DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 3, DAY 3, MORNING

March 16, 2022

On the 16th day of March, 2022, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. JEFFRIES: Good morning. I'm Commissioner Cindy Jeffries from FMCS and I will be facilitating this morning's discussions and process. I'd like to welcome everyone back. Our esteemed negotiators, the Department, the advocate or the, now I'm losing my train of thought ,the advisers. And with that, I'd like to jump right into roll call this morning and then we'll review the agenda, and we'll get moving. So, I'm just going to go down the list here. For accrediting agencies as primary, we have Jamie Studley.

MS. STUDLEY: Yes. It's dawn and it's good to be with you.

MS. JEFFRIES: Wonderful. And alternate Dr. Laura Rasar King.

DR. KING: Good morning.

MS. JEFFRIES: Good morning. For civil rights organizations and consumer advocacy organizations, we have Carolyn Fast as primary.

MS. FAST: Good morning.

MS. JEFFRIES: Morning. And Jaylon Herbin as alternate.

MR. HERBIN: Good morning.

MS. JEFFRIES: Good morning. Financial aid administrators at postsecondary institutions, we have Samantha Veeder as primary.

MS. VEEDER: Good morning, everybody.

MS. JEFFRIES: Good morning. And David Peterson as the alternate.

MR. PETERSON: Good morning, everyone.

MS. JEFFRIES: Good morning. Four-your public institutions of higher education, Marvin Smith as primary.

MR. SMITH: Good morning.

MS. JEFFRIES: Morning. And Deborah Stanley as alternate.

MS. STANLEY: Morning.

MS. JEFFRIES: Morning. Legal assistance organizations that represent students and/or borrowers, primary is Johnson Tyler.

MR. TYLER: Morning.

MS. JEFFRIES: And alternate is Jessica Ranucci.

MS. RANUCCI: Hi, everybody.

MS. JEFFRIES: Good morning to both of you. Minority serving institutions, primary Dr. Beverly Hogan, who is not with us today. She will not be with us all day. And Ms. Ashley Schofield is the alternate who will be with us part of the day. Correct Ashley? Okay. Welcome. Private nonprofit institutions of higher education, Kelli Perry as primary.

MS. PERRY: Morning.

MS. JEFFRIES: Morning. And Emmanual Guillory as alternate.

MR. GUILLORY: Morning, everyone.

MS. JEFFRIES: Morning. Proprietary institutions of higher education, primary Bradley Adams.

MR. ADAMS: Good morning.

MS. JEFFRIES: Morning. And alternate, Michael Lanouette.

DR. LANOUETTE: Good morning.

MS. JEFFRIES: Morning. State attorneys general, Adam Welle primary.

MR. WELLE: Good morning.

MS. JEFFRIES: Morning. And Yael Shavit alternate.

MS. SHAVIT: Good morning.

MS. JEFFRIES: Good morning. State higher education executive officers state authorizing agencies and/or state regulators of institutions of higher education and/or loan servicers, primary Debbie Cochrane.

MS. COCHRANE: Good morning.

MS. JEFFRIES: Morning. Alternate, David Socolow.

MR. SOCOLOW: Good morning.

MS. JEFFRIES: Good morning. Students and student loan borrowers, primary Ernest Ezeugo.

MR. EZEUGO: Morning, everyone.

MS. JEFFRIES: Morning. Alternate, Carney King. Doesn't appear as Carney has joined us yet. Two-year public institutions of higher education, primary Dr. Anne Kress.

DR. KRESS: Good morning.

MS. JEFFRIES: Good morning. And alternate, William Durden.

MR. DURDEN: Good morning.

MS. JEFFRIES: Good morning. U.S. military service members, veterans or groups representing them, primary Travis Horr.

MR. HORR: Morning.

MS. JEFFRIES: Morning. Alternate, Barmak Nassirian.

MR. NASSIRIAN: Morning.

MS. JEFFRIES: Morning. Civil rights, primary is Amanda Martinez.

MS. AMANDA MARTINEZ: Morning.

MS. JEFFRIES: Good morning. We have the two esteemed advisors, as we've had throughout the entire process, compliance auditor with experience auditing institutions that participate in the Title IV HEA programs, Mr. David McClintock.

MR. MCCLINTOCK: Good morning. And it might be the last time you do it, so I appreciate you always working in the word esteemed.

MS. JEFFRIES: Okay, thank you. And the second advisor is labor economist or an individual with experience in policy research, accountability and/or analysis of education data, Dr. Adam Looney. Doesn't look like Adam's with this today. And, last but not least, for the Department of Education, Gregory Martin is the lead negotiator.

MR. MARTIN: Good morning.

MS. JEFFRIES: Good morning. And Steve Finley is at the table for office of general counsel.

MR. FINLEY: Good morning.

MS. JEFFRIES: Good morning. Did I miss anyone? Okay. Barmak Nassirian will be at the table for service members and veterans today. Are there any other substitutions that we need to announce?

MS. VEEDER: Yes. Dave Peterson will continue through the Gainful Employment discussion for financial aid.

MS. JEFFRIES: Okay. Thank you, Samantha. Alright. So, with that, if we can just have the people who will be at the negotiating table on camera and for the rest of you, we invite you to turn your cameras off. Emmanual will be continuing for the Gainful Employment discussions as well. So, with that, our agenda today is to complete the process, including consensus on Gainful Employment and then move directly into financial responsibilities, issue paper number four, I believe it is. So, with that, I'm going to turn it over to Greg from the Department to kick us off.

MR. MARTIN: Thank you, Cindy, and welcome, everybody. And I want to say to all our friends in California and on the West Coast that today your weather has nothing on us here. We finally have a beautiful 70-degree day and it's perfect out. So, no better time to spend than doing negotiated rulemaking, right? So, I do have a window outside which I can look out and see, see what's going on out there. So usually, the wintertime finds me pining to be in some places like California. But when spring comes then I'm okay. So, lift the spirits. But you know, the way it is, probably in a week or two it'll be 40 degrees and there'll be snow flurries. So, I shouldn't get too used to it. So, before we before I go any further today, I wanted to finish up on a final discussion on 668.13 certification procedures. And I don't believe I gave any opportunity for final comments on that particular section. So, I want to go revisit that and I'll ask Renee. I think it's Renee today. I'm not certain. To pull up the, yeah it is Renee. Thanks, Renee. To pull up 668.13. And we'll just take a look at this again. We have had discussions about it off and on throughout the paper. We were referring to it. So, this is the supplementary performance measures. And just as a review, here we have it, the negotiator suggestion is to move the supplemental performance measures to a new subsection which you see here. We have left them in the GE paper for convenience and consideration since it does affect the GE rule. And so just to look through these, these are the Secretary assessments so analyze the following information, among other information prior to issuing an institution, a new program participation agreement, and may consider the information in determining whether to certify or condition the participation of an institution under 668.13 and which is this section 668.14, which is program participation agreement. So, we've already walked through most of these. But I'll just to an overview here, the withdrawal rate, the debt-to-earnings rate or earnings threshold measure, the small program rate, educational spending, job placement rate and licensure pass rate. These are just all things the

Department can consider in either certifying or recertifying an institution. So, I think we have already had a lot of discussion about this. I'll ask people not to be too redundant of what we've talked about before, but what I do want to make certain that we've provided an opportunity for discussion about each section. So, sticking with that, I'll open it up now.

MS. JEFFRIES: Thanks, Greg. Emmanual.

MR. GUILLORY: So, I want to clarify that this section is applying to all institutions of higher education, not just this since it is not GE specific. That it's all institutions of higher education. And with that clarification, with the debt-to-earnings rates, the earnings threshold measures, if in the nonprofit sector, the 18 institutions or the 18 programs from the data that we received yesterday that failed at those, and I don't know if I have to go back and see how many institutions that actually was, but at those institutions, would that then mean that those institutions as a whole can have their PPAs not be recertified or be put on provisional status because of failing programs on their campuses? Is that accurate?

MR. MARTIN: Partially. Your statement about this applies to all institutions, not just GE programs. That is correct. This is again, not in subpart

Q this is from 668.13. It's just included here because there are some references to what's in subpart Q. Specifically with the debt-to-earnings rate, the actual debt-to-earnings rate, that is what’s applicable. That will be generated for GE programs. So, if a program is not a GE, it doesn't have a, so the debt-to-earnings rates generated for GE programs and when we talk about the small earnings rates, those where those programs don't meet the numbers thresholds to have to have debt-to-earnings rate generated. The small earnings rates don't have, I want to reiterate, they don't have a pass-fail threshold associated with them because they don't affect the program eligibility. So, it isn't as if the small earnings rate would be a certain percentage that would necessitate the Department not certifying or provisionally certifying an institution. It simply says that the Department can, in making a determination about recertification or whether to put an institution on provisional certification, can include that rate as is or can consider that rate rather among many other things as in its decision regarding an institution's certification or recertification. And remember, this is not an area not talking about program eligibility here. We're talking about the certification or recertification of the institution. And it's just one of many things the

Department can consider. So, there's no way we're not going to apply any threshold cutoff for this, even where even where debt-to-earnings rates are applicable for a GE program. Certainly, those rates could have an effect on program eligibility under the GE rule. But here there's no threshold that's applied as far as whether or not it would result in any conditional certification or a provisional certification. I hope that clarifies it for you.

