

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 3, DAY 3, AFTERNOON
March 16, 2022

On the 16th day of March, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. WAGNER: Welcome back. I hope everyone had a good lunch [audio] noon session. Before we jump back to where we were before lunch, just have a couple quick reminders. One is that there will be public comment both today and tomorrow starting at 3:30. There will be no public comment on Friday. And if you are going to be participating in the public comment, please join the sessions 10 to 15 minutes beforehand, your assigned time, and log in under the name you are registered under. And one other reminder is that the in terms of this afternoon for the negotiators that the three minutes be used to be for new concerns, comments, or questions to help to try to get to a consensus. And that time should not be used to restate previously stated concerns and to be for things on the table. So that being said, I think based on my notes, I think and I'll turn it back over to Greg, I think we were on financial responsibility, recalculating composite scores, but I'll defer to Greg to where he wants to pick up.

MR. MARTIN: That's correct, Kevin, we're at, E, paragraph E, recalculating composite scores. And I know we were experiencing some difficulty with transmission, so hopefully that's not going to be

too much of a problem here as we go forward. But if it is and my picture freezes up at an awkward moment, please forgive that. It's interesting how when your picture freezes, it stays at a moment you don't want, the look on your face is always like rather upsetting. So hopefully that won't happen here. So, we're starting with E, recalculating composite scores. And we have added here a reference to recalculating the composite score for the contributions and distribution under paragraph C1 10, which we were discussing prior to the break, some more information on that forthcoming, but don't have that right now. So, I understand what the concerns were related to that particular requirement. So, I don't usually need to reiterate those as it relates to recalculating the composite scores, since we've already spoken about those. And then the [audio] here is still under E in 3. If we look at three for a, if we can just arrow down just a little bit to get to three there, I think. Great. Could we, could you, Renee, could you arrow down just a little bit? There we go. Three. Thanks. I appreciate it. So, this change here, we've, a missing word here to this item. So, I'll just, this is from proprietary institution, the withdrawal of equity in the entity whose financial statements were submitted in the prior fiscal year to meet the

requirements of 668.23 in the year following the change of ownership in the entity whose financial statements were submitted to meet the requirements of 620-600.20 G or H will be adjusted as follows. And that is all that is in E. I'm going to go through F and then go back and comment since E was so, so brief. So, let's move on to F, which is reported requirements and after that I'll allow for comments and discussion. So, we're moving into F, which is reporting requirements. And the first change is in F1 romanette four on page 17. And we see it there. And this is just we've corrected a cross-reference and clarified the language. So, for a contribution and distributions, again described in paragraph C1 10 of this section and/or repayment or short-term borrowing in paragraph D10 of this section, no later than ten days following each transaction. And then moving down to romanette five. We have revised here to provide for simpler language by removing the duplicate cross-reference and correcting reporting requirement to refer to publicly listed rather than publicly traded entities for consistency. So, five now reads for the provisions relating to a publicly listed entity under paragraph C6 of this section, C romanette six of this section no later than ten days after the date that such event occurs. And there is a change in romanette six, which is

updating a cross cross-reference here to refer to D to D9. And we've also updated a cross-reference and then if we move on to romanette ten. In romanette ten here we've updated this item with cross-reference to C1, romanette nine and D11 to reflect the fact that we now have both a mandatory and discretionary trigger tied to the loss of eligibility for Federal educational programs. So, intend for the loss of eligibility for another Federal education assistance program described in paragraph C1, romanette nine or D11 of this section no later than ten days following the action. And in looking at three in number in three C, we just added a missing word to the item here. So that's not much there and that is pretty much all for reporting. So, I'll open the floor for discussion at this point.

MR. WAGNER: Alright. Thank you, Greg. Thank you, Renee.

MR. MARTIN: It could be anything for E, anything for E and F.

MR. WAGNER: Yes, on E and F. Let's see. Kelli, I see your hand up.

MS. PERRY: Thank you. I have a couple of questions and then I just would like to make a statement. In as it relates to contributions and distributions for the ten days following each

transaction. Does that, do you take those together so it would be ten days after the distribution? Because I don't know that you care about the contribution by itself, because what we're looking at is the contribution and the distribution. So, is it ten days following the distribution?

MR. MARTIN: Yeah. Taking the totality when the distribution occurs after the contribution.

MS. PERRY: Okay. So, contribution and distribution are looked at as one transaction as opposed to separate.

MR. MARTIN: Yeah, I believe. Yes.

MS. PERRY: Okay. And then the second question has to do with, I think it's 12. So, it says for failure to meet any of the standards in paragraph B of this section not later than ten days. So, within B, if I'm referring to the correct B [ph], that's where the composite score calculation is. So, is the intent of the Department that once an institution school calculates their composite score when they're doing their audit, do they have to notify you within ten days, or is the reporting that they're doing through the Clearinghouse/eZ-Audit sufficient? Like do schools have to notify you if they know that they failed the composite score, I guess is the question? Because that's

what this implies.

MR. MARTIN: Just, I'm having trouble with a little bit of break up here. So, you're looking at romanette 12?

MS. PERRY: Yes.

MR. MARTIN: Right before two for failure to meet any of the standards in paragraph B of this section. No later than ten days after the institution ceases to meet to meet the standard.

MS. PERRY: Right.

MR. MARTIN: What again? Could you, I'm sorry. I didn't hear you.

MS. PERRY: So, B includes the composite score. So, the question is, do institutions have to notify you within ten days of calculating their composite score when they do their audits and do their calculations that they have not passed it? Or is the reliance going to be on when the audits and such get submitted through the clearinghouse/eZ-Audit?

MR. MARTIN: Steve, do you have anything to add to that? I'm going to see if Steve is, Steve can respond.

MR. FINLEY: So, you're talking about a, are we talking about a single audit submission that's been finished, but it's finished prior to the nine-month

deadline for submission?

MS. PERRY: No, I'm saying like so when I do my audit right, I calculate my composite score. We go through, we have to provide it to the auditors. It's a piece of audit evidence that we give them. So, when I do that, I know whether or not my score is passing or failing. And so, I guess my question is this is saying that I have to tell you within ten days whether or not I failed. Or are you, or does that not equate and you're simply relying on the information that's submitted with the easy audit when you do that, when you redo those calculations?

MR. FINLEY: So, my understanding is we want the audit submitted with that calculation within ten days of when the institution has it in-hand, not necessarily you know, if that's earlier than the nine-month deadline, we want it earlier. And I don't think we were talking about a separate reporting of the composite score calculation.

MS. PERRY: Okay. So maybe suggest that when it says meets the paragraph, the standards of paragraph B that you say B2 and B3 and 4 and exclude 1.

MR. FINLEY: Yeah, we'll look at that. There's also just a possibility I'm wrong, Kelli, but we'll check on it.

MS. PERRY: Okay. And then the last thing is, and I know I didn't get it in time for session two. So, I have submitted some language for number three as it related to a possible appeal process, as it related to the composite score calculations. And I know it's not in here, so. I guess, one, I just would like to understand the rationale for not having an appeal for the composite score, but two, I just want again to say, and I know we're not talking about the composite score in this neg reg, but it is a very important calculation, obviously. And I think we've talked about the fact that there are some challenges with it, and you know the Department has agreed, I think, that there are some challenges with it, but there's real concern over what was added in the last rulemaking as it relates to refinancing debt. Institutions who fail financial responsibility because of-

MS. JEFFRIES: You have 30 seconds, Kelli.

MS. PERRY: -the fact that they've made those decisions to refinance debt, this is something that is going to potentially affect students. Schools are not potentially going to be making the right business decisions because it could change their calculation in their composite score. So, I would

strongly encourage, if any way, if there's some way to add an appeals process for the composite score so that these can be looked at before a school is determined to not be financially responsible as it relates to sound business decisions that they've made relating to recalculating their debt.

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

MS. PERRY: Thank you.

MR. MARTIN: And I think I will say we, you know, as we've said before, that we were not, I understand that there are concerns about the composite score and that there is a great deal of appetite out there to have that looked at again, but it's not within the scope of this negotiation. So, I don't think we're going to entertain anything related to that, including the appeals process. But I will take it back.

MS. PERRY: Thank you.

MR. WAGNER: Thank you, Kelli, I see our esteemed advisor, Dave McClintock.

MR. MCCLINTOCK: I'm glad I got Kevin on board; Brady's next. I just, a point of clarification, I think. Steve, you mentioned statements needing to be submitted within ten days. And I think it says there's a new requirement they have to be submitted

within 30 days of the completion of the audit. I just want to confirm that that's. Accurate. So, it's not 10 days, it's 30 days, is that right?

MR. FINLEY: Yeah. Like I said, I was not sure.

MR. MCCLINTOCK: Okay. I just wanted to make sure I'm on the same page and I guess I would say I would just build on what Kelli said you know going through an audit, there's lots of testing and adjustments being made, and it would be tough to know exactly when the school determined that they failed a composite score or fell in the zone for the composite score for the prior year until the report gets issued. And so, to add requirements beyond the issuance of the audit, it would be just tough to track and understand. That's the purpose of the audit report being submitted.

MR. WAGNER: Thank you, Dave. Thanks for that. I don't see any other hands. We'll turn it back to you, Greg.

MR. MARTIN: Great. And I want to say that we appear to be having some trouble with the with the audio with the video feed. You probably notice that you can't see all the, I like to call them Hollywood Squares, that come up here so that we are having some issues. We're trying to resolve that as we speak. But I

think that audio, while there are some issues, is sufficient to continue. So, I will continue and we, I believe we finished F, and so we'll be moving to G, there are no changes in G. So, I'd like to move on to H, which is audit opinions and disclosures. Thank you, Renee. And we have further clarified the language in this section to streamline reading and further express our intent. So just reading through this, this is even if an institution satisfies all of the standards of financial responsibility under paragraph B of this section, the Secretary does not consider the institution to be financially responsible if the institution's audited financial statements include an opinion expressed by the auditor that was adverse, qualified or disclaimed opinion unless the Secretary determines that the adverse, qualified or disclaimed opinion does not have a significant bearing on the institutions of financial condition. And that is the changed language there. And I'll just continue to read that because it carries over to the end. So, or include a disclosure about the institution's ability to continue as a going concern unless the unless the condition unless the condition has been alleviated. And then the Secretary may conclude that diminished liquidity, ability to continue operations, or ability to continue as a going

concern has not been alleviated, even if the disclosures in any way provide that those concerns have been alleviated. So basically, just some wordsmithing there to clarify our intent and make that a little more streamlined. And that is everything that we have for H of the opinions and disclosures. I know it was rather brief. But I will take any comments on H because I would like to not have too many paragraphs or at least finish out that section before we move to a different section.

