas

9 From Anne Kress (P) Comm Colleges to Everyone:

10 +1 Barmak—the diploma is decorative, not demonstrative
11 of college completion

12 From Beverly Hogan Primary/MSI to Everyone:

13 You are correct, Barmak!

14 From Beverly Hogan Primary/MSI to Everyone:

15 Clear the noise

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

18 Was "completion," the term the Dept used in the first
19 place, the better term v diploma?

20 From Anne Kress (P) Comm Colleges to Everyone:

21 +1 Jamie

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

23 Is the Department responsible for determining whether
24 or not a high school diploma is valid in all of
25 668.16(v) (2)?

26 From Anne Kress (P) Comm Colleges to Everyone:

27 Think "completion" is the accurate term here, and this
28 is validated by the HS transcript, most frequently.

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

3 +1 Jamie and Anne on "completion" being the accurate
4 term

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

7 does business relationship mean financial
8 relationship?

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

11 Yes, B is needed for A

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

13 I will put my comment in the chat. It is not clear to
14 me how one would confirm the validity of a diploma if the
15 high school has closed.

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

18 +1 to Debbie. I think we need to add if the high
19 school is open to 1 romanette 1

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

22 In addition, I believe the Department took comment
23 between the time it announced the neg reg and the time it
24 developed its proposals that are before us.