MR. GUILLORY: So, I hear what you're saying, but what this language is literally saying and what it would do is that the Department would be able to look at debt-to-earnings rates, earnings threshold measures and small program rates when determining an overall institution's ability to participate in Title IV eligibility overall. So, it's actually scaling up from just looking at the program and saying, this program is bad, this program is going to lose Title IV eligibility because this program is a GE program. This is now being scaled up to look at the entire institution and say based on GE rates, earning threshold measures and small program rates, we may use that information to determine whether or not to approve your PPA, recertify your PPA or put your PPA provisional status, which includes additional metrics that we will later talk about later today or this week. And so, with that, scaling up is very, very concerning. And if we look at the data that we saw yesterday and even looking at the 18 programs that supposedly fail at private nonprofits, the 12 programs that fail at publics, and then there were 210 programs that failed at private for-profits. But even looking at private nonprofit data only in our sector, then those campuses with those failing programs to potentially not have their PPA be recertify because the Department can look at it and say, well, you didn't have passing programs and we're going to use that data. So that's just very concerning to us. And I want to highlight that and point out what this is saying. So maybe the Department's intent is to look at it a little bit differently, which I think is good with the intent, but with the words on paper, this could be troublesome to future administrations that may come along and use this language and do something differently with it. So, I just want to highlight that it's a concern of ours, but I appreciate your response, Greg.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thanks, Emmanual. Brad?

MR. ADAMS: Yes. I just want to clarify if what's currently listed as romanette four, educational spending. If the categories listed here are the same categories, we are using for what we’ve already submitted in IPEDS and if not, should we align the two? Just from an administration point of view, I'd rather have one educational spending definition if possible versus it looks to be comparable. I just don't know if it is. You just wanted to clarify that with the Department.

MR. MARTIN: Brad, like you, I think it does look comfortable to me, but I'm not enough of an expert in IPEDS to recall exactly if it mirrors language in there. Remember, I would say this is not a definition, this is a consideration. So, we can consider the amount of spend on instructional activities, academic support, recruiting, those types of things. So, we're not necessarily defining that here, but I'll check for you as to how if what you're asking is how closely does the language here mirror what's reported in IPEDS? Off the top of my head, it looks awfully similar to me, but I don't know if it mirrors it. So, I'll have to get someone to confirm.

MR. ADAMS: In this disclosure. That's the very last sentence there. Is that a new disclosure? I don't recall that in there in the past. Is that going to be something that our auditors will need to update our audit guides or is that existing?

MR. MARTIN: Which one are you talking about?

MR. ADAMS: The same thing. Educational spending. Very last sentence.

MR. MARTIN: Okay, as, oh, as provided through a disclosure in the audited for some recovery activities, advertising and pre-enrollment expenditures as provided the disclosure and the audited financial statement required in under 668.23 D. So, you're asking is that current or new? Let me check that one for you too Brad, I want to make sure. Steve, do you know the answer to that?

MR. FINLEY: Yeah. I'm looking at the financial responsibility stuff. I don't see this added as a new provision.

MR. MARTIN: I thought it was existing, but I'll have someone check on that for you, Brad.

MR. FINLEY: Yeah, I don't know the answer.

MR. MARTIN: They'll probably send me a message pretty soon.

MS. JEFFRIES: Alright, thank you. Marvin, you're next.

MR. SMITH: Yeah, I'm just still

asking about small program rates and I wanted to see if the Department has run some data on small program rates. I guess that's the first question. If you have done that, can it be shared with the committee?

MR. MARTIN: Data on what we have done on small program rates. I'll ask if we have data to share that. I don't know the extent to which we have anything that we can share, but I'll definitely see if it's something we can put out.

MR. SMITH: Thank you.

MS. JEFFRIES: Thank you. Johnson, you’re next.

MR. TYLER: Yeah. I just want to support this supplementary, let me see if I can say it correctly, the supplemental performance measures. Not to digress too much here, but I'm going to for a second, when I interviewed for a job at Legal Services back in 1989, student loans and for-profit institutions were a problem. And the waiting room, there was actually a brochure on the whole issue. I remember reading it. And so, we're all here today because we're trying to change the game here. We're trying to improve outcomes, and I think we can't lose sight of that. All of these metrics that are here in this provision are things that I look at when I'm trying to get a loan discharged based on borrower defense. The Secretary recognizes these things as issues related to being misled. And so, I think it's really important that we not lose sight that we're here not just to help the students, but we're here trying to change our society, making education the promise that in 1965, President Johnson tried to create. And so, people taking advantage of this easy money is often the case. And I have nothing but good things to say for the community colleges. They are of great value, but I don't think they should lose sight to the value of the purpose behind this. So, that's it.

MS. JEFFRIES: Thanks. Johnson. Barmak.

MR. NASSIRIAN: I want to echo Johnson's comments here. I think it is understandable, certainly, that institutions may have some anxiety about the disclosure of these criteria. And obviously, I understand the concern that some future Department of Education could arbitrarily act on one of these just because they're cited. But frankly, it's outrageous that these are not things that are currently factored in. I mean, who wouldn't want to know the performance of programs that are receiving as much federal money as higher education programs are. Whether it be a public for-profit nonprofit, you don't want to put the

Department in a straitjacket and blind it to the actual criteria on the basis of which any reasonable person would want to make some kind of judgment. That does not necessarily, and certainly the Department's behavior to date does not indicate a particular willfulness of purpose when it comes to taking action against the institution. So, I wouldn't worry too much about it. The reason I raised my hand was to reiterate again in romanette two since you're citing 668.404, the importance of truthfully, this issue of teacher grants again. If you don't change the language in 404, you're actually providing misinformation to students in terms of how many of the people who were packaged with TEACH Grants are actually repaying on sub loans. So, this is another way in which the artificial exclusion of what are actual loans, not imputed, these are actual loans, results in misinformation going out. So, I hope this this is additional reason to go back and fix that. Thank you.

MS. JEFFRIES: Okay, thank you. Jamie.

MS. STUDLEY: I think Johnson's and Barmak's comments are very well taken, and the Secretary should have reasonable ability to consider factors like these in granting the privilege of a PPA. That said, the government always has a responsibility to be as efficient and apply as little burden as possible to get through the information it needs to make an important decision like this. So, I see in the notes that our esteemed advisor, Mr. McClintock, has said the educational spending outlined would require a new audit disclosure. The disclosure is probably not the hard part, it's the calculation and having a definition that makes sense for institutions. So, my thoughts here are just to try to understand whether this language is doing it in a way that allows for a reasonable and efficient calculation by institutions that would give the Secretary the information the Department needs. And if there is burden in the collection, whether it's possible to consider a sort of safe harbor so that institutions that are very, very secure in the sense that their spending is not instructional in student services in a very clear way that their auditor can identify, don't have to do a micro accounting, don't have to do a lot of extra work to make that evident to the Secretary on this issue. I realize that includes some technical questions you might not be able to answer now, but I think it's important to think about effort being appropriate to the need.

MR. MARTIN: Thank you.

MS. JEFFRIES: Okay. Thanks, Jamie.

I'm not seeing any additional hands at this point. Greg, is there anything that you need to say, or do you want to just move to consensus check on this?

MR. MARTIN: I do have a couple of comments I just want to make overall before we, you know, before we move on to that vote. So, I want to thank everybody for the good and robust discussion we've had on GE. I realize that there are varying opinions, people come at it from various perspectives and that we have various opinions on it. And I appreciate the professional and useful discussion we've had. I want to close out here before we end with a few responses to some of the questions that we had lingering from yesterday before we move on to a vote. And before I do that, I want to say, [inaudible] confirm, we don't have any smaller program data to share. That was just confirmed for me. I want to reiterate the Department's reason for the proposed rule. Overall, we are concerned about programs that may not be meeting their statutory obligation to prepare students for Gainful Employment in a recognized occupation. And this includes programs that leave graduates with unaffordable debt, but also includes programs that are leaving graduates worse off than they if they'd never gone to college in the first place and don't seem to benefit students beyond what they would have, the benefit they would have received from just having a high school diploma. The Title IV programs are meant to provide for socioeconomic mobility and drive generational change through higher education programs, leaving most graduates with wages below with someone who never went to college receive, are not meeting that promise and aren't operating consistent with their legal obligation to prepare students for Gainful Employment in a recognized occupation. We also heard from a number of negotiators about the possible impact of these rules, their possible inclusion of pandemic affected years, and also the newness of the earnings threshold metric. We hear that and we understand it while we think it is premature to propose language that would include some sort of a transition period to account for that, we are looking closely at this matter and are committed to looking at whether we can include something like that in the final rule, provided we don't reach consensus today. We will, relatedly, consider whether certain types of conditions like broader economic impacts are appropriate for consideration of the rules. And next, I know that some negotiators are concerned about small program rates. So, we just had a discussion about that. We appreciate those concerns. And while the small program rate would never be a sole basis for revoking the participation of an institution for those programs, we do believe that the information is important to have and will help to feed disclosure requirements and will generally add to the amount of information available and we think it is a good thing to have those rates generated. Additionally, we had a few suggestions yesterday. One was to provide a longer time frame to measure the earnings of certain types of programs that have prelicensure requirements. At this time, we're not considering making that change. We are concerned that not all programs with prelicensure requirements had the same significant difference in earnings as medical and dental residency programs. Another was to provide a safe harbor for programs based on borrowers’ repayment rates. We did not have adequate justification for repayment metric at this time. And finally, we are aware that at least one negotiator was concerned about an alternative earnings appeal. We reiterate our position that as the federal government, our concern is with ensuring that we use the best data available and consistent with other programs under the Higher Education Act, including the FAFSA and Income Driven Repayment, and consistent with a host of other government programs outside of the Department of Education. We believe this is an appropriate way to measure the earnings of institution's GE programs. So, with that, I will turn it back over to the facilitators to take a vote on consensus.