MR. WAGNER: Thanks, Greg. Thanks, Renee. Does anyone have any comments on subsection H? Yes, Kelli.

MS. PERRY: So, if, basically what this is saying is that your auditors are going to say that you don't have any issues as it relates to going concern or liquidity, diminished liquidity, but that the Department has the ability to say that you do. So, is there any way you could give some examples of why if the audit isn't producing that result, that you would feel that it was?

MR. MARTIN: I don't know that I have specific examples, I can try to get those from our audit group if that would be instructive. The purpose here is you know that simply because the individual auditor that even if that audit shows that they have been alleviated,

the Department still has the discretion to say that it questions the end of this bill to continue as a going concern. It gives the Department, the Department's not held or tied by that particular auditor's evaluation. Steve, do you want to add to that?

MR. FINLEY: Yeah. Thanks, Greg. Since it's been a few minutes since I've put my foot in my mouth, my understanding is we are talking about situations where there will be some kind of paragraph from the auditor acknowledging that an issue was looked at in some detail and the Department is pretty much taking the position it's going to also look at that issue in detail and reach its own conclusion about the impact on the institution. But I don't think we're talking about situations where there's no comment from the auditor at all about there being an issue with liquidity or whether the entity's ability to continue operating as a going concern was not mentioned or something like that. I know there was a change in the audit standards for going concerns where it became less of the auditor's opinion that was being expressed and more of the auditor's evaluation of management's assertion on that. And we're just trying to acknowledge that if we see these paragraphs, we're going to also take a closer look at it and have the Department make

its own determination.

MS. PERRY: Okay. That explanation made sense. I mean, it might just be the way that it's worded that was confusing. Thank you.

MR. MARTIN: I would go back and just to reiterate [inaudible] you know, in support of what Steve was saying, it says, you know, the financial statements do include the opinion expressed by the auditor. So, it starts with the opinion being expressed by the auditor. And then the Secretary can determine that adverse or qualified or disclaimed opinion does not have a significant effect. So, we have latitude that way as well. And so, it would only be where there was an opinion expressed and then that was resolved, and the Department has the discretion to conclude that it still has concerns. So, I think the way it's written, I mean, if there are suggestions as to how it could be worded better, we'd be willing to take those. But as I look at it, I think it does make it clear that this all stems from the opinion expressed by the auditor that was adverse, qualified, or disclaimed. Okay. Do we have anybody else?

MR. WAGNER: Kelli, you have your hand still up or?

MS. PERRY: Yeah, I just. I'll look at

it. I just, I think we're getting hung up that we're saying that the Secretary determines that it has been alleviated. And then it goes on to say that the Secretary has the ability to say that it hasn't been alleviated. I think it's just the combination of those two sentences together, and maybe there's just so many words in there that are crossed out that I'm not reading it right. So let me take another look at it.

MR. MARTIN: That could be. That's a problem for me. I know after a while you get so many, words that are that are crossed out, but. Yeah, you're talking about so the Secretary determines the diminished liquidity to continue operations or ability ongoing concern has been alleviated. Yes. So, the Secretary can conclude, even with the adverse opinion that it has been alleviated, we can also, as stated in romanette one, determine that the adverse or disclaimed adverse, qualified, or disclaimed opinion has no significant bearing. So, I think what it's really showing is that we have discretion about the opinion going both ways. But I agree with all the strikeouts it can get a little harrowing after a while to figure out what's there. But I think it works as written. But if there are suggestions to make the intent clearer than we-

MR. WAGNER: Thank you for that. Brief

announcement, David Socolow is going to be coming to the table for state agencies for the remainder of the day. Are there any other comments on H specifically to H? Okay. Greg, back to you.

MR. MARTIN: Thanks. And again, there seems to be a little bit of problem even with the audio. So, I do apologize if anything breaks up. And if I have to ask anybody to repeat themselves, it's because it didn't come through. It didn't come through well. So, moving on to 174 past performance, there's nothing new in past performance. The next section is alternative standards and requirements. And in here there's nothing in there as well, nothing new in that one either. And then the last section we move on to 176 change in ownership. And in 176, let's make sure I get this correct in 176, in 176C we have some changes.

MR. FINLEY: Hey, Greg.

MR. MARTIN: So, let's go down to 176. Yes.

MR. FINLEY: Yeah, let me interrupt. Donna Mangold is going to be representing the general counsel's office on this issue. Can you wait until she confirms she's ready? She was having to change rooms and establish a new connection, I think. It should just be a second.

MR. MARTIN: Okay. No problem. We'll hold.

MR. FINLEY: And if she has trouble connecting, we can, I'll fill in till she gets here. It's-

MR. MARTIN: Okay. Alright, fine. So, yeah. Okay. Well, we can go back to C. Steve, you are, you are going to stay on until it joins, correct?

MR. FINLEY: Yeah. Yeah. I'm sorry. I was just-

MR. MARTIN: Alright. No problem. No problem. So, in and then C this is acquisition debt. We have made a subsection to and added cross-references to ensure the language is sufficiently clear. So, this is now a subsection acquisition debt notwithstanding paragraphs B3, romanette one A through C of this section, the Secretary may determine that the institution is not financially responsible following a change in ownership. If the amount of debt assumed to complete the change in ownership requires payments, either periodic or balloon that are inconsistent with available cash to service those payments based on enrollments for the period prior to when the payment is or will be due. And in paragraph D terms of the extension, we just note in D1 romanette one B that we

have corrected the reference in this section to refer appropriately to the GAO. And that was in B the same day balance sheet or statement of financial position must be prepared in accordance with generally accepted accounting principles or GAAP accepted accounting principles, rather GAAP published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government's Auditing Standards or GAGAS published by the U.S. Government Accountability Office. So, we did make that change there. And that is everything. 176 is severability, 177 seven rather, severability. So, I'll take any final comments on 176, which is change of ownership.

MR. WAGNER: Any comments on 176? Yes, Barmak, you have the floor.

MR. NASSIRIAN: Thank you. Just so I'm clear, the changes of ownership contemplated here or within sector, or do they involve change of control as well? Meaning, meaning the change from for-profit to nonprofit or otherwise?

MR. MARTIN: I'll ask Steve to confirm but I think it would be any change, of ownership action.

MR. FINLEY: Yeah, it's any change of ownership resulting in a change of control under the statute and regulations.

MR. NASSIRIAN: So, this does include conversions, acquisitions, that cross sector lines?

MR. FINLEY: Yes, those come within that category.

MR. NASSIRIAN: Okay. If that is the case, I'm just curious about subsection C acquisition debt at the bottom. I'm not sure how the Department is going to calculate the amount of future cash available for a future payment, regular or balloon payment based on future enrollments. How would the Department do that? That's not a cash flow analysis. That's a forecast, right? The forecast based on another forecast.

MR. FINLEY: I could treat that as a rhetorical question.

MR. NASSIRIAN: It's not a rhetorical question.

MR. FINLEY: Yeah, I know, I understand, Barmak.

MR. NASSIRIAN: Let me be more specific. If this is intended to be a cash flow analysis that circumvents the prior conditions that what the Department appears to be contemplating here, quite rightly so, is the possibility, particularly now that I know you could cross sector lines, is the possibility that the new entity, however its categorized, could

satisfy the requirements that you have already put in place with regard to the composite store and could go through all of the various financial responsibility metrics that normally apply, but that it could still be of sufficient concern for the Department to flag it as not financially responsible. And what you're citing here is it's, I guess, the cash flow analysis that indicates the deal is not tenable. And my problem with it is that it really is based on true estimates that I'm not sure the Department would be in any position to either make or defend.

MR. MARTIN: I don't have any further clarification to make on that. I'll ask for some additional clarification from our people who deal with audits to see if we can get some more detail on that.

MR. NASSIRIAN: If I may, and I've said this before, I'll say it again here. One good marker that this thing could prove to be potentially problematic would be the involvement of former owners in the financing of the deal. To me that's much more meaningful because what you don't have there, you don't have the validation by a third party who puts their wallet on the table to say this deal is tenable. So, so I'm really worried here-

MS. JEFFRIES: Barmak, 30 seconds.

MR. NASSIRIAN: Okay, I'll stop.

MR. WAGNER: Thank you, Barmak.

MS. JEFFRIES: Before you get going, Kevin, I just want to let Steve and Greg know that Donna is in the meeting now. She has joined if you need to make that switch.

MR. FINLEY: Yeah, I think it will happen with a change in the issue paper. Thanks, Cindy. I was jumping the gun before for some reason.

MR. WAGNER: No worries, Steve. Welcome, Donna. Okay, is there any other or any other comments related to 176? Yes, Kelli.

MS. PERRY: I can put this in the chat, but I think I echo as I read this, I think I echo Barmak's concerns on this because as I look at all the requirements in this change of ownership section, you're looking for financial statements for the, you know, the new owner, right? So, you don't have what those financial statements are going to look like consolidated unless you use the same-day balance sheet, assuming that you're combining it, assuming that means that you're combining the two there, but you don't have any income statement. You don't have a complete set of financial statements to determine whether or not the resources that that new institution has to pay their debt is

sufficient. And I would question whether or not the Department would have the purview to determine whether or not they have the resources to pay that debt because that new institution could restructure a number of things after they emerge.

MR. WAGNER: Steve.

MR. FINLEY: Yeah, so another concern I think that's addressed by this, but it's not I don't think it's the sole reason this is being proposed are transactions were pretty much all the equity is sucked out of an institution to try to finance the acquisition by the purchaser. And so, it's the institution that's left with a lot of the debt on the books. But Kelli, I think we'll take your concern back too.

MS. PERRY: Yeah, if it's an equity concern, maybe there's a way to write it such that the equity the equity is used. I don't know.

MR. WAGNER: Thanks, Kelli. Barmak, something new to add?