MS. JEFFRIES: Okay. Thank you, Greg. So, with that, we are going to move to the consensus check, and we will be doing a verbal accounting of that for the record. So please hold your thumbs high and keep them up until I have called your name and your position on this. So, let's see thumbs. I see. Carolyn Fast is thumbs up. Brad Adams is thumbs down. Anne Kress is thumbs down. Emmanual Guillory thumbs down. Jamie Studley sideways thumb. Johnson Tyler thumbs up. Debbie Cochrane sideways thumb. Adam Welle sideways thumb. David Peterson thumbs down. Barmak Nassirian thumbs up. Amanda Martinez thumbs up. Ernest Ezeugo thumbs up. Marvin Smith thumbs down. Ashley Schofield thumbs down. And Greg Martin thumbs up. Did I miss anyone? Okay. Just give me a minute here. What we want to do next is as soon as I get a counting from my team for the thumbs down, so I don't miss anyone that was a thumbs down. What we're going to do, as we have consistently done, is call on each person who was in dissent. We are going to ask you to please only articulate a list of the changes that you need, you would need to have to get to, you know, either sideways or thumbs up. The Department would be, it's very helpful to the Department for you to be succinct and just list what those items are. For example, if it's traditional rate concepts from the 2014 rule, so state. If it's allowing a slightly longer cohort period for extended prelicensure requirements, state it. So, with that, let's start moving through this. I know Carolyn was, Carolyn, were you thumbs down? No, you weren't. Okay. So, I think Brad, you would on my screen anyway. Be the first thumbs down.

MR. ADAMS: Can I just have another 30 seconds to get my thoughts written out? Sorry.

MS. JEFFRIES: Sure. Emmanual or Anne you were thumbs down, right?

DR. KRESS: Sure. So, the first thing I would say is that the community colleges are very much in favor of Gainful Employment. We started this negotiation requesting that the Department restore the 2014 requirements that was not heard. So that's one place that I would start. I would also support the notion that was brought up of a transition period. If there are going to be new standards that are imposed. And then I will just go back to something that I've mentioned several times, which is that we really need to make like comparisons. So, to have a median income for individuals through Gainful Employment programs, that includes everyone, but then to compare them to high school graduates that does not include everyone in that population does not seem appropriate. But given a lot of the uncertainties around the new earnings threshold and how it's been calculated, I'd strongly recommend a transition period. But that's really where we are right now. But we are in support of Gainful Employment, and I'm very disappointed that we were put in a position that we had to vote this way today.

MS. JEFFRIES: Thank you, thank you, Anne. Brad, are you ready or do you want more time?

MR. ADAMS: I can go now, and I want to start by thanking Greg for the summary, that's helpful. And I thought it was well said. And although we may disagree, I do think that was very beneficial to get the Department's perspective on that. I want to go before the record, since I've quoted wrong in previous articles that my no vote has nothing to do with protecting proprietary schools or programs. I just want that clear as clear can be. My no vote was really for four things. One of which most important is that the Department has stated yesterday does have the ability, if they chose to do so, to provide a disclosure for all programs that are subject to the Gainful Employment definition of a Gainful Employment program. So that would be a debt-to-earning disclosure and an alternative or an earnings metric disclosure. The second would be I agree with Anne and others, transitional rates. I think especially due to the COVID pandemic that's going to be impacting salaries in 2020 and beyond is very would be very important. Third would be the slightly longer prelicensure program period, and fourth would be the alternative earnings appeal for programs like the cosmetology industry. Thank you.

MS. JEFFRIES: Thank you, Brad. Appreciate that. Emmanual?

MR. GUILLORY: Yeah. I wanted to say that we're also in support of Gainful Employment and what the Department is trying to do. And when Greg had indicated, here's the Department's intent, we support that intent, we want to make sure we're getting after the bad actors. We want to do that. And we actually wanted to reach consensus here. I didn't want to vote down on this overall because I know what the Department is trying to do, and I respect what the Department is trying to do. The big concerns that remain for us, though, is it's hard for me to support a process when there is no ability to ensure the data. Well, when the appeals process is what we see it now, I guess at the end when an institution is already eligible, and it just seems like how does that really work in reality. So that remains a concern. The other big concern is the undetermined small program rate data. I know I've heard from Greg say that I mean, we don't really know what is good or bad or but either way, someone's been determined if something's good or bad and just not having any clear information on that, not being able to see any data on that, which I do appreciate the data that the Department has shared, at least thus far. It just makes it very, very troublesome. And then also what I said most recently in section 668.13, just how those additional metrics would be applied, scaled up to the institutional level and completely eliminate institution’s ability to participate in Title IV. I really fear for our smaller institutions in our sector, they may have one or two GE programs that happen to not do well for whatever reason, and then all of a sudden, the whole institution can't participate in Title IV. And you're displacing those students. So, that's it for us.

MS. JEFFRIES: Okay. Thank you, Emmanual. David.

MR. PETERSON: Like everyone else who spoke, financial aid administrators were coming into this really excited to discuss Gainful Employment. And we really are not happy with the outcome of today. But some of the same things that everyone else has mentioned, uncertainties with the small program rate transitional. The idea of incorporating in a transitional rate would be something we would be interested in discussing the appeals process. And then minor, Barmak brought it up, the TEACH Grant, really that loan should be included. Again, that's not a reason to vote no, but that seems like a small change that would have made a lot of sense and it doesn't seem like we are willing to discuss or willing to do that when it was brought up. So, thank you.

MS. JEFFRIES: Thank you, David. Marvin?

MR. SMITH: Yeah. I also think we're supportive of the efforts here. It's the details and really the rushed process here. And my concern is that four-year publics and community colleges will look at this and we'll say this is not worth the risk of offering short-term certificate programs to low-income students. And so, there's this balancing act here that I'm concerned about. I'm concerned about small program rates and folks not sharing that data. To me, that seems honestly like a half-baked idea, but maybe you have more information. If small program rates are that important to the Department, I wonder if a compromise is to put it into this disclosure website because again, I don't know how that data is going to help students or schools. So that's, I think, my main concern for four-year publics.

MS. JEFFRIES: Thank you, Marvin. Ashley?

MS. SCHOFIELD: I echo the same sentiment as my colleagues as a representation of minority serving institutions. I would also like to add that the outcomes of the debt-to-earnings ratio is a concern for us, particularly in the HBCU and minority service community, because of the type of students that we serve. And being that most of our students come from lower socioeconomic status and experience an overwhelming higher debt burden than most students that are not in this low-income category. And so, I applaud the Department for its intent as relates to Gainful Employment, because I think it is beneficial. I just think that, as Marvin stated, rushing through this particular piece of legislation is just not in the best interest of the institutions that we serve and the students that we serve.

MS. JEFFRIES: Okay. Thank you, Ashley. Appreciate it. Greg, does the Department have what they need, they captured those and?

MR. MARTIN: Yes, I want to thank

everybody for again, for the discussion and for their willingness after the vote to share with us their reasons for not feeling that they can vote consensus at this time. So, again, my sincere appreciation to everybody.

MS. JEFFRIES: Thanks, Greg. And I want to thank the committee. This was a highly important area for each and every one of you. I know that. We know that. You've worked hard and we do appreciate it. And I do want to thank you, especially to the dissent, for clearly articulating a list of what your concerns are for the Department to consider as they go through the towards the NPRM period. So, with that, we are going to move to issue paper number four, I believe, financial responsibilities. Oh, geez. I don't even have to ask Renee, you're right on top of it.

MR. MARTIN: It's right there. So, we're moving into financial responsibility. And just want to point out that the first part of this is the 668.15, which is the reserved section which we've removed. So, there'll be no discussion on that. But just want to reiterate again that we have taken that out and moved the relevant parts over to subpart L which we will be discussing today. So, where we're going to begin is in 668.23, which is a compliance audits and financial statements. So, I'll give everybody a second to get there and that begins on, if you have the paper copy of your issue paper, it would be on the page at the bottom of page eight and then moving on to page nine. So, I will direct your attention to 668.23 D under audited financial statements. And starting a (d)(1) and we point out here that we've added acceptable to further clarify the meaning of this item. So, you'll see they're under audited financial statements to enable the Secretary to make a determination of financial responsibility and institutions must, to the extent requested by the Secretary, submit to the Secretary a set of acceptable financial statements for its latest fiscal year. And then turning over to (d)(2) and in (d)(2) romanette two, we have deleted individuals since the other documentation items in this category all relate to a foreign entity. So that is changed to for a domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution. The institution must provide documentation of the entity status under the law of jurisdiction under which the entity is organized to include, at a minimum, the date of organization, a current certificate of good standing, and a copy of the authorizing statute for such entity status. And that is everything for 23. It isn't much, but since we're going by going by section, I will open it up for discussion because after this we're going to move on to subpart L.

MS. JEFFRIES: Thanks, Greg. Any comments on this? Questions? Steve, you have your hand up.

MR. FINLEY: Yes. I just want to note there is a carryover here because we are welcoming suggestions on the disclosures that were mentioned for the educational expenditures from the GE discussion and that would result in something being added to 23 here. So, there's a carryover and a request for suggestions on what that language should look like.

MR. MARTIN: Thanks, Steve.

MS. JEFFRIES: Thanks, Steve. I don't see any hands, Greg, but I do want to announce that Kelli Perry is back at the table for financial responsibility discussion. I'm Sorry.

MR. MARTIN: Okay.

MS. JEFFRIES: I got a couple more. Sam Veeder is back in, and Jessica Ranucci is back. So, with that, I think you can go ahead and move on.

MR. MARTIN: So just to build on what Steve was saying, I know this came kind of quickly. So, you know, if after mulling it over, people have thoughts about this as it relates to what we discussed in under 668.13, be more than happy to go back and entertain those at a later point.

MS. JEFFRIES: Okay, great.

MR. MARTIN: So, I just want to I know it doesn't give people a lot of time just to throw that out there. And, you know, you have a few seconds before we move on. So, I just want to offer that opportunity. I'll go back and bring it up again and provide an opportunity for comments on what Steve just mentioned. So, with that, we're going to move into financial responsibility into subpart L. And so, we are at 668.171. The first thing is just a technical point in (d)(3) romanette one, we've updated the cross reference to (h)(2), regarding a requirement to pay credit balances under 668.164. And then moving on to romanette six, we've updated six of romanette six here to further clarify the language without making any substantive change. So, all we have here is subject to an action or event described in paragraph C of this section, mandatory triggering events or an action that the Secretary has determined to have material adverse effect on the financial condition of the institution under paragraph D of this section. And that being the discretionary triggering events. And so, with that, we're going to move on to paragraph C, which are a mandatory triggering events . So, we'll go through the mandatory triggering events. And then at that point, when we're done with mandatory, we'll open the floor for discussion. So, changes that we have here for mandatory triggering events and looking at (c)(1), which are mandatory trigger events, an institution is not able to meet its financial administrative obligations under paragraph (b)(3) romanette five of this section if one or more of the following occurs. And so, we are in romanette one. And following some confusion from the negotiators, we have taken another look at this language and sought to further clarify the substance that the trigger remains the same. So, for an institution with a composite score of less than 1.5 or an institution affected by the litigation or liabilities described in B and C, the institution must undergo a recalculated composite score for any other debts or liabilities from a settlement arbitration, judgment or administrative proceeding. So just looking at the change here, these are if one of the more following occurs, debts, liabilities and losses in romanette one for an institution for institutions, composite score of less than 1.5, the institution or entity after the end of the fiscal year for the Secretary has most recently calculated the institution or the entities composing score is required to pay any debt or incurs a liability from settlement arbitration proceeding proceedings, final judgment, determination arising from administrative action recalculated for the administration or entity or the composite score is less than 1.0, as determined by the Secretary in paragraph E of this section. So just some clarifying language there. But the intent remains basically the same. If we move down to B, this is in romanette one B. Again, here we have proposed language changes to simplify the language and address any confusion. Of our prior language. This trigger still relates to any institution or entity whose financial statements were submitted under 668.23 for a change in ownership under 600.2 G or H that has sued for relief by a state or federal authority or through a Qui Tam lawsuit where the federal government has intervened. So, we'll look at, B, the institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 600.20 G or H 668.23 or subpart L of this section is sued for financial relief, an action brought on or after July 1, 2023, by a federal or state.

MS. JEFFRIES: Greg, can you hang on

one second here? I think someone is attempting to mute. Something they inadvertently muted, including you.

MR. MARTIN: Yes. I thought the background the background was coming from me, but I assure you it wasn't.

MS. JEFFRIES: Okay, thanks.

MR. MARTIN: No problem. So, we'll go through B again. So, this is again, we're looking at B we're looking at one romanette one B. So, the institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 600.20 G or H 668.23 or subpart L of this part is sued for financial relief in an action brought on or after July 1, 2023, by a federal or state authority or through a Qui Tam lawsuit, and which the federal government has intervened and the suit has been pending for 120 days. The next area we'll look at is in romanette three, Gainful Employment. Here we have clarified the language to reflect that the trigger will be at least 10 percent of the Title IV revenue if that revenue, rather, is in a failing GE program. We understand there were confusion on the part of some. There was confusion, rather, on the part of some negotiators during the last meeting. We believe this language will clarify those concerns. So, in romanette three, under Gainful Employment, as determined annually by the Secretary, the institution received at least 10 percent of its Title IV HEA program funds in its most recently completed fiscal year from Gainful Employment programs that are failing under subpart Q of this part. So, I hope that language clarifies that revenue requirement. And if we move down to romanette six. At negotiator's suggestions we have added an additional trigger to address SEC actions other than the suspension or revocation of an entity's registration or trading. We believe this additional set of events will capture very serious actions and provide the Department with earlier protection from institutions facing serious action. So, we'll take a look at what is the changes here to romanette six. This is under public entities. If an institution is directly or indirectly owned by at least 50 percent of an entity whose securities are listed on a domestic or foreign exchange, the entity is subject to one or more of the following actions or events, and this would be the SEC actions. The U.S. Securities and Exchange Commission or SCC, SEC rather issues an order suspending or revoking the registration of any of the securities pursuant to Section 12(j) of the Securities and Exchange Act of 1934 or suspends trading of the entity's securities pursuant to 12(k) or the Exchange

Act. Or in B, other SEC actions. The SEC files an action against the entity in district court or issues an order instituting a cease-in-desist or administrative proceeding against the entity. And the next change here is in romanette nine. So, in romanette nine is contributions and distributions. We have in, let me make sure I've got this, no, I'm sorry, that's romanette ten, that is romanette ten, not romanette nine. I got confused on my cross outs here. So romanette ten is contributions and distributions and we have rephrased the sentence to clarify our intent here in romanette ten B. So that has changed to the offset of such distribution against the contribution results in a recalculated composite score of less than 1.0 as determined by the Secretary under paragraph E of this section. And then in 11. We have clarified the language throughout this section in terms of an entity whose financial statements are submitted for an institution. We also modified B to reflect that we are referring to termination or suspension of a loan agreement or financing arrangement or when a creditor calls due a balance on a line of credit. So, we'll look at 11 and the changes there. As a result of an action taken by the Department, the institution or entity included in the financial statements submitted in the current or prior fiscal year under 600.20 G or H 600.23 or subpart L of this part is subject to default or other adverse condition under a line of credit loan agreement, security agreements or other financing arrangement or any creditor terminates, withdrawals, limits, or suspends the loan agreement or other financing arrangement or calls due a balance on a line of credit. And there's also a change in two here as well. This is romanette 11 (b)(2). Hold on one second. Just a moment here. This is, I'm sorry, we're moving on to number, I'm sorry, we're moving on to number, on to the number two here. This is just strictly number two. My mistake. So, we have proposed some language changes to further clarify this section without making any substantive changes and this section still requires that two discretionary triggers become mandatory if they both occur and remain unresolved 60 days after the second trigger or remain mandatory if three or more discretionary triggers are hit. So, we'll look at the revised language here in in two. So. In the fiscal year following the year in which the Secretary is most as has recently calculated the institutions composite score the institution becomes subject to two or more discretionary triggering events as defined in paragraph D of this section that remain, that remain rather 60 days following the second triggering event. All further discretionary triggering events during that fiscal year become mandatory triggering events even if the two original triggering events are resolved. So, with that, I'll open the floor for discussion on mandatory triggering events.

MS. JEFFRIES: Thank you, Greg. Ernest, you are up first.

MR. EZEUGO: Yeah. Okay. So, in the interest of full disclosure, I actually have a comment about the previous vote. I am so sorry. I recognize that this is against what you all have been asking. And I actually debated not saying it, but I really feel it on my heart, especially after some of the stories I heard yesterday, after our sessions and after negotiated rulemaking, I should say, to just say this clearly. I have to call at the fact that all of the dissent for Gainful Employment and I and to be honest, some other proposals that we've talked about over the course of the past couple of weeks seem to trend on everybody wants Gainful Employment, but no one wants to keep any schools out. Everybody wants to protect students but doesn't want to do what's necessary to do that. Everybody's concerned about the circumstances of students from low-income backgrounds, but they don't want to take the steps that might consider bettering a lot of those students. What students are seeing, at least with the students that from Young Invincibles and other organizations that we're working with who are watching are telling me is that they see institutions and they see other actors claiming to care about the well-being and their lives, but only up to a certain level of inconvenience. And for many, not all, but for many of those students, this actually reflects, and this is why I wanted to say this here and actually reflects the experiences that they've had on campus. I'm talking about students who have stopped out, students from nontraditional kind of backgrounds to higher education, who've had experiences that are not the experiences of the standard 18-year-old coming straight out of high school. And I do not want to diminish valid concerns that were brought up. That's not my intention, and it's not even my intention to doubt the intention of folks on this committee. That's not what I'm trying to do. It just feels important to say, especially after the particular story I heard last night, I want to protect that person's privacy, that this is the perception of people watching, at least for the students watching. And it's one that hurts higher education, quite frankly, not even to speak of the obvious ways that it hurts students who are being left out of consideration when those dissents are made, especially from certain seats on this committee. The stories are clear and numerous, at least to me. I'm happy to just share some of them in the forum. The research supports them. We know that poorly performing programs, the ones that perform poorly, intentionally, and some that do so with good intentions, still hurt students in the short-term. And they hurt and have severe impacts on students and their families and their networks long after graduation. If they even get to that point, to the extent that these dissents throughout the rest of these negotiations, in this final consensus, we are critical and would directly impugn the different constituencies that we serve, their ability to serve these students like we say that we want to do. I just implore you to really make.

MR. WAGNER: Earnest, you have 30 seconds remaining.

MR. EZEUGO: Thank you. I appreciate it. I'm almost done. I really implore you to make that plain, because I'm telling you now, it's the students that I'm talking to and what they've shared about these processes, it's really disheartening. And it's just on my heart. I just have to say that I'm sorry for distracting and we can continue with the discussions.

MS. JEFFRIES: Thank you, Ernest. So, I think we left off at discussion on discretionary triggers is that right, Greg?

MR. MARTIN: Yeah. I just want to point out again, I know that coming off our emotional debate over GE I just want to remind everybody that even though we didn't reach consensus on GE, we are hoping to reach consensus on as many of the areas as possible. So, as you as we make our comments today try to tailor those with if there's something you see here that you would need to see different in order to reach consensus. Let us know what that is. So just directing everybody to specifically what you need to see here. At this point, this late in the week, it's going to be very difficult for the Department to provide additional data or, you know, I'm not against debating the theory behind this or if that's necessary, but I would like to have us move in the direction of where we need to be to get the consensus, if that's possible. Thanks.

MS. JEFFRIES: Okay, thank you. Again, thank you as well, Ernest. Barmak, you are up next.

MR. NASSIRIAN: Thank you. So, let's go to romanette one A, debts, liabilities, and losses. Page 11, I think.

MR. MARTIN: I'm there.