MR. NASSIRIAN: I'm curious, the scenario that Steve just painted is, of course, the one to be concerned about. Would that entity then pass financial responsibility based on the preexisting metrics, even though we know that it would inevitably because that failure is not because of erroneous

forecasts of future revenues, that the scenario you are attempting to address here is based on the fact that equity is gone. Right?

MR. FINLEY: And the situation I described usually results in a multi-year financial responsibility failure by the institution.

MR. NASSIRIAN: Right. So again, my interest is to make sure that this thing you have here is A) doing something which I'm not sure it is, and B) that something significant is lacking here to control for the kind of scenario the Department seems to be worried about, which is an entity that superficially satisfies the requirements of its composite score, but has nevertheless fundamental structural issues that should give you concern. And to me, the source of that financing is at the root of it, because essentially, I don't care what appraisal they put on the table, you have no third-party verification that the deal is tenable because it's the owner who is rolling the dice and hopefully sort of exiting over time. Maybe that's their game plan.

MR. WAGNER: Barmak. Dave, I see your hand up.

MR. MCCLINTOCK: Yeah, Barmak shared some of what I was going to say is I'm trying to figure

out what is new being covered here. So, if it's debt coming up in the next year at the change of ownership, you do the acid test and you compare your cash to your current liability. So, if you have to pay it in 12 months, it would already be caught by the acid test ratio. And then the tangible net worth test historically identifies the issue that Steve was talking about. If it's a high, highly leveraged deal with significant debt and not enough equity, the deal would have composite or would have not met the tangible net worth test which would already be covered in other statutes, I think.

MR. WAGNER: Thanks, Dave. I don't see any other hands. Greg, would you like to take a consensus check on financial responsibility?

MR. MARTIN: I would like to do that, but I have a couple of things I'd like to discuss internally. So, if it pleases the negotiators and the facilitators, I'd like to take about a 10-minute break here and just come back. I'd like to just discuss the acquisition debt issue, because I know it's been raised. I don't want to be dismissive of it and just move to a vote of consensus without having properly addressed it beyond what you see here. So, if I could request that.

MR. WAGNER: Yeah, that'd be fine.

MR. MARTIN: Back at 2:00?

MR. WAGNER: Sure. We'll break, it's 1:40, almost 1:49. We'll break at 2:00, we'll come back live at 2:00 p.m. Eastern so we can go offline. Welcome back. It's 2:08 Eastern. Back from our break. I'm going to turn it back over to Greg. Greg, take it away.

MR. MARTIN: Thank you. So, before we continue to a consensus vote here, I just wanted to clarify, I did get confirmation that we, and going back to, I want to make sure I get this, I get this correct. Under the discretionary triggering events in, yeah in 10 in C, I'm sorry, in D. That's correct [inaudible] hold on a second. [Inaudible] to be there. And now I've lost my place. Hold on [inaudible]

MR. NASSIRIAN: D10 is page 15.

MR. MARTIN: Oh yeah, okay. Institutions [inaudible]. Yes. I'm sorry. I just was drawing a mental, a mental blank there. I don't know why I'm having so much trouble with this. Right, that's correct. In D10, so where we, in the discretionary triggers where we have the institution's financial statements submitted to this part, I include a credit or loan borrowing from the last quarter of the fiscal year that was then repaid during the first two quarters of the next fiscal year. We did have, there seemed to be a relative amount of agreement among the negotiators that

they'd like us to look at this again. And in the interest of reaching consensus and being attentive to the concerns of the negotiators, we are willing to remove 10. So, I just want to make that clarification. And then before we move on, I'm going to turn it over to Steve to address some acquisition debt back in 176C.

MR. FINLEY: So what I, what I understand now is that we have had some situations in change of ownership reviews where the review of the same-day [audio] sheet appeared to yield a passing score and then that was due in large part to certain debt arrangements not being finalized that were that when they were put on the books a few days later for the acquisition debt, it was really clear that the entity should have failed the same-day balance sheet. And so, this is going to provide the Department with the ability to look at these finalizations for acquisition debt and take that into consideration when evaluating the institution's financial responsibility after a change of ownership.

MR. MARTIN: Thanks. So, with that, I'll turn it over to the facilitators and we'll move to a consensus [audio]

MR. WAGNER: Thank you, Greg. Thank you, Steve. [Audio] I see one hand, Kelli, is there

something new to add?

MS. PERRY: I just, they were going to clarify something for me in the [audio] section, I believe it was, F112 [ph], for reference, the composite score and having to notify within ten days when we're aware of a failing score or change the reference from B to B2 through 4 and exclude 1?

MR. MARTIN: Right. I don't think we brought that one, we may have neglected to discuss that when we were on break.

MR. WAGNER: Greg, do you want to take a short break to look that over if you haven't or?

MR. MARTIN: Just give me, just, yeah, just give me about a minute offline, [audio] minutes offline, see if I can get through a chat on that one. Thank you.

MR. WAGNER: Can we stop the live feed? Okay, we're back live. It's 2:20 Eastern. Thank you for, that break. And I'm going to get back to Greg.

MR. MARTIN: Thank you. So, we had a question regarding before we move to vote for consensus on reporting requirements and that was in F. Just make sure we get this right now. F1 It's under romanette 11 and remember that we had some concerns about failure to meet the standards and originally, we had referenced all

of B of this section and there were concerns about having to make these do these reports within 10 days as concerns composite scores since it is the Department calculating those. So, we have agreed that we will change the reference in here in in romanette 11 where it reads for failure to meet any of the standards of paragraph B that will now read for failure to meet any of the standards in paragraph B3.

MR. WAGNER: Thank you, Greg. We do have two comments, new comments. We have Barmak and then Kelli and then we can go ahead and do a consensus check. So, Barmak, you have-[audio]

MR. NASSIRIAN: Thank you. This is just a suggestion. I defer to the Department's legal judgment, whatever your decision is. But, Steve, the comment you made just alarmed me because the scenario you are concerned, rightly concerned about, about potential changes to the same-day balance sheet data, because of the addition of new debts, obviously the Department should have authority to fail a program or to take action against it if that is so. I'm just concerned that the acquisition debt language here seems to restrict that only to those cases where cash flow projections don't support the deal, where, in fact, this particular scenario you mentioned had to do with the

addition of a debt that wasn't accounted for on the same-day balance sheet. So however, you resolve it, that doesn't change my intent to support this language, this section. But I just wanted to make sure that this doesn't end up actually restricting the Secretary from taking action in those cases, because it only seems to address changes that are due to you know financial shift as a result of enrollment changes, so-

MR. MARTIN: Thank you, Barmak.

MR. WAGNER: Thank you, Barmak. And we have Kelli. Kelli, you're up.

MS. PERRY: Brad and I both put this in the chat, but with the removal of D10, there needs to be a change in the reporting section F [inaudible] romanette four to remove that part about the short-term borrowing.

MR. MARTIN: Right. Yeah. Thank you for pointing that out. That was in my head, and I was trying to think of where that was, but yeah.

MS. PERRY: The other thing there too though, in the last sentence it talked about not later than 10 days following each transaction. I think that needs to be changed to the transaction because you had said earlier that a contribution and a distribution were considered one transaction. So, there's not multiple

anymore.

MR. MARTIN: Thank you.

MS. JEFFRIES: Greg, I'll just point out, I think Kelli stated it, but both of those things are in the chat, so you'll have reference to them.

MR. MARTIN: Okay, great, thank you.

MR. WAGNER: Thank you, Kelli. Thank you, Brad. Thank you, Greg. I think it's time for a consensus check on financial responsibility. Does that make sense [audio]?

MR. MARTIN: Yes. Yes, absolutely.

MR. WAGNER: Okay.

MR. MARTIN: I apologize for the back and forth there, everything. I just wanted to make sure we got everything in before- [audio]

MR. WAGNER: No problem. I want-

MR. MARTIN: Thank you very much.

MR. WAGNER: You were just freezing a little bit. I want to make sure you weren't speaking, so.

MR. MARTIN: Oh, no.

MR. WAGNER: We're going to go ahead and take a consensus check on issue paper number four, if you could please vote with your thumbs and hold them up high so we can see them. I'll go through a roll call

and if we are if there are any dissents that, please articulate what your issue would be, how will you be able to reach consensus and focus on a list of needs. But before we go to that, let's see, let's take a consensus check. So, everybody hold them up so I can see them, and I'll announce them [audio]. Let's see, we have Kelli. She's voting for it sideways. Brad is down. Anne is voting for. Jamie is for. Sam is for. Marvin, David is for. Barmak is for. Carolyn is for. Yael is for. [Inaudible] Jessica is a yes, Amanda's a yes. Ernest is a yes and Ashley is towards the side, which is for consensus. So, thank you for that. Brad, if you have something you'd like to articulate on what you'd need to reach consensus, or do you have a list of something that would make that possible?

MR. ADAMS: Yes, so thank you, Kevin. As discussed throughout the past three sessions, there's a couple pieces of the mandatory triggers and a few in discretionary that I'm struggling with. On the mandatory, in particular, the Gainful Employment revenue reduction of 10 percent, which could equal one program with no consideration of any bottom-line expense reductions and impacts on the bottom-line income. The fact that any credit event, even if it's a short-term borrowing line of credit being pulled by a bank, is

significant enough to create a mandatory trigger. And the fact that any lawsuit from a state, regardless of materiality, is considered a mandatory trigger. On the discretionary trigger, my issues were the two discretionary automatically being a mandatory, especially when discretionary triggers like changes in Title IV revenue, which include increases and high dropout rates yet are still yet to be defined and really no one knows what those mean. So those are my main concerns in order to get me to a sideways vote.

MR. WAGNER: Thanks, Brad. Okay. So, I think we're onto issue paper number five, changes of ownership. So, I will turn it back to Greg to start going through them.

MR. MARTIN: Thanks a lot, Kevin. And just want to reiterate that Donna Mangold is here for representing the Office of General Counsel for the Department. She'll be taking over for Steve Finley on this issue paper. And before we get started, I just want to thank everybody for the discussion on financial responsibility, even though we did not reach consensus and we had a lot of good discussion, got a lot out of it. The Department got a lot of ideas going forward. So again, I want to express my appreciation for all of your efforts there. So, we are moving on to issue paper five,

which is a change in ownership and control. And the first place that we have changes here in, under our definition, is 600.2. Moving to the definition of a nonprofit institution. So, let's go there. And for those of you following on paper, that would be the top of page three. So here we are, a nonprofit institution. There are changes here to the first part of the definition that are intended to be non-substantive changes just to further clarify, clarify the language. And that begins with in one, romanette two, we have proposed some additional changes that will further clarify the meaning of these requirements. The language says that nonprofit institutions are not going to be an obligor, on a debt owed to a former owner, and will not maintain a revenue sharing agreement that is inconsistent with reasonable market value with any party, including a former owner, and will not maintain leases that are inconsistent with fair market value with a former owner of the institution. So just to go through this section, again, this is a definition of a not-for-profit of a nonprofit institution as an institution that meets the requirements in either paragraph one or two of this definition and paragraph one, a private nonprofit institution that is owned or operated by one or more nonprofit corporations or associations, and no part of

the net earnings benefits any private, individual entity or individual, as determined by the Secretary, is legally authorized to operate as a nonprofit organization by each state in which it is physically located, and is determined by the U.S. Internal Revenue Service to be an organization which contributions are tax deductible in accordance with Section 501c3 of the Internal Revenue Code, except that in determining whether the requirements of paragraph one romanette 1A of this definition have been met, the Secretary considers the entirety of the relationship between the institutions, the entities in its ownership structure and other parties by way of, for example, for purposes of participating in the Federal Student Aid programs, a nonprofit institution is generally not an institution that is an obligor, either directly or through any entity in its ownership chain on a debt owed to a former owner of the institution or natural person or entity related to or affiliated with the former owner of the institution. And then moving into B, either directly or through any entity in its own chain enters into or maintains a revenue sharing agreement with any party, including related or unrelated parties, or a former owner of the institution, or a natural person or entity related to or affiliated with the former owner of the

institution unless the institution demonstrates that payments under the revenue sharing agreement are reasonable based on the market price for such services or materials, including demonstrating a reasonable relationship to the cost of the services or materials provided or, in C, is a party, either directly or indirectly, to any other agreements, including lease agreements with a former owner of the institution, or a natural person or entity related to or affiliated with the former owner of the institution under which the institution is obligated to make any payments unless the institution demonstrates that payments under the agreement are comparable to payments in an arm's length transaction at fair market value. So, there's a lot there. So, we are at the end of the definitions of 600.2. So, I'll stop there and open it up for discussions or comments.

MR. WAGNER: Thank you. Greg, real quick, before we get to the negotiator's comments, Johnson is coming back to the table with legal aides, so welcome back, Johnson. And then let's see, we have Carolyn, you're first. So, you have the floor.

MS. FAST: Thank you. We are concerned about the addition of language in this section that refers to fair market value and reasonableness, because

those are exactly the sorts of things that have been used to in the past where we've seen conversions that were actually the exact kinds of things that we're trying to prohibit with this rule. So, the new language would permit institutions that to obtain nonprofit status in a conversion deal that includes ongoing payments as long as those were, market prices are reasonable. But this sort of valuation is easily manipulated. And so, the new language is creating a safe harbor for the exact type of deals that are problematic and deals in which the value of the institution or services is inflated at the time of the purchase. What we would suggest to address this concern is to return to the language that was proposed in the earlier version of the issue paper, which provides flexibility to the Department to look at a situation and it doesn't prohibit all situations where there is an agreement with a former owner, but is they're generally going to be considered problematic. But we strongly suggest returning to the former language and eliminating in B and C the language that says unless, everything after the unless, because that is what we consider to really render the whole provision useless as a- [audio]

MR. MARTIN: [Audio] or ask Donna rather to, to add more if she feels the need to do so.

We, in looking at this, you know we can't anticipate every circumstance that's going to come up. So, we believe that this language gives us more leeway to apply the requirement where appropriate. And we also want to point out that we have expanded the application of the provision beyond just the former owner and to instead address any revenue sharing agreement with any party, which does allow us to assess a broader range of institutional agreements. But I'll ask Donna if she wants to comment here.

MS. MANGOLD: My comment would be that we do assess the reasonableness of what is being put before us to demonstrate market value, because there has to be some space for looking at a transaction that just because it's with the former owner or an affiliated party may make sense. For example, a lease, you know, you have a building and it's already outfitted and maybe there's no market to sell the building and to not allow that lease to go forward could potentially cause problems. But what we do is we require valuations. We vet the valuations for reasonableness. We have rejected valuations that we deem to be not reasonable; the comps are wrong; the market size is wrong. We have rejected valuations of leases because of the credentials of the party doing the valuation was not adequate. So, we

really do have a lot of flexibility here and we are simply not going to take a piece of paper that says this is the market value and deem that to be an adjudication of market value. So, we wrote it this way to try to build in as much flexibility for us as possible, but to allow that there may be certain circumstances when related party transactions are at market and are appropriate.

MS. FAST: Would it be okay for me to respond again, or should I get back in the queue?

MR. WAGNER: You can respond back. You still have some time remaining.

MS. FAST: I was just going to say, thank you, sorry. It just seems to me that there is more flexibility in the language that was used in session two, which we did not have this objection to, because it still said it still gave the Department the ability to make a determination that just didn't create sort of this sort of weird presumption that we see here, that if you know someone comes in and can point to you know one person or whatever that says this is fair market, then that was going to be okay. So, we suggest that there's actually more flexibility in the other in the prior version and [audio]

MR. WAGNER: Thank you, Carolyn. Did

you get that last part? It kind of cut off for me.

MS. MANGOLD: It cut off for me too. But I think we can go back and look at that at the second version language. We can go back and look at that language again. I just don't have it in front of me right now.

MR. WAGNER: Thank you, Carolyn. Thank you, Donna. Okay. Let's see, we have Yael, you're up.

MS. SHAVIT: Thanks. I'd like to just agree with what Carolyn said, that I think the previous language did give the Department more flexibility, and it did it without creating what to me appears to be an incentive for precisely the type of misconduct that we've seen. And you know, speaking as a representative of the attorneys general, that our offices see consistently with these types of [audio] problematic conversion. Where the creation of continued relationships with former owners that can create incentives for the operation of purported nonprofits for the benefit of the former owners, I think is something that should be dissuaded. And I think that's one of the reasons why this issue is on the agenda for this rulemaking. We know that valuation is subject to manipulation. We know that's difficult. To the extent that the Department has expectations about how to

establish valuation, I'm also concerned that the Department will include language that's you know both this specific, without including a clear outline of third party, unbiased, extrinsic evaluations of fair market value that institutions would be required to bear the burden of demonstrating here. But my very strong suggestion, I'd like to note that this is language, the addition of which is deeply concerning to me, my very strong suggestion is to revert to previous language here. I think the additions, though I understand that they're well-intentioned, create incentives for really problematic behavior.

MR. WAGNER: Thank you, Yael. Let's see. I'm just making sure. Okay, we have, Kelli you're up.

MS. PERRY: Thank you. I am going to echo the thought of going back to the language in the previous version, session two. We are concerned that with the addition of in romanette 2B the concept of agreement with any party, including related or unrelated parties, that this may have unintended consequences to private nonprofits as it relates to some of the agreements that they have. You know, there are agreements that they have where third parties have helped them maintain and launch you know online

programs, including HBCUs. There are many agreements as it relates to revenue sharing agreements, as it relates to food service or bookstores or things like that. You know, there's large research institutions have partnerships with or relationships with LLCs for different types of subsidiary structures, etc. So, I'm concerned that the addition of this language will create unintended consequences there. So again, I would agree with the other two negotiators that we revert back to the language from the- [audio]

MR. WAGNER: [Audio] Kelly. Let's see, Brad. I see you, you're up next.

MR. ADAMS: Yeah, I'd like to just start with a general comment and basically you know state on the record that you know I don't know how many folks on this committee have ever been through a change of ownership within the higher education realm. I have not. I've been through several outside of higher education. And I will tell you, reading the regs here are extremely complicated. And I really think we could have used a corporate merger and acquisition advisor on the committee like we requested in week one to help us through some of these complications. So, with that, I just wanted to ask a question on number six, right above this nonprofit, private, nonprofit definition. Again,

it's because of the burdensome impact that this is going to have. And I just want to make sure the Department has a real good reason for making this change that we're going to now require that if your online campus differs from your main campus, you are going to now require that to be changed, which means you have to seek approvals from accreditors and states and other entities to come into compliance with this requirement. There's going to be a lot of paperwork and it's going to be a headache, and I honestly don't know what the difference is on why we're doing this item for having the distance ed be associated with the main campus or associated with these administrative offices if it's in a different state. Is there a reason that we're making that change?

MR. MARTIN: Are you talking about six, in six, Brad?

MR. ADAMS: Yeah.

MR. MARTIN: Yeah [audio]

MR. ADAMS: [Inaudible] yeah.

MR. MARTIN: I'll ask Donald to comment. But it is we feel that you know for the institution that offers the on-campus programs and distance that we need with the offering of distance education programs, we those need to be associated with the main entity of the institution. So, you know, in

being able to hold the institution accountable for those programs, we believe it's important to make sure that those are associated with the main campus of the institution. Donna, do you have any comment?

MR. ADAMS: There's no reason else other than you think it needs to be, there's no legal reason why it has to be?

MR. MARTIN: [Inaudible] a legal reason. I would yield to Donna on any legal.

MS. MANGOLD: No specific legal reason. But it just in terms of accountability to actually have a location, have a deemed location.

MR. ADAMS: Okay. And then the second question and just confirming because this was discussed in week two that the reason why we changed the definition in one romanette one to a private nonprofit institution is because we're now excluding publics from the definition now, is that the reason for the change?

MS. MANGOLD: [Audio] consistent with the statute. [Audio] statutory language.

MR. ADAMS: In I think this is section 103 313 but I'm just confirming, is by this change, publics are now not subject to the definitions in section one, is that accurate?

MS. MANGOLD: Brad, I'm sorry I missed

the question. That they are or aren't? You're looking at 600.4?

MR. ADAMS: Let's see, I'm right here in this-

MR. MARTIN: Definition of a nonprofit institution still, right, right, Brad? Number one.

MR. ADAMS: Yeah, it's above six [interposing] it's one romanette I right above that. [Interposing]

MR. MARTIN: The definition of- [audio]

MR. ADAMS: It used to just say a nonprofit. Now we added the word private.