MR. NASSIRIAN: Okay. I don't quite grasp why the Department is only interested in institutions whose score was less than 1.5 and then drop down below 1. But in fact, the more severe case, in my opinion, would be an institution that has a more precipitous drop. An institution that actually scored way above 1.5 and suddenly drops below 1 should be of much greater concern to the Department, therefore, that qualifying openings should go. It should simply read if an institution drops below one, you've got a problem with them. Their prior condition actually, you're picking a much weaker case of an institution that was already sort of barely there, dropping below 1, [inaudible] surprise. I think, I keep thinking of ITT and Corinthian that were in pretty good shape and then dropped like a rock. You repeat the same construct in two romanette two B. Again, it really doesn't matter or romanette 2 one, romanette two A, for a prop school whose composite score was again less than 1.5 if there's a withdrawal. No, I think any withdrawal, even if the score was higher than that, frankly, again, if the score was higher than that, they're withdrawing more money. So, I don't see why you would limit the Secretary's discretion here. Then I'd like to go to romanette 11. If I can find it. Creditor events. I see that, I believe this is just a redundancy and I'm being a little paranoid, but I don't see why you qualify the subsection A to only those actions taken by the Department. I mean, what if an institution, I believe B takes care of it but I don't understand. Maybe they bought too many Russian bonds and are now defaulting on their own obligations because they didn't get paid. I don't see why the action has to have been taken by the Department. I feel like default is default. And the Secretary does not need to limit him or herself to just the causality. I think default is sufficient by itself. Thank you.

MS. JEFFRIES: Okay. Thank you, Barmak. Brad, you are up next.

MR. ADAMS: Thank you, Cindy. I've got a few comments in here, so I may need to get back in line, but on a romanette three on the Gainful Employment. Let me first by stating I understand the intent of wanting to ensure somebody's financially responsible if they lose revenue, and it really could be losing revenue for any reason. It doesn't have to just be for Gainful Employment programs. But from this being a mandatory here's where I have my largest problem is we define as a discretionary trigger in number seven down below that, if you lose 25 percent of your students, that's a discretionary trigger. But here is a mandatory you've got 10 percent as Gainful Employment as a mandatory. So, you've given the bar at a much higher level for proprietary schools than the bar you've given for everyone else as a discretionary. And I really struggle with that. And in addition to that, we just talked about yesterday an administrative capability in 668.16 M, that 50 percent or more would have to be failing for you to not be administratively capable. So, help me understand why we want a different threshold for proprietary schools here as a mandatory at 10 percent, then we're giving for everyone else down below as a discretionary 25 percent.

MR. MARTIN: Well here. Our concern is that where the revenue has been derived from a program deemed to be failing because if the program is failing thatcould be an indication that a very significant revenue stream for those institutions is in danger of being cut off. So that's the rationale behind including it as a mandatory. And once you've failed that the prospect of not having the revenue from that program anymore which is a fairly serious and you know, very concrete thing and that possibility certainly exists at that point.

MR. ADAMS: But Greg, I'm sorry, that's not answering the question that this financial responsibility is for everyone, for all colleges. And you've applied a mandatory trigger at a 10 percent level up here, and you put a 25 percent trigger as a discretionary down below for the for everybody else. I mean, to me, that's not apples to apples and especially to me either gainful needs to move down as a discretionary or if it's going to stay as a mandatory, at a minimum, it should be tied to what we did in administrative capability, but it shouldn't be at a level 15 percent less than the nonprofits and publics. I don't think that's sending the right message that we don't care if they're financially responsible.

MR. MARTIN: We're saying we don't care if they're not financially responsible. The only situation in which in which a program could lose eligibility as a result of GE is a GE program. So that would be the only the only instance where that would be that outcome could occur would be in that situation. That wouldn't be the case with any program that wasn't subject to Gainful Employment. I think that's the difference. I don't know how else I could ask Steve if. Do you want to comment, Steve?

MR. FINLEY: Yeah. I don't think I can improve that observation.

MR. ADAMS: Well, I would like the

Department to state why it shows a 25 percent revenue threshold for everyone not subject to Gainful Employment, which is everyone at this table but me. And you've got a 10 percent as a mandatory right here. At a minimum, it should be the same. Right? And I'd argue they should both be discretionary, too. But you really haven't answered the question because a nonprofit could have a 12 percent reduction in revenue and not [30 seconds]. Right? And I'm just I'm struggling with the difference in thresholds. It seems like you're picking and choosing who you want to fail based on not having the threshold the same.

MR. FINLEY: We'll take that back, Brad.

MS. JEFFRIES: Thank you. Jessica?

MS. RANUCCI: Just to respond briefly to Brad before I make the point I was going to make. My reading of this is that the discretionary trigger would include orderly closure, which would not pose the same level of risk to the overall finances of the school that could have been planned for years and could have been taken into account. And I will say from my own perspective, not speaking for the Department, I actually do think there may be reasons to consider financial responsibility different by sector. Specifically, the ability to essentially milk an institution for cash, put it in your own pocket and walk away. And having been on the other side of that and see students left holding the bag, I do think that that is a very serious risk that is much less available at schools that are nonprofit and public. But turning to what I was going to say was on number two, not romanette two, but the last thing that we talked about the multiple discretionary is leading up to the mandatory. I don't really understand why this is now tied to a fiscal year since it seems to be divorced from a composite score. It seems to me like two discretionary events that happen in September and October should be treated the same as two discretionary events that happened in October or November, or November or December, whether they're in the same fiscal year doesn't really seem to be material. So, I would encourage the Department perhaps to do like a rolling 365 day period rather than a set fiscal year period.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thanks, Jessica. Kelli.

MS. PERRY: Thank you. First, I want to support the Department's language on the debt liabilities. I know there's some concern, and that's why I want to say what I have to say, because I did say all the plus ones in the chat. Those are related to what

Barmak said. So, I do agree with you from the concept of the fact that having a school that may be passing the financial responsibilities for it and then dropping down below is important if they incur a debt or liability that big. Right? But if you were to change that and change it, take out the 1.5 measure, you're in essence, addressing all schools. So, colleges and universities are sued all the time and as a result, there are some that result in the things that are listed in here. Right? So, if the Department were to consider removing that 1.5 and making this eligible for all schools, one, I very strongly disagree with that. But if you were, you have to go back to the concept of addressing materiality, because to require schools across the country to submit within ten days, every time they're sued and have a judgment or required to pay a debt as it relates to liability for settlement. If it's not material enough to affect the composite score it is something that will become unwieldy on both sides. So just to give you some context about removing that 1.5, what that would do. So, if it's removed, the materiality concept needs to be addressed. The second question I would have, and I'm just curious more than anything, it goes back to these contributions and distributions section. And I think, you know, and we've talked about the whole concept of what we're trying to address here and the fact that somebody may contribute to pass the composite score and then make that distribution that would then cause them to fail. So, in essence, they would have failed without that contribution. When you get into the reporting of this, the concept is that you're going to report this within ten days, right? You're relying on the school to report to you. Yes, I made a contribution, then I made a distribution. And I'm assuming the reporting would be after that distribution. I guess the question I would have is, is that if I was a school and I was trying to, in essence, game the system by making that contribution, why would I, within ten days after making the distribution report it to you? So, I guess I just would caution the Department on this of how you're going to know this.

MR. WAGNER: You have 30 seconds.

MS. PERRY: Because this is not something that you would be able to see or pick out in the financial statement. So just some thoughts there.

MS. JEFFRIES: Okay. Thank you, Kelli. Carolyn, you'll be up next. But I need to announce that Yael is coming to the table for state attorney generals. And Johnson Tyler is back at the table for a comment from legal aid groups. So, with that, Carolyn.

MS. FAST: Thank you. I just also was wanted to ask about the thing that Barmak had raised about limiting these provisions to schools that are all ready to start with at a below 1.5 composite score. It seems to be a pretty important issue in terms of how this would work and what schools would be affected. And I wondered if we could get potentially a response from the Department on whether they would consider making this change before consensus votes, since it seems like it is important to a lot of people on the committee based on what was in the chat and I think it might be useful to us to get in consensus.

MR. MARTIN: I will take it back and I'll discuss it over the lunch period, and see if I can get a decision on whether we would consider changing that or not.

MS. JEFFRIES: Okay, thank you. Barmak?

MR. NASSIRIAN: Yeah. I candidly did not quite understand Kelli's concern here in terms of materiality, if we remove the 1.5 percent, it seems to me that composite scores that drop from above 1.5 percent to below 1 would by definition be more material than the ones that drop from a number below 1.5 to a number below 1. But I mean, not always, but in general, I think that's a bigger delta in most cases to the same fixed number. But I also wanted to disagree with Brad. You know, we're not engaged in any kind of mystical numerology here where the numbers have to line up, the numbers have to make sense in the context of what we're doing. The 25 percent reduction in enrollment is a fairly high threshold to accommodate orderly enrollment management practices that institutions engage in all the time. Deriving a subset of your revenue from failing programs is a different animal altogether. I think a lower threshold is appropriate when the source of the revenues speaks to something about what the institution is engaged in. So, I don't know that ten is the right number or 25 is the right number, but I just wanted to argue against the belief that the numbers have to somehow elegantly line up. They don't. They have to be appropriate in the context of what index they're measuring. Thank you.

MS. JEFFRIES: Thank you, Barmak. Brad.