MS. MANGOLD: Hold on. It was to, I see where you're going and I need to double check on something, because what we're trying to do is distinguish that private nonprofits had to be 501c3 and other and publics do not. I need to, I need to take that back and take a look at it, Brad.

MR. WAGNER: Okay. Thank you, Donna. Thank you, Brad. Let's see, I see, Johnson, you're up.

MR. TYLER: Yeah. I just want to go to this thing about the market price reasonable and how difficult that is to assess. I mean, there's, you know, unlike even power plants and cars and all this stuff,

there's not a huge market for for-profit institutions out there to make this sort of assessment. I appreciate Donna's statement that the Secretary takes this very seriously, but I think there's more flexibility in the original provision in issue paper two is better. And I just want to add one other example here of what can happen. There was a school in Colorado where the owner created a loan, a loan agreement where he carried \$400 million of revenue. This was in 2012. The school was certified as a nonprofit by the Department of Education and the IRS. The Colorado Attorney General then sued them for lots of deceptive stuff and the result was, in 2020, so six years after the suit, a \$3 million settlement and about 10,000 students were affected by the deceptive practices that were going on in that institution. So, you know looking providing more flexibility for the Secretary to look into whether something actually is a real transaction is really important. I think the new language is detrimental to that rule. Thank you.

MR. WAGNER: Thank you, Johnson.

Before we get to you, Barmak, I do see Donna's hand up.

MS. MANGOLD: I just want to clarify that the situation that you're talking about, the Department initially took the position toward [audio]

when it actually did its review of that requested nonprofit conversion. It was denied at that point in 2016. Eventually, there was a complete change in the transaction afterwards, and it was only after significant changes took place that the decision was made to allow nonprofit status. So, at the point of \$400 million, it was of goodwill essentially, it was not approved as a nonprofit. So, I just wanted to make sure that was clear.

MR. WAGNER: Thanks for that, Donna. Johnson is that [audio]?

MR. TYLER: Yeah, I didn't read that part of the decision. It's 150 pages. The judge spent a lot of-.

MR. WAGNER: Thanks, Johnson. Let's see. Barmak, you're next.

MR. NASSIRIAN: Yeah, I want to echo the concerns that have already been expressed by Carolyn and Yael and Johnson and Kelli about the addition of this language. I have to say, you know it's always nice in a capitalist system to create the altar of market-based pricing, but it again strains credulity that in these kinds of one-off transactions that anybody is in any position to question an actual deal on the basis of what comparables. There are no comparables. Somebody's

handing over an entire campus to a fake nonprofit. And the two parties seem to be in agreement to exchange some cash. I don't see the Department being able to refer to any objective reality to contest that. It is, and again, the language allows for those exceptional cases that I do know can occur where you don't want to disrupt somebody's operations because it generally describes those transactions as suspect. That is the right description. This is as close to a deal breaker as anything the Department has done in this rulemaking for me. So, I would really encourage you to remove the additional qualifier on this, the institution demonstrates, etc., etc. I would also suggest that Kelli sort of brought this up and I agree with her that certainly transactions with unrelated third parties that are charitable or below market should be accommodated. Transactions that are that go in the opposite direction by a nonprofit, even if it's with an unrelated party, are problematic. If we had a robust Internal Revenue Service, those transactions would be flagged as violating intermediate sanctions as excess benefit transactions. And because the Department of Education tends to be the only financier of these potentially fake nonprofits, I would actually modify the previous language to capture transactions with unrelated parties

if they represent excess benefit transactions. This would accommodate Kelli's concern that if somebody wants to do a charitable donation of services that's okay and they're not related to the former owners, that's fine. But if the entity is being set up to benefit some third party, the Department is the only, remember, these are not viable nonprofits. Nobody else except the Department is giving them a dime. And therefore, the Department must, must take the position of a donor, not of just an agency shoveling money out the door, and therefore excess benefit transactions that simply require a penalty by the covered individual should actually result in loss of eligibility by the sole funder of these entities, which is you.

MR. WAGNER: Thank you, Barmak. Let's see, Jamie.

MS. STUDLEY: I'm happy to defer to Kelli and others who want to speak specifically to that. Do you want-

MR. WAGNER: It's up to you, Jamie. Or you can go ahead.

MS. STUDLEY: Not seeing them react, I'll weigh in. I think that Carolyn made an interesting point when she used the word presumption as we're struggling with all of this. It seems to me that the

regulation actually ends in to, the point after it says the Secretary considers the entirety of the relationship between the institutions, etc. and other parties, period. By way of example, are truly examples that go to the Secretary's determinative determination about the entirety. And so, it doesn't change what the Secretary can do, but it does change the tilt. Now, is it, you know, who's arguing which, you know, in what order? So, I think it is important as a signal, but it doesn't, this is a neutral comment, to what degree does it really work to balance appropriate arrangements and arrangements that the Secretary should determine don't fit? Excuse me, I apologize. Barmak is focusing on how to solve a particular set of problems, and others; he was the most recent. One of the things I'm also trying to do is think about where it will bite on arrangements that should not be burdened or complicated and whether those can also be handled in the entirety or whether there should be more changes. For example, we are looking at an institution separating from a public institution, and the public institution may want to capture some of the value that the entity is taking to be repaid to the people if that piece with the [inaudible] on both sides decides to part. If I'm the school within a museum and we all agree that it makes

more sense for my school to be a separate nonprofit entity from the nonprofit museum should A be changed is an obligor on a debt owed to a former for-profit owner of the institution? Or will the Department's answer be, we can look at all those variables within the entirety of the relationship, we don't need to specify here? So, this is really in the as applied and what is regulation and what [30 seconds] descriptive that the Department feels would be helpful to put into the regulations so we understand the context and what they will look at for entirety. But what legal weight does it have either way? Thank you.

MR. WAGNER: Thank you, Jamie. Let's see, I see Kelli, you're up next.

MS. PERRY: Jamie, thank you for the offer to skip. I actually wanted to bring up something else. So, the number [audio] above the nonprofit definition. Brad, I didn't catch this the first time around. I'm glad Brad brought this up. But when it says that the distance education program are associated with the main campus, what is associated mean? So, for example, you know you have your main campus, and you might have a branch campus and that branch campus might be solely responsible for your distance learning program. So, doesn't then fall into what you're

proposing here, because it's not technically the main campus? So, I guess the question is what is associated with? And if the distance ed programs are being run out of the branch campus, this could potentially create problems for a lot of private nonprofits as well. So, I don't, I kind of agree with Brad. I'm not sure what the intent of what this is trying to do, because it may create unintended consequences for distance programs in private nonprofits.

MR. MARTIN: I'll take back the question about a branch campus as opposed to you know a true institution that meets the true definition of a of a branch campus with its own administrative authority. And I don't know if I can clarify that now, but I will try to get clarification on that. I still want to reiterate that that with the increasing popularity of distance education, that the Department feels it's necessary to be able to associate you know programs with an institution and with the main, where an institution has several additional locations that it still must take responsibility for its distance education programs. This is especially important where you have you know students from different states attending via distance, some type of telecommunication. So, we do have a real interest in being able to know where those programs are. But I will

take back the question about as it relates to a true branch campus.

MS. PERRY: Thank you.

MR. WAGNER: Thank you. Brad, you're next.

MR. ADAMS: And my comment was similar to Kelli's, and I'll add to it. I'm getting significant pushback from my constituency group because our read based on what Donna just said and read of the text is that if distance education is taught out of a branch campus, you've got to go through all the state and accreditation and programmatic approvals to move that to your main campus. And so, I'm hopeful that that can be changed. If not, given the site visits and the amount of paperwork we're talking about here, I'm getting asked if we could at least get a one-year period of time to go through the process of getting this done because it is going to be incredibly burdensome to do this. So, at a minimum, if you're going to force this, we would like at least a year, year, I guess, policy to let us get into compliance.

MR. WAGNER: Thanks, Brad. Alright, let's see. Barmak, you're next.

MR. NASSIRIAN: On this issue of location, I had originally submitted language that the

Department chose not to take. That's fine. But let me just note that in setting up a system that ties location to where the institution is as opposed to where its students are, you can set up a form of forum shopping that is probably not advantageous to program integrity because it's very easy to set up a mascot campus in a state of your choice and then reach out and enroll huge numbers of students elsewhere. I do think it makes some sense to whatever extent the Department still believes the triad is meaningful and state authorization add something to ensure that to do a look-back provision and simply say you know wherever you had the largest numbers of students during the last five years or whatever, some look-back that ties state supervision, direct state supervision, as opposed to circuitous and generally ineffective reciprocity agreements to where the students are. Because you know the state of Iowa didn't have a lot of skin in the game when a particular institution went from 600 students to 60,000 students, they were not in Iowa. They were in California and New York, most of them. So, tying that level of state authorization to where the students are. And again, I realize it fluctuates. It may change year to year. So do a gross kind of look back and tie it to where the most students are because the AG in that state is more likely to be

your ally and the institution is more likely to be perceived as a problem if it's engaging in predatory practice. You know, the AG in Iowa may not have the resources to protect people in California. So just for what it's worth.

MR. MARTIN: Thanks.

MR. WAGNER: Thank you, Barmak. Jamie, you're next.

MS. STUDLEY: Just to repeat what I put in the sidebar, if the Department could help us understand what the problem is in identifying what Donna mentioned, we need to have a deemed location or we need to have clarity about it. If we can understand what the problem is that you've seen, then we might be able to be more helpful about how to do it without the kind of burden that Brad was talking about for stable situations where D/E is, the responsibility for it is assigned to do that efficiently. I credit that there is something that led you to feel a need to do this, but it's a little hard to craft the solution without knowing what ties it.

MR. WAGNER: Thanks, Jamie.

MR. MARTIN: With respect to that question, you know we with any programs, it's important for us to be able to especially with institutions, to

have many additional locations, to be able to trace back programs to where they actually are based. And especially with the increasing advent of online program managers, things, things like that, where we have a lot of other agreements with other entities. We believe it is important to be able to, to track that back to the main institution. And so, we do have some concerns there. I can flesh that out for you more. I will take back the concerns you've expressed about this, and we can have a discussion about it. And maybe I can come back a little more tomorrow about where, if any, where the Department is willing to go on this. But I certainly have heard everybody's considerations and I promise to discuss that.