MR. ADAMS: Thank you, Barmak. Just a quick response here. To me, you should have the ability to also reduce some sort of expenses to offset changes in revenues. And that ability is not here. But I do think 10 percent is a low threshold as compared to some of the discretionary triggers. I do want to talk through what the others at the group have been talking about. In one romanette, one A and here's where I'm struggling. And maybe it is the CPA in me, a composite score by its nature is, number one, as we've mentioned, it needs to be updated, it's antiquated, but by its nature, it's a point in time score as of a certain date. And so, for us, we're a 9/30 fiscal year end and what our composite score is as of that date, six months from now, if and again, we're above a 1.5 and I think it should stay where it's just schools below 1.0. And I agree with Kelli on this, that the administrative burden would be significant. The schools would have to know they're always recalculating their composite score for any liability. And we're talking no materiality out into the future. So, these liabilities a lot of times occur in the fiscal year subsequent to your audit. But the point here being, six months from now, you get a lawsuit. You may be in a much better composite score position six months later. So, there's no opportunity as written. And I think Kelli actually proposed this in her proposed language to resubmit in interim financial numbers say yes, even though this occurred after the fact, and it could have taken me from a 1.4 down to a .9, I may be sitting as of today in a position where I'm at a 2.0

because income's been good for the year, right? Because income flows through your equity part of your balance sheet. So, where I'm struggling with the composite score as written is a point in time midnight as of the end of your fiscal year. If you're going to try and recalculate it, you need to do an interim composite score as of that date that the liability occurred to then see if you're still below 1.0. And I think, Kelli, maybe you can speak to it because of your comment in the issue paper, but I do think you've got to be apples to apples, or you've got to change your composite score one way or the other, because the composite score is a date and time. And once you get to the next day, the composite score changes to whatever you are on that day. So, thank you. And I'll get back in line for my last comment.

MS. JEFFRIES: Okay. Johnson, real quick, do you mind if I check in with Kelli to see if her hands up in response to that? Would that be okay? Okay, Kelli.

MS. PERRY: Yeah. It was actually in response to what Barmak had come back with the second time, and then I can address what Brad said. So Barmak my concern is the reporting of the liability, right? So, the way that it's not so much if a school is not in the zone, which would be under 1.5 or failing. Right?

They're passing school. And the way that this is what this says is that if you go from 1.5 down to 1 in a recalculated score that would trigger this. But if the way that the reporting language reads, unless I'm misinterpreting it, is that the deposit the Department is the one that has to recalculate that score, not the individual institution. Right? So, if the Department is the one that has to recalculate that score, that means me as an institution, regardless of if I'm say I have a 3.0 and any debt or liability that I have, I then have to report to the Department within ten days so that they can recalculate my score. Let's say that that that liability is only $20,000. And my financial statements show, you know, revenue of 400 million, that $20,000 isn't going to have an impact. And it's going to create a lot of work for schools and a lot of work for the Department if the Department is the one that has to do the recalculation. If the school can do the recalculation and say, okay, you know, I just had a $20,000 liability, that $20,000 is not going to affect my composite score. So, I don't have to report at anything. That's different. And so, I guess maybe there's clarification on that per se. And then to what Brad talked about, you know, he's right in the perspective of that the composite score is a point in time, and it's calculated based on your audited financials. Schools are schools, you're right, they could change, they could go up, they could go down, that liability is also a point in time and will affect what your financial statements look like or what they or they could be better, right. So that that liability is not going to have an impact on that score. But the problem with calculating composite scores in the middle of the year is that not all schools do accrual-based accounting throughout the year. So not all schools are closing their books on a regular basis every single month to recalculate a composite score. So, there's just a lot of complexities in that recalculation that would potentially be challenging.

MS. JEFFRIES: Okay. Thank you, Kelli. Johnson?

MR. TYLER: Thanks. I'm not an accountant. I don't get into the high finance. I think the attorney general's here. Carolyn used to be one as well, do a lot of this stuff when they're going after them. But I did help a borrower once in a Borrower Defense claim and we see a lot of these from this one institution that was right next to Penn Station, preyed on a lot of low-income people there, including homeless people, including veterans who are protecting transportation hubs during right after 9/11. They were in this great, crazy financial thing that the shareholders brought the suit and that's how I know about it. So was trying to get these loans discharged. So, the owners issued $10 million of stock certificates and then sold it about three or four months later and took $9 million in cash. And the shareholders brought an action and that's how it's public. But I think there has to be some way to deal with this composite score stuff where that sort of shenanigans doesn't happen. That school is now out of business. There are thousands of students. My colleague Jessica has been, her organization is part of trying to help those students and the company's gone bankrupt. And there's really nothing for the students. They all have a ton of debt, and they have nothing to show for it. So, I really do think that, you know, the Secretary needs some flexibility on this and should think about how important that metric is. I just think it's important to be able to do something in that sort of situation and not rely on shareholders to try to protect our own interests. And the students get nothing out of it. I mean, the school went out of business 10 or 12 years after that lawsuit. So, thank you.

MS. JEFFRIES: Thank you, Johnson.

Appreciate that. Barmak?

MR. NASSIRIAN: Yes. First of all, I wanted to appreciate Kelli's clarification of where her concern is. But I have to tell you, I don't see anything about reporting here. What I see is a provision that limits the Secretary's discretion and precludes action where it's most needed, where there is. Now, however, we calculated what the basis of reporting is that we can talk about. But I would posit that an institution that precipitously drops from a 3.0 to .5 is probably a better target of immediate concern than an institution that drops from 1.1 to .9. So, in this provision, I don't see why the Secretary would want to limit that discretion and preclude action where they really ought to hustle and get something done. With regard to the example, obviously the judgment of materiality should also be available to the institution itself. An institution with $400 million of revenues on a $20,000 judgment would be pretty safe in assuming that that its 3.0 is not going to be dislodged to a 0.9 as a result of that particular judgment. I think that's where the reporting language resides and what the obligations are I don't presently have in mind, but it seems to me that here we're talking about the legal basis of authority for the Secretary to intervene and to me just doesn't make any sense to exclude larger drops from above. 1.5. Now how you get it reported, I understand. And apropos Brad's point, of course, it's a fluctuating number. The composite number may be different by the hour. But guess what, the number that should concern us is when it drops, even for a moment below a critical threshold. Because, yes, while there is a high, there may be a theoretical possibility that it could bounce back. What we've seen historically is that it doesn't bounce back. That is indicative of a dangerous trend that ends up costing students and taxpayers. So, it has to be monitored. The Department has to monitor it. That is standard practice in commercial credit transactions. We don't just take a snapshot and say, good luck, I'll see you next year. You obligate people to report changing circumstances that have an impact on their ability to service the debt. Thank you.

MS. JEFFRIES: Okay. Thank you. I think we're going to take the three hands that are up, Brad, Kelli and Jessica, and see if there's some new information to share with the Department and then let the Department move on to the next section of this, as you do have this as a large document to go through, so we want to be sure we can get to all of it. Brad.

MR. ADAMS: Well, I do have a comment

within mandatory, but I may let Kelli and Jessica if they want to finish up on one A, romanette one. I think there's still on that topic, but I'll hold off, if that's alright and keep my place in line.

MS. JEFFRIES: Sure. Just want to check in. Kelli and Jessica, do you have something new that you want to share?

MS. PERRY: No, I just wanted to just one more response to what Barmak just said. I'm not saying that this, so the reporting that I'm talking about is actually in this issue paper. We get to it a little bit later. And all I'm saying is that if we're going to do something with this one, we need to take them in tandem and do them together. Is what I'm saying.

MS. JEFFRIES: Okay. Thank you. I see the advisor, David McClintock, has come on camera and has his hand up. Do you have some input on this, Dave?

MR. MCCLINTOCK: I just wanted to make a quick clarification, I guess. So, the composite score is a combination of a point in time because you use the balance sheet, right? So, the last day of the year, but it also includes the PNL, so the profitability of the entity during a time period. So, it's not as if it's a continuous calculation of the composite score because you would need to update it with activity since the most recent balance sheet dates. So, there are considerations about the timing of when you look at whether it be a month end or quarter end or something that would be reasonable to do, it's not every single day a school would calculate it. The changes could be made. You just have to consider that as part of the process.

MS. JEFFRIES: Okay. Thanks, Dave. Appreciate it. So, Jessica, is your comment on one A? Okay. So, Brad has deferred to you on that before him. So.

MS. RANUCCI: Thank you. I'll try and be quick because this is just, I believe, a drafting issue. But I wanted to bring it up because I think it's maybe an important one. My understanding of one A is that it was intended to cover a variety of liabilities resulting from settlements or final judgments, whereas one B was intended to cover certain losses of state and federal losses that have not gone to judgment. But I'm a little concerned that the redrafting of one A with the language that says proceeding described in paragraph (c)(1) one B or C of this section, that that clause suggests that that entire list of things. So, debt or liability from a settlement or arbitration proceeding, final judgment, judicial proceeding is only limited to things that are otherwise described in paragraph B and

C, and I don't think that that was intended to be based on all of our conversations and the rulemaking. So, I was wondering if you could just take a look at that? I can try and rephrase it if that's not clear.

MR. MARTIN: Could you put that, would you put that in the comment please? Thank you.

MS. JEFFRIES: Thanks, Jessica. Brad.

MR. ADAMS: Thank you. So, I had a comment on, its 11 creditor events, B. And I understand the point, but there's no materiality threshold in here whatsoever, and this is a mandatory trigger. But, you know, I was an auditor in 08, and I saw what the banks did to companies and just calling a balance on a line of credit. You can have a balance called on a line of credit for not using your line of credit. And it doesn't mean you're not fiscally responsible. So, I just am really struggling with how we word B as we worded it. I actually think in the discretionary number two creditor events is actually worded more I guess at a higher level than this. This is just so open to discretion. Maybe someone can help me understand why we think calling a balance due on a line of credit that may be because it's not being used is a bad thing and it means you're not fiscally responsible.

MS. JEFFRIES: Okay. I'm not seeing an

immediate response, Brad. Maybe something the Department has to mull over and get back to you on.

MR. MARTIN: I'll take that, I'll take it back. You're talking about the creditor term, about the suspension of a line of credit. Well, our concern is obviously where schools are experiencing financial difficulties. One of the ways we have of picking up on that in time to do anything about it is where creditors begin to limit or suspend lines of credit or call-in balances on loans. And so, I think that's stuff that we're coming from here is trying is a lot of this is ways in which the Department can be aware of where an institution is potentially in trouble. And while I do understand that that you could have a line of credit ended for not using it. Our overriding concern is this is awareness here of when an institution begins to be in financial trouble. And these are important indicators of that. But I will take it back.

MR. ADAMS: And I added comments in the text for you, Greg. I do think if we just added at the very end of B because the institution is in financial distress or something that relates to the fact that it was called because of the fiscal nature of the school or being in a bad position, however you need a word it but some sort of qualifier there. And then I'd like to move to two right below it on the two discretionaries becoming a mandatory and we'll get through this when we cover discretionaries but some of these discretionaries as you know having not been defined that the Department can't tell us how you resolve it, is still a problem for me. And I understand why the Department has discretionary triggers and why we want them to be not limiting. But at the same time, if a school has no idea what the benchmark is, I don't see how two of them that are undefined can then result into a mandatory financial issue that would be could potentially require a letter of credit. I just don't think it's worded in a way with the discretionary triggers down below that that we could live with. Thank you.

MS. JEFFRIES: Thanks, Brad. Certainly, if you have some suggestion what the language would look like, that would be more acceptable. You could put that in the chat. The Department's looking for that type of information as well for consideration. I'm not seeing any more hands on this section, Greg, so why don't we go ahead and move to the discretionary triggers, I believe are next.

MR. MARTIN: Thank you, Cindy. Yes. We will be moving to the discretionary triggers and those are found in paragraph D. So, we'll wait for those to come up. Renee, can you bring up D? Oh, there it is. Thanks. Oh, Vanessa's started. Okay. So, we had a switch over. No problem. Thanks, Vanessa. So, Vanessa Freeman is doing this now, so want to acknowledge her efforts here. So, this should be page 14, right? I think we need to go back, Vanessa. Yeah. This is page. Right, right there. Thanks. That's great. Fantastic. Okay, so we are starting with our discretionary triggers here in D and let's move down to D two, which is creditor events. And you see that there. We have clarified the cross-references in this item. And again, we've updated throughout the section what we mean by the entity of financial statements were submitted to the institution. So that's just noting those changes there. And then we'll move on to, let's move on to number six on page 15, Vanessa. This is pending Borrower Defense claims number six there that you see. And we have revised this item to clarify the original intent. And here under pending Borrower Defense claims there are pending claims for borrower relief discharge under 685.206 from students or former students of the institution. And the Secretary has formed a group process to consider the claims under 685.402. And then moving down to number seven. Discontinuation of programs. These here we have moved the affecting at least 25 percent of the students from reporting requirement for this trigger to the discretionary trigger itself. Because we think the intent of the trigger will be clearer. So, in number seven, then the institution discontinues a significant share of its academic programs, affecting at least 25 percent of enrolled students. And our next change is under ten, number ten, which is borrowing. And we have clarified here this applies to all borrowing during the last quarter that is repaid during the first two quarters. So, there I'll read the revisions to ten. An institution's financial statements submitted under 600.20 G or H or 668.23 or subpart L of this part include a line of credit or borrowing in the last quarter of the fiscal year that was repaid during the first two quarters of the next fiscal year. And then we move down to number 11, the loss of program eligibility. And we've added this discretionary trigger here (d)(11). This is a new trigger, discretionary trigger that will ensure the Department has adequate information about such actions but does not require the Department to take action where loss of eligibility is against a single small program at an institution. And this is, again, number 11, loss of program eligibility. One or more programs at the institution has lost eligibility to participate in another federal educational assistance program due to an administrative action against the school or its programs. And that is everything for the discretionary triggers under D. So I'll open the floor for discussion.

MS. JEFFRIES: Thank you, Greg. Brad, you are up first.

MR. ADAMS: Thank you, Cindy. And back to my previous comment on the language. I think we should remove the two discretionary triggers becoming mandatory since the Secretary already has the ability to judge any trigger it wants to that warrants a consequence. So that would be my recommendation. I'll put it in the chat. On this, again, I'm struggling with three and four. Three in particular on a fluctuation in Title IV, because it's not a fluctuation only down, it's a fluctuation up. So, you could have an instance where revenues increased 25 percent that you could be deemed financially not responsible. So, in the fact that neither one of these as Greg nor Mr. Finley’s own admission in session to the Department can define what either one of these is. And so, I don't know how a school knows whether they're triggering either one of these two. I did want to bring up, though, on the new item number ten. I'm struggling with this one because there's no way to game the system with borrowing money at the end of the year anymore. It's now the money has to be used for a fixed asset in order to help your composite score. So why are we going to penalize schools that have short-term borrowed money in the last quarter of one year and then pay it off in the first six months of the next year when it doesn't help you game any kind of calculation. All we're doing here is saying schools don't pay off your debt early or you'll be penalized. So maybe someone talk to me why we think number ten is important here? Paying off debt early is good, I thought. I'm confused.

MS. JEFFRIES: Okay. Greg? Nope. Okay.

MR. MARTIN: I'll take that back.

MS. JEFFRIES: Okay, you'll take that back? Alright. Thank you. And I don't know, maybe some of your other negotiators may weigh in on that as well, Brad. We'll see. Kelli?

MS. PERRY: Yeah, I have some concerns about ten as well, because there's a very good chance that a school could use a line of credit as a cash need. So, I'll give you an example. A lot of schools will have lines of credits set up with banks, but they never draw on them. But let's say, you know, the school is running short on cash. Let's say they have a June 30 year end.

They're running short on cash because their fall tuition revenue hasn't all come in. And they need to use that line and that line of credit to get through the summer months and then they pay it back once that fall tuition revenue comes in immediately. So, this is this whole concept of having a line of credit that you borrow against in one fiscal period and you pay it back in another fiscal period is something that Treasury Department's use or can use as a means of determining how they use their cash because they don't want to dip into their investments or their endowment or such. So, they have a real concern about this one, because I think this happens more than you think for reasons not because the school is at risk of closure, but because they do it to manage their cash.

MS. JEFFRIES: Thank you, Kelli. Greg, I don't see any other hands. Oh, here we go. Jamie?

MS. STUDLEY: I think the change to number seven, adding the 25 percent program closure level is a good direction. I don't know if 25 is magic, but I appreciate the ability to distinguish between appropriate management and terminating programs for whatever reason and the need to look at them as triggers. I will reiterate the two discretionaries should not become mandatory refrain that you've heard. I rise now just to speak to the simple question of number one accrediting agency actions has placed or places the institution on a status is a very reasonable discretionary trigger but has no time horizon. So, it could I don't think the Secretary would, but it could encompass an accreditation status ten years ago. So, I'm not sure what has placed adds since what you're looking for is a delta something that happens that the Secretary wants to be informed of and look at. So, if the intent is the institution is placed on the it has placed the institution on probation or show cause that may be a sufficient trigger or you can add a timeframe. I don't think it's a severe problem, but it just leaves open a historic door that the Department's probably already looked at that action.

MR. MARTIN: Certainly, certainly our intent is not to do that, to go back to ten years. But I can understand that there could be some that could be read in there. So, take a look at it.

MS. JEFFRIES: Thanks, Jamie. Debbie?

MS. COCHRANE: I'm just trying to understand some of the comments that have been raised around the two discretionary triggers becoming one mandatory one given and I know there's some questions have been raised around what can be added authorities like give the Department. I'm just wondering if the Department had a response on that?

MR. MARTIN: About the two discretionaries becoming mandatory?

MS. COCHRANE: Yeah. Given that it can already look at the kind of take any one discretionary triggering event and kind of escalate it. That's what I think if I'm understanding what some of the other negotiators have been asking about, I would just like to hear the Department's perspective.

MR. MARTIN: It is true that we can take any of the discretionary ones are at our discretion. It is as I think, acknowledgment in the regulation that if there are two or more discretionary events that happen, that that becomes a that becomes an item of concern. And at that point, they become mandatory. And it elevates what the Department has to do as well as opposed to what the Department can do. So that, but I get the I take the point that, yes, that we can use any of these in any of these discretionary triggers independent of that independent of that mandatory trigger. I sense there seems to be a considerable amount of concern about the mandatory discretionary two or more discretionary triggers becoming mandatory.I'll take that back for discussion.

MS. JEFFRIES: Okay. Thank you, Greg. Barmak?

MR. NASSIRIAN: I wanted to echo Brad's comment and Kelli's comment with regard to a ten. If short-term borrowing and repayments really doesn't have an impact on the composite score. What's the point of just forcing institutions to report and overwhelming the Department with non-actionable information that it can't really use? I don't see that as particularly adding any value to anything. But the comment I had was my and this may have to do with the manner in which the mandatory trigger on default was crafted, maybe? But the way I read it, number two, romanette one and two, which are intended to be discretionary triggers are actually more limited than the mandatory trigger on default. This seems to be from my reading, this is already a mandatory default and is already a mandatory trigger. So now you're saying you have to default and there has to be further conditions. And if those conditions are met, this becomes just a discretionary trigger. Just it seems either redundant or there's something kind of incongruent about what we're doing here. I just don't understand what this provision is supposed to do if default is a mandatory trigger. What is this provision doing here? I may be missing some nuance, which I often do, but some clarification on this would be helpful.

MS. JEFFRIES: Thank you, Barmak. Carolyn?

MS. FAST: I just wanted to offer some support for the Department's proposal that two discretionary triggers would equal a mandatory trigger. That seems to be a very clear need for this type of provision here. There's been a historical problem with the Department acting in time to protect students and taxpayers from these closures. And part of it is that the Department has other things to do or there might be other concerns that the Department is wrestling with instead of just focusing on what can we do to protect students and taxpayers before it's too late. So having a mechanism that says here are some multiple big problems and this is going to be mandatory without having to get the Department to necessarily pay attention or resist other pressures, to let these things go to have protections in place seems to be extremely important. And it would be a big step backward to get rid of that provision.