MR. WAGNER: Carolyn, I see your hand. Jamie, is that, are you finished with your comment?

MS. STUDLEY: I think Greg's comment was helpful and maybe there's something that could be done with either. I mean, first of all, the main institution is always ultimately responsible, including for what happens at its branches. But maybe there is some designation or clarity that could be helpful with you. And I know that at least as accreditors, whatever a third party is doing, institution is responsible for it. So that doesn't allow for us to distribute the identity.

But whether it's for your purposes or students understanding of where things are coming from, there may be a more direct through-line. So, thank you for taking-

MR. WAGNER: Okay, thanks, Jamie.

Carolyn, I see your hand.

MS. FAST: Yes. I just wanted to add that if it would be possible to get perhaps before a vote of response on whether the Department might consider going back to the language from the earlier session on the nonprofit definition, also just to add that to the list. Thank-

MR. WAGNER: Okay. I don't see any other hands on 600.2. Real quick announcement, though, it is 3:07. I know there's, just want to make sure everyone understands there is a public comment at 3:30. For those that are going to be commenting, please log in 10 to 15 minutes before your allotted time and please log in under the name your registered under. So, with that being said, I'll turn it over to you, Greg.

MR. MARTIN: We did have, there was a request to gauge the group, take a temperature check to see if it was about the Department making changes to what is in the definition of a nonprofit institution. Do we want to do anything like that or, just wondered where we were with that?

MR. WAGNER: Just on that one issue on the temperature, the temperature check on- [interposing]

MR. MARTIN: Yeah, it was requested. I don't have a problem with a with a temperature check on that if people want to show, remember, just to make it very clear, we're not voting for any consensus.

MR. WAGNER: Correct.

MR. MARTIN: Or anything like that. This is strictly on whether or not the Department should reconsider the language in under the definition of not-for-profit institution, nonprofit institution in one romanette 2B.

MR. WAGNER: Okay. And, Carol, before we take that temperature check, do you have a comment?

MS. FAST: No. No, I don't. Sorry.

MR. WAGNER: Kelli.

MS. PERRY: Yeah, I just want to clarify that my recommendation when I said to revert to the language was for everything in this in number one, as it relates to the definition of the private nonprofit, so not just B, it would be eliminating C, it would be eliminating some of the changes that were made in the other romanettes as well.

MR. MARTIN: I'm sorry, that would include, yeah, I just restrict it to B, I should have

phrased it that way to go back to the, you're talking about going back to the original language in its entirety from the previous paper, right?

MS. PERRY: Yes.

MR. WAGNER: Johnson.

MR. TYLER: I just wanted to say that you know I looked at the language more closely in issue paper number two, it really provides a tremendous amount of discretion that's more defensible for the Department of Education, who really are the experts here in terms of seeing bogus transactions or not. If you with the new language, it becomes something for an administrative law judge who may not have the same amount of expertise to deal with experts from well-financed institutions that are trying to make this transaction. It becomes just a very different standard of review. I think, you know, the Department of Education is creating a problem for itself here that's unnecessary. I think initially, you know, people view that as broad, but this is an issue with paper, too, the language being maybe too broad, since virtually every institution has to do distance learning and is contracting with entities that have a profit motivation involved. But, you know, there's a general world [ph] word in there. So, you know, if an institution is only contracting with a small portion of

people to do this, which is important for their students, you know, there's no issue here for the Secretary, but by switching it this way, they really create a lot of leverage for a lot of mischief, it seems to me. And students will not be protected.

MR. WAGNER: Thank you, Johnson.

Carolyn.

MS. FAST: I just want to say I agree with Johnson, and I agree that the language in, from issue paper from session two is the way to go here and would recommend it. The only thing that I want to point out is one thing that would be lost in reverting entirely to that language is that C would come out completely, in C, it talks about other kinds of agreements besides revenue-based agreements. So that is something to consider and an easy fix for that, I think be to just take out the word revenue in B so that it would go back to whatever was in session two except it would be [audio] or inclusive of other agreement revenue sharing, but could be, for example, a lease kind of agreement.

MR. MARTIN: Thank you.

MS. STUDLEY: The, the sound went out at a key moment in Carolyn's comment.

MS. FAST: Oh, sorry. Just to say, I

don't need to repeat myself. I'm not sure which part you missed, but I just wanted to say that the only thing that I think would be lost, that would be a problem if we just went back completely to the identical language from session two is in C as it's more broader. It talks about agreements other than just revenue-based agreements. So, for example, a lease kind of agreement, which is arguably that you know, revenue-based and that is important, and I don't want us to lose that. So, I think a really easy way to fix that is just to maybe take out the word revenue and just have it in B from the issue of session two issue paper, so it would just refer to agreements with former owners.

MR. WAGNER: Thank you for that. Greg, in light of the clarification, [inaudible] would like to a temperature check on that particular-

MR. MARTIN: Yeah, I understand that people have some concerns about the language. Since it was requested, we can go ahead and do it.

MR. WAGNER: Okay. Alright, so could we take a temperature check on that one specific issue we mentioned? Yes, Jamie. And then Carolyn, and Jamie, you are on mute.

MS. STUDLEY: Yeah. I think Carolyn's suggestion was important, but I think we should really

read what the words are that you're getting a temperature check on. Is it enters into or maintains an agreement with any party unless, because that would raise Kelli's concerns about over [inaudible] so and Carolyn said agreement with any former- anyway, what is it that-

MR. MARTIN: You know though, let me just say that since we're close to the end of the day and obviously we're having some issues here with exactly what the language would be. So, if, I forget who asked for the temperature check, but could just request that maybe I take this back and I think it might be more efficacious if I just came back tomorrow with you know what the Department is willing to do here with respect to this language? That might be better than to continue to debate this tonight.

MS. JEFFRIES: I would make an additional recommendation that, rather than [inaudible] going back looking at that language from the proposal in week two, the negotiators should take the time this evening to review that as well, so they know exactly what you know how to discuss it tomorrow morning when they start when we start in.

MR. WAGNER: Thank you. Alright. In light of that, do you want to continue, I guess, on

600.4, Greg?

MR. MARTIN: Yeah, so we're moving to 600.4 and there is nothing in, there are no changes in 600.4. So, we're going to move down to 600.20. I'll go through 600.20. If not, obviously, if there's something in 4 that as we go through 20 that anybody determines they want to make a comment about, we'll entertain that when we finish with 600.20. So, moving into 600.20, notice and application procedures for establishing and reestablishing, maintaining or expanding institutional eligibility and certification, we in G is where we'll start. In G1, we have added changes just to clarify the structure of the language. And there are no substantive changes here. We included in romanette one no later than 90 days prior to the change of ownership, the institution provides the Secretary notice of the proposed change on a fully completed form designated by the Secretary. So that was the change there. And we move on to let's see where we if we move on to, we were just in one and moving to two, this is we've simply slightly simplified the cross-references in the language in this item. So just a few changes to the to the cross-references is all that has changed here. And then going down to two, also three romanette four. Three romanette four. So, we appreciate the suggestion from the

negotiator to clarify the financials that financial statements must be acceptable. And we have reworked the language slightly to ensure that that is reflected here. And then in number for, we have proposed to add a disclosure requirement to students to ensure they are aware of a change in ownership and its potential implication for students. So, in four we have the institution must notify enrolled and prospective students of the proposed change in ownership and submit evidence that such disclosure was made no later than 90 days prior to the change. And I'll move on to H, which is terms of the extension rather. And moving on to H three, we just have a minor correction here. We've corrected a cross-reference to the second reference to H2, romanette three. And it's now corrected to H2 romanette one. And those are the only changes that we had for 600.20. So, I'll stop there and see if there are any comments on that section before moving on.

MR. WAGNER: Okay. I see your hand, Brad, you're up.

MR. ADAMS: Yeah, I've got a small request on, it's in 600.2 G3 romanettes one and two, where it says a recently updated copy. And I know in our February session, Donna mentioned an email would be okay and suffice this. So, I'll drop a potential change

language change into the chat. But I would like it to state that as long as that document or let's see current language supplemented with documentation that such licensure accreditation remains into effect as at the day before the change of ownership just to make sure that it's kind of written in a way where we know emails and things are suffice. So, I'll put it in the chat and let you consider it for an update.

MR. MARTIN: Alright. Thanks, Brad.

MR. WAGNER: Thank you, Brad. Let's see. Jamie. Jamie, you're on mute.

MS. STUDLEY: You'd think by now. I'm looking over 4, notifying enrolled and prospective students. We have, and I believe it's common among accreditors, but I can't speak for all of them that we have in some transaction situations insisted that a prospective change of ownership or control be made known to the campus in order to get input to satisfy accreditation requirements not just of notice, but actual engagement with those audiences. I can say that they're, the school's a very great deal. Some are able to talk to their campus you know for multiple years about transitions that may be coming, and some others have been stressed by this. I wonder whether institutions think that requirement is appropriate, and

I do think giving students as much notice as possible. But I'm thinking of the nonprofit situations where there have been you know, discussions that change the Transformation Partnerships Fund, is trying to get people to think about these things earlier. But whether 90 days is workable, I know it matches the 90-day notice to the Department. And maybe that's fine. I just don't want us to move past something that I know is an effort to balance notice to students with complicating fluid situations for institutions, including some of the small colleges that we've seen exploring multiple options. I guess my colleagues from the private nonprofits or proprietaries didn't have a concern. I've done my share by just flagging the issue.

MR. WAGNER: Thank you, Jamie. I see Kelli.

MS. PERRY: Yeah, I can see what Jamie might be saying from the perspective of, if you, let's say you had two private nonprofits that were going to merge. The 90 days notification to students 90 days prior might be a long period of time because the details of that might not be worked out 90 days prior to whatever the merger might be. I don't know. I don't know that I have anything additional to add. I do agree that with what Jamie's saying.

MS. STUDLEY: And it may be that the notification is fine, and the Department needs to be sensitive to what degree of detail is possible, because once those things are shared, the campus says, well, exactly what's going to happen and how is it going to work? And not and not every detail may be available, but the alerts of things changing may be necessary for student planning. And what this, while it doesn't require notification to faculty and staff, notifying students would have the effect of notifying the community.

MR. WAGNER: Thank you, Jamie. Johnson, I see your hand up. Just to give everyone a heads up. It's about 3:23. We don't have a whole lot more time before public comment, but take it away, Johnson.

MR. TYLER: I just think it's problematic to be telling the Department of Education about a plan and not telling your faculty and students, I can't see how that would be. I understand it might you know alienate the institution from those entities, but I just feel like it's you know I don't understand. I could see that really backfiring, honestly. You know, having read some of the complaints out of among some professors out west about a merger and how they felt about it

affecting their institution's reputation, I don't know why you'd want to hide it from them, but those are just my thoughts as a person, not an advocate.

MR. WAGNER: Thank you, Johnson. Brad, you're up.

MR. ADAMS: Yeah. Just quickly, on the same point here. When does the 90-day clock, like what is it? Is it tied to the effective date in the contract? Help me understand, because sometimes we don't know when the change is going to happen by the Department. So, when does the 90-day clock start?

MR. MARTIN: I also would, [inaudible] ask Donna to correct me here if I'm, from the way I look at it would be, so it says 90 days prior to the change, whatever is proposed in the contract the institution has for the change of ownership that it be disclosed irrespective of how long it would take the Department to act on that would have to be disclosed or that there would have to be evidence of such disclosure made no later than 90 days prior to that date that was set.

MS. MANGOLD: The closing date, the closing date of the transaction.

MR. ADAMS: Closing date. At that point, it's been approved then. And my concern is that you notify students, and it doesn't go through if you

notify them too early.

MS. MANGOLD: Well, the issue is that we don't approve anything. We don't approve changes of ownership before they happen. Maybe we do a pre-acquisition review, that's not an approval. It doesn't happen until afterwards. So, it's 90 days back from the closing date.

MR. ADAMS: Right. Okay. Thank you. And then the notification doesn't specify, I'm assuming email and website and things of that nature justify versus snail mail?

MR. MARTIN: Any time, any time with the Department that requires a notification that we don't specifically indicate that it must be in paper. Electronic means are acceptable.

MR. WAGNER: Okay. Thank you for that. Let's see. Greg, we have three minutes. Do you want to tee up the next section or do you want to hold that off until tomorrow?

MR. MARTIN: I think we'll hold that off for tomorrow. But just as a reminder to everybody, we will be beginning with 600.21, updating application information. I'll come back tomorrow, and I owe everybody some further discussion on what is in the definition of a nonprofit institution under one, under

one and I'm sorry, under yeah, under one romanette two. So, we'll come back tomorrow morning, have a discussion of that and then move into updating application information.

MR. WAGNER: Real quick, Brad.

MR. ADAMS: Yeah, just Greg if you could also check on the distance education at branch versus main just to- [interposing]

MR. MARTIN: Oh, yes, I will. That's the other that's the other issue. Thank you very much, Brad.

MR. WAGNER: Thanks a lot, Brad, I appreciate that. Alright. It's almost 3:29. So, let's see, I think we can go ahead and start with public comment. Brady, who do we have as our first public commenter?

MR. ROBERTS: Our first speaker was just admitted. It is just Jeffrey Thomas representing themselves. Looks like he's just got to enable audio.

MR. WAGNER: Jeffrey, welcome. Can you hear us?

MR. THOMAS: There we go.

MR. WAGNER: There you go. Welcome, Jeffrey. You have three minutes for your public comment and that will begin when you start speaking. You have

the floor.

MR. THOMAS: Thank you. Thank you for the opportunity to speak to you all today. My name is Jeffrey Thomas. As you can see, I'm grateful for the opportunity to share my perspective as someone who has attended both traditional and nontraditional universities as a veteran. I hope you walk away with understanding why non-traditional school worked for me, and I believe it's important to keep this option available for veterans. I am a United States Air Force veteran. After I got out the military in 1990, I enrolled in Coppin State University in Baltimore. At the time, I was married with children and working a full-time job as an operator and mechanic at a production factory. This was a lot to handle. My degree program was very demanding instruction and required a lot of unnecessary time. With all my other responsibilities, it became a little too much and I stopped my degree program then. About seven years later, I decided to get back to get a business [ph] degree with the hope that I could reclaim my life and career path. While I worked on my degree, I was working full-time and taking classes in-person at the University of Phoenix Maryland campus. It was a completely different experience from Coppin for me, where I was at work with [inaudible] and helped me

succeed and reach my goals. This is something I didn't feel while at Coppin. I earned my degree in business information systems from Phoenix and was taught by a skillful faculty who worked in the discipline that taught. I went with the goal of finding a better career path. And I got that just, I got just that. Once I earned my degree, I immediately got a promotion and became a supervisor and manager. I feel my education at Phoenix gave me an advantage throughout my career. I ask today that you approach rulemaking fairly with all students in mind. Please do not limit much-needed options for veterans who have earned the right to choose a quality education that befits the need. Thank you for your time. One thing I would like to add. My job is just relocated to Delaware, so I'm looking for a new job, which I feel my degree is giving me advantage in finding a new job. I have a number of options now because of this degree. Thank you for your time again.

MR. WAGNER: Thank you, Jeffrey. Just a reminder, before we get to the next public commenter, that if you're going to be part of the public comment to please log in now and you don't have to wait till your scheduled time. Brady, who do we have next?

MR. ROBERTS: I just submitted Travis Petersen, who's a veteran representative themselves, and

I believe they are, they're logged in.

MR. WAGNER: Alright. Travis, can you hear me?

MR. PETERSEN: Yep, I can hear you.

MR. WAGNER: Great. You have three minutes for your public comment, and that will begin when you start speaking. You have the floor.

MR. PETERSEN: Alright. Thank you. My name is Travis Petersen and thank you for the opportunity to speak before you today. I'm a former student veteran and founding member of the Moral Compass Federation. I'm retired from the Air Force after 21 years flying combat search and rescue, and then foreign internal defense combat aviation advisor. I'd like to thank the Department for caring about and safeguarding our veterans' earned benefits. I see many drawbacks to the 90/10 rule, and I wonder if there might be a better path forward. When I look at the student outcomes at these schools affected by 90/10, I do not see substantial differences between for-profit colleges and many public schools. And yet 90/10 seems to ding these for-profits that they're underperforming or taking advantage of the veteran students. But in fact, some of these for-profits have even better outcomes in public schools. Unfortunately, these private schools will

likely have to close their doors to veterans because of the changes being discussed today. It's apparent that the 90/10 doesn't care about student outcomes, which in my opinion means it doesn't actually care about protecting student veterans' earned benefits. It doesn't improve transparency about student outcomes for veteran students, and it doesn't even apply to the majority of schools that veterans attend. If this rule is going to be anything but harmful to veterans, there needs to be mechanisms in place that do account family and school student outcomes and will allow veterans to still use their benefits that the school has good outcomes. Coming from the SOF community, we are trained to rely on intelligence. If we're making any significant decisions, that is a necessary advantage, and the more data we have, the better. To truly safeguard my fellow veterans would be a data-driven policy that focuses on what matters like student outcomes and which applies to all institutions of higher education. Of the many downsides of the 90/10 rule, one of the most problematic is that it only applies to one sector of higher education. The public or nonprofit schools are being judged by this revenue test, and if this is a good regulation, why would we also apply it to them? I am very thankful that there's more on the table to improve the lives of

veteran students, and it seems that many others will agree with me that it is a great idea to provide better transparency and pragmatic outcomes. Incurred debt and future earnings may be what is most important and relevant to veteran students because essentially regulation policy is a snapshot of current market forces, trends and behavior, which cannot take into account future changes and innovation in higher education. A regulation necessary can quickly become outdated or in effect, prioritize balancing the free market by empowering veterans' readily available student outcome data. This implementation of transparency to inform veterans does allow for future changes and innovations within higher education. Releasing this pragmatic gainful employment data for all schools will give veterans what they need because now it allows veterans to choose their education based on real merit.

MS. JEFFRIES: 30 seconds, Travis.

MR. PETERSEN: I'm finished. And I again, I want to thank you all for allowing me to represent.

MR. WAGNER: Thank you, Travis.
Alright, Brady, who do we have next?

MR. ROBERTS: Alright. I just admitted Kevin Mackay, who is representing themselves.

MR. WAGNER: Kevin, can you hear-
[interposing]

MR. MACKAY: Can you hear me?

MR. WAGNER: Yes, I can hear you. You have three minutes for your public comment and that will begin when you start speaking. You have the floor.

MR. MACKAY: Excellent. Thank you. Well, good afternoon, everyone. My name is Kevin Mackay. I'm a veteran of the U.S. Marine Corps and a proud graduate of the University of Phoenix. I'm sharing my personal experience in higher education with you today because I believe higher education can help veterans advance in their careers regardless of industry. I do find it a bit odd that we're not looking at other schools, such as nonprofit schools, and not questioning the return on investment there as well. I get that's not in your scope, but I feel we should be looking at all schools equally. And when evaluating, I think we also need to look at some other factors as well. My sister chose to pursue social work rather than a high-paying law degree, even though her grades were excellent. And although she has a master's degree and runs a large nursing home, her pay is substantially lower than other fields. This does not mean she did not receive a quality education. Potential students should also have access to

counseling to help them make an informed decision and answer the question, does higher education make sense for me or do other options exist? Again, maybe outside the scope of today, but please make sure we account for these factors when exploring our why and guidance for students. But here's why the University of Phoenix worked well for me. After completing my service in the US Marine Corps as an infantry squad leader, my passion for service continued, and I became a police officer in the city of Stanford in 1998. But completing a college degree was also a long-term goal of mine, and that goal became increasingly more challenging to achieve after becoming a father and raising a family while working full time. I began a Bachelor of Science in Criminal Justice at the University of Phoenix in 2002, and I went on to complete it in 2005, and it wasn't easy. But the flexibility of the online program enabled me to immediately put theory to practice, and in my day-to-day responsibilities, it had a profound impact on my advancement within our Department. As a matter of fact, I went on to help create our Department's computer forensic division and lead technology training initiatives. Since retiring from the city of Stanford, I've gone on to complete my master's in digital forensic science at Champlain College, and I have been an adjunct

professor there, even creating online courses for them. The quality of my Phoenix education and the support provided to me as a working father and police officer has inspired me to share my story as one of the many testaments of how higher education can change the trajectory of veterans' careers. I hope that a key part of your rulemaking will ensure that Americans can attain a more cost effective and career-relevant higher education, regardless of what type of institution a veteran decides to enroll in. Please consider how we, veterans, continue to need accessible programs that fit our lifestyles, backgrounds, and needs. Do not isolate one segment of higher education over another. Every veteran has earned the chance to gain a quality degree that helps them succeed. Thank you for the time and thank you for letting me engage in this important process.