MS. JEFFRIES: Thank you, Caroline. Greg, you have your hand up?

MR. MARTIN: Yeah, after we take the last comment, I wanted to ask if I may impose upon our advisor, Mr. McClintock, to comment on ten about the extent to which, in his professional opinion, he feels that the borrowing in the last quarter and repayment in the first two quarters could be used to gain composite scores. If he feels he would like to comment on it.

MS. JEFFRIES: Sure, wait just a second. Yael was in line, and I want to see if she's okay with you holding your place right now and letting Dave address that or? Okay, great. Thank you. Okay, Dave.

MR. MCCLINTOCK: Yeah. Thanks. And I did add to the chat. I know the public can't see that, that I don't see a way that it can be game. So, after the Borrower Defense went into effect, the way the composite score works, schools have to subtract their net fixed assets from equity, but they can add back long-term debt and they now have to add any new fixed assets any new debt has to be specifically tied to the acquisition of fixed assets. And so, in this case, if you borrow money and pay it back, it's not getting captured in the composite score or that add back in any way. So, I can't see a way that it would game the composite score calculation.

MR. MARTIN: Thanks, David. I appreciate that.

MS. JEFFRIES: Thanks, David. Okay, Yael?

MS. SHAVIT: Thanks. I just want to add on to Carolyn's comment. I view the necessity of the two discretionary triggers becoming mandatory the same way that Carolyn does. And I do want to note that the discretionary triggers are constrained and targeted. I think it's good to give the Department discretion there. But where there are two discretionary triggers at issue, I think at that point, understanding the different obligations of the Department and the amount of time that it can take to make discretionary actions. Time is not on the side of the institutions or their students, and I think it's unlikely for the Department in those scenarios to be able to act as quickly in every circumstance as would be necessitated by multiple red flags going off. So, I think as a timing matter, more than anything, this is a critical addition. And I do just want to note again, it isn't the case that the list of discretionary triggers is expansive. I think it is targeted and I think it's meaningful. And so, where there are more than one of these triggers creating red flags and concerns, I agree that it's not only appropriate for the Department to create a mechanism by which two discretionary triggers become mandatory. I think it's critical for the functioning of these regs.

MS. JEFFRIES: Okay. Thanks, Yael. I appreciate that. Okay. Jamie, do you have something quick because we're fast approaching the lunch hour?

MS. STUDLEY: I can wait till after lunch, if you prefer?

MS. JEFFRIES: No, go ahead. We need to get as much as we can, because you still have a significant piece of this paper to cover.

MS. STUDLEY: It, I respect the considerations, although managing the Secretary by regulation is a challenging task. Maybe the Department at some point can explain that, that remain unresolved. That might be helpful and knowing the limit of this. Just very briefly, here's the situation that I'm concerned about not having an automatic effect. So, and it's a much more benign counterpoint to the multiple seriously troubling issues that Carolyn and Jessica have spoken to. A college in prudent management of the institutional programing in the best interests of the student says we need to discontinue a quarter of our programs. We've planned for that. We do that so that we can continue to offer good programs. The secretary says, yes, that's no problem there. You're not in financial distress. In fact, that's good for you. Oh, and we are closing some locations that will also change our structure, but it's all to the good. And the Secretary says that's fine. Does the third thing that they want to do, that they would otherwise have the right to talk to the institution about why they wanted to close something else, throw them into a mandatory financial responsibility. After all this prudent planning to reorganize themselves, they are now mandatorily in a financially determined state to be financially precarious when in fact these were the changes that were necessary to make them healthy. And the Secretary has exercised this discretion to say they are. I don't know that you can answer it right now. That's the needle we're trying to thread to I respect the idea of moving these and not having them sit around when there are decisions to be made. But I also I think that's why the 25 percent helps that that may tilt the balance of this as we navigate this. But that's the kind of thing that I worry about, not the bad ones, but the ordinary course kinds of activities that are appropriate for discretion. Could a school doing wise things be thrown into that pot? That's it.

MS. JEFFRIES: Appreciate that, Jamie. And you brought us right directly to the lunch hour. So perfect. So, we will adjourn and reconvene at 1 p.m.

today and pick up on financial responsibilities. Hopefully being able to move through that document and at least look at, I believe, change of ownership would be next, right? Yes.

MR. MARTIN: Correct.

MS. JEFFRIES: Okay. Alright. So, with that, if we could go off broadcast and everyone have a great lunch.

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

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

Emmanual will continue for GE

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

It is still dark here!

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

The notion that programs with failing D/E rates are considered as to overall institutional capability (here, for purposes of entering a PPA) seems entirely reasonable.

From Jamienne Studley--Accrediting agencies (P) she/her to Everyone:

Same question as Brad: what might be the burden on schools to calculate if not the same as IPEDS, and is that a standard disclosure?

From Anne Kress (P) Comm Colleges to Everyone:

+1 Jamie and Brad

From Dave McClintock (Advisor) Auditor to Everyone:

The educational spending outlined would be a new disclosure

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

+1 Johnson and Barmak

From Johnson Tyler (P) Legal Aid to Everyone:

I think the educational spending on instruction is already in IPEDS data.

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

Educational spending is already part of IPEDS submission, so if the definitions align it will not create an additional burden. If the don't align I believe it will create confusion.

From Jamienne Studley--Accrediting agencies (P) she/her to Everyone:

Thanks, Brad.

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

IPEDS does have instructional spending reporting, but it does not currently allow for a good understanding of non-educational expenditures because expenses for advertising are included in other categories, including "student services"" This definition addresses that problem.

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

I will be coming back to the table for Fin Resp.

From Sam Veeder (P) FA Administrators to Everyone:

I will be rejoining for FA

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

I'll be coming to the table for legal aids

From Johnson Tyler (P) Legal Aid to Everyone:

Jessica is taking over for legal aid. thx. johnson

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

my request remains the same that use IPEDs educational spending definition as it currently exists and if we want to change the current IPEDs definition then to do it in IPEDs so that they align and are the same.

From Johnson Tyler (P) Legal Aid to Everyone:

Thank You Ernest

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

Thank you Ernest.

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

Of course, and I appreciate that reminder Greg. Thank you.

From Amanda Martinez (P) Civil Rights to Everyone:

+1 Ernest. Important perspective to share for the public and group.

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

Thanks for sharing Ernest. As I have stated for three sessions I firmly believe a DE and earning disclosure for all programs at all institutions would provide students with valuable information about the value of a program. The small program rate is a good start, but it could go to all degree programs as well.

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

+1 to Barmak - why would we limit this provision to schools that start with scores under 1.5? If a school drops below 1, that is significant, regardless of the prior score.

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

+1 to Barmak/Carolyn

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

Agree on the point raised by Barmak/Carolyn.

From Jamienne Studley--Accrediting agencies (P) she/her to Everyone:

+1 to Barmak/Carolyn/Debbie on this issue of dropping below

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

Yael is coming to the table for state AGs

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

Johnson is coming back to the table to make a comment

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

"you may be in a better position 6 months later . . . but you may not be"

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

I am going to let Barmak go in front of me so we can finish debate on 1 (i) A

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

I’m coming back to the table for legal aids

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

I am concerned about the language in (c)(1)(i)(A) regarding settlement, arbitration proceeding… administrative proceeding described in paragraph (c)(1)(i)(B) or (C)…” I believe that this final clause (“described in paragraph (c)(1)(i)(B) or (C)”) is NOT intended to circumscribe this whole list to events listed in (B) or (C), but I’m concerned that it could be read that way.

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

I recommend we change 11 B to the following:

Any creditor terminates, withdraws, limits, or suspends any line of credit, loan agreement, or other financing arrangement because the institution is in financial distress.

From Jamienne Studley--Accrediting agencies (P) she/her to Everyone:

+ 1 to Brad --as I've said before i don't understand why two discretionary triggers become mandatory, since the Secretary always has the ability to judge that a discretionary trigger warrants attention or consequence

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

+1 Jamie. My recommendation would be to remove the two discretionary triggers become mandatory since the secretary has the ability to judge any discretionary trigger that warrants consequence already.

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

+1 on Brad's point on 10

From Dave McClintock (Advisor) Auditor to Everyone:

I would echo the comments about #10 and don't understand the risks it is trying to address now that all debt must be specifically assigned to new fixed assets in the composite score calculation

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

+1 to Jamie. I appreciate the department defining a figure on point 7. I am not sure 25% is the right number and I would like for it to align to point 3 in mandatory, but 25% is a defined number which helps institutions.

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

Thanks for asking Debbie. I've been seeing it as a streamlining process but am also curious to hear this response.

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

+1 Debbie

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

+1 Debbie

From Emmanual Guillory (A) PNPs to Everyone:

+1 Debboe

From Emmanual Guillory (A) PNPs to Everyone:

*Debbie

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

In response to Jamie, aren't all discretionary triggers subject to the introductory language that "the Secretary determines… likely to have a material adverse effect on the financial condition of the institution"? If so, I think that might take care of the long-ago accreditation action issue.

From Jamienne Studley--Accrediting agencies (P) she/her to Everyone:

In a sense the "two discretionaries" provision could override the Secretary's discretion to judge that they are not of concern. Thanks, Debbie, for asking.

From Anne Kress (P) Comm Colleges to Everyone:

+1 to Jamie's reading as the heart of the concern

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

+1 Barmak. As I referenced not as well as Barmak I am not sure why creditor events are in both places.

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

+1 Barmak

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

That's how I've been seeing it, thanks Carolyn.

From Johnson Tyler (P) Legal Aid to Everyone:

+1 Carolyn

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

Thanks everyone, I can see those perspectives. The discussion of the topic is helpful.

From Emmanual Guillory (A) PNPs to Everyone:

Also, what happens for institutions that are simply restructuring majors?