MR. WAGNER: Thank you, Kevin.

MR. MACKAY: Thank you very much.

MR. WAGNER: Alright, Brady, who do we have?

MR. ROBERTS: Alright. I just admitted Kalli Blackwell, who is the general manager representing Aveda Arts and Sciences Institutes.

MR. WAGNER: Kalli, can you hear me?

MS. BLACKWELL: Yes. Can you hear me?

MR. WAGNER: I can hear you. Welcome. You have three minutes for public comment and that will begin when you start speaking. Go ahead.

MS. BLACKWELL: Good afternoon. Again, my name is Kalli Blackwell. I'm the general manager of the Aveda Arts and Sciences Institutes. I do appreciate the opportunity to provide public comment and feedback to some of the proposed regulatory changes that are being discussed here today. So, we are a collective of 18 Aveda Institutes across the country. By way of background, we are a family business with three generations working in the beauty industry. I opened our first cosmetology school 25 years ago and started with 30 students. Today, we enroll close to 4000 students a year. So, these schools are my life's work and passion, and our singular focus is to transform passion into purpose by empowering students to achieve their potential through education. So, some benchmarks to student success for us are graduation placement and licensure and a few of our averages to share, our graduation rates on average are 79 percent. Our placement rates are 72 percent, and our state licensing exam passage rate is 94 percent. We pride ourselves on the quality of our education, the strength of our

programs, and the success of our students. As you consider this rulemaking, I do hope that you'll consider thinking about student outcomes and measure any proposals on whether our students would have the opportunity to complete their programs or whether your rule may risk their closure. I'd like to direct my comments to two specific areas, certification and Gainful Employment. The Department has proposed a set of changes to certification that would limit student aid to federally mandated levels. The proposed change would require states to adopt new state laws to accommodate this proposed change. The current regulatory structure allows us flexibility to offer programs within certain parameters of the state requirements and to make programmatic adjustments as needed to comply with those state licensing changes. This would be impossible under these proposed changes. With regards to Gainful Employment, I do have serious concerns about the proposed earnings metric, the 8 percent passing threshold, lack of appeal process, and the possible metric tied to high school earnings. My concerns about each of these elements, quite simply tie to the underreporting of income that is prevalent in the beauty and wellness industry. I want to emphasize that we support strong accountability metrics that ensure

students achieve graduation and career goals and support the data transparency to ensure students and their families have the information they need to make informed choices. Thanks for your time today and I would like to close with an invitation. I understand that most people do not have personal-

MS. JEFFRIES: 30 seconds, Kalli.

MS. BLACKWELL: Thank you. Most people don't have personal experience with our cosmetology schools or our programs. So, I would like to welcome each of you to visit our schools and to contact with me any questions, because I know you could leave feeling just as inspired by our students as I am each day. I appreciate the time. Thank you.

MR. WAGNER: [Audio] Kalli. Alright, Brady, who do we have next?

MR. ROBERTS: I'm admitting Todd Bloom, who is representing themselves.

MR. WAGNER: Alright. Thank you. Todd, welcome. Can you hear me?

MR. BLOOM: Yeah, I can hear you.

MR. WAGNER: Okay, great. You have three minutes for your public comment, and that will begin when you start speaking. Take it away.

MR. BLOOM: Thank you. Hello. And

thank you for the opportunity to share my story. My name is Todd Bloom, and I understand today's public comment is discussing the quality of education and many of these conversations have been about veteran success in higher education. I am a veteran. I joined the Marine Corps immediately after graduating high school and proudly serve for four years in active duty and four years non-active. After being discharged from the Marine Corps, I found a stable job at IBM, and I was navigating being a single father. I had the desire to go to college, but I knew I could not quit my job or lose time with my son in order to do so. Thankfully, my employer at the time encouraged employees to pursue higher education and even funded my degree at the University of Phoenix. If it were not from my employer's part-employers partnership with the University of Phoenix and the University's online program, I do not know where I would be today. I proudly received my Bachelor of Science in Business Management and Marketing. Upon graduating, I received an immediate promotion and raise at IBM, where I worked for over 20 years. I'm proud of the life that I have built for myself and my family. As a first-generation college student, veteran, working adult and single father, the University of Phoenix was the single best and most pivotal, pivotal option for me. The University's

established online systems were great for my coursework. The expert faculty were responsive, and the flexibility of the program was encouraging. Today, many active-duty military and veteran students attend University of Phoenix for these same reasons. Active military and veteran students need flexible programs and options for high quality programs that are going to help them get on their feet after leaving the service. I ask that you use your authority to make sure we have more quality, flexible programs for veterans and active-duty military. Please take great care not to limit options for veterans. That will only force them to forego opportunities available or force them into programs that are not optimized for nontraditional students. Thank you for your time.

MR. WAGNER: Thank you, Todd. Brady, who's next?

MR. ROBERTS: Alright, I just admitted Wade Eyerly, who is representing Degree Insurance.

MR. WAGNER: Welcome. Wade, can you hear me?

MR. EYERLY: I can. Can you hear me?

MR. WAGNER: I can hear you. Welcome. You have three minutes for your public comment, and that will begin once you start speaking. You have the floor.

MR. EYERLY: Alright, thank you. My name is Wade Eyerly, and I'm the CEO of Degree Insurance. I first want to thank you guys for providing me the opportunity to give some input here. I want to introduce you to a relatively new development in higher education that I think is pretty pertinent here. Today, obviously, college education is the largest uninsured investment most individuals or families will ever make, which is obviously the impetus for the Gainful Employment standard, and what it's trying to get at. Does an education from a given institution provide any real return on that investment? It's the only place that a parent will counsel someone they love to borrow 10 or 20 times their net worth and make a single investment with it. Just hoping that five years after they graduate, it actually works. What we've done is develop a novel type of insurance that guarantees a student's earnings in the five years after graduation. I mean, truly guarantee as and if you don't earn what we promised, we cut, you send us your tax returns, we cut you a check for the difference. The student is paid for the earnings shortfall; however, it didn't deliver up to what it was expected to do. And while I recognize that what I'm laying out is a relatively new concept, we all know how challenging it is to introduce and adapt to

regulations once they're written. I think it would be wise to consider what we do as well as what others may begin to do and include phrasing when we talk about Gainful Employment that clarifies that a college guaranteeing student salaries across the covered period of time would satisfy that requirement, or that a college that can provide a guaranteed earnings floor of a specific minimum could be exempted from the Gainful Employment requirements, given that they're clearly achieving the stated aim, which is to ensure that graduates are seeing a return on their educational investment. Thanks again for letting me make the comment, and I hope this will help us all get closer to our goal of seeing, making sure every student gets the outcomes that they're hoping for here.

MR. WAGNER: Thank you, Wade. Brady, who is next?

MR. ROBERTS: I just admitted Benjamin Larson, who's representing themselves. It looks like they're just getting hooked up to audio.

MR. WAGNER: Alright. Thanks, Brady. Ben, can you hear me?

DR. LARSON: Yes.

MR. WAGNER: Alright. Welcome. You have three minutes for public comment, which will begin

when you start speaking. You have the floor.

DR. LARSON: Alright. Thank you.

Hello. My name is Dr. Benjamin Larson. I'm a United States Army veteran. I want to thank you for allowing me time to speak to you today. I joined the Army immediately after high school because college was financially out of my reach. And honestly, I wasn't even sure what I wanted to study. In the army, I was trained as a biomedical equipment technician, which, after I left the Army, allowed me a great paying job without needing a college degree. So, I just went right to the workforce. About 15 years into my career, I was offered a great job opportunity, but it required a bachelor's degree. I didn't have one, so I was denied the job. And I decided at that point in my career, perhaps earning a college degree was the right move to make. Having a wife and a mortgage, I needed an option that allowed me to continue to work full-time while earning my degree. So, I went, and I spoke to the reps of my local colleges and a few online options. I chose the University of Phoenix for the following reasons. They gave me generous credit for my military training and professional training. Their asynchronous learning fit my job. I was working crazy hours at a hospital and carrying an on-call pager every other week. Finally, their accelerated class

schedules meant I could complete my degree in under two years. I know that one of the important topics being discussed today is defining Gainful Employment and evaluating the quality of a degree program. I'm here to ask that you use your authority to protect veterans' choices and measure quality at all colleges. Veterans need viable school programs that fit their unique situations. In my degree program at Phoenix, not only did it fit my lifestyle, but it helped me get the job I wanted and completely changed my perspective on higher ed. I eventually went on to earn my master's and my PhD. I am now a successful data scientist with Verizon with three degrees under my belt from three different universities. Phoenix was the catalyst that helped me exceed beyond my own expectations and completely changed the trajectory of my life. As a veteran, I respectfully encourage that you take this opportunity to take care that you do not limit options for other active-duty military and veterans who want to change their lives for the better. Thank you.

MR. WAGNER: Thank you, Benjamin.

Alright, Brady, who do we have next?

MR. ROBERTS: Kevin, I just admitted Luis Luna, who is representing themselves.

MR. WAGNER: Luis, can you hear me?

MR. LUNA: Yes, I can. Hi.

MR. WAGNER: Great. Hi. Welcome. You will have three minutes for your public comment and that will begin when you start speaking. You have the floor.

MR. LUNA: Thank you. Dear Members of the Negotiated Rulemaking Institutional and Programmatic Eligibility Committee. My name is Luis Luna and I live in New Haven, Connecticut. I am an organizer with the Connecticut Working Families Party, and I am a member of the Student Loan Fund Borrowers Collective. When I entered college in the fall of 2003, I was a low-income immigrant student, hoping to realize the dreams of my parents and my dream. As a student in high school, I had very little support or guidance to navigate the college application process. I knew I was passionate about art and design, so I went and saw an ad on my computer for the Art Institute of Philadelphia. I was intrigued. I contacted the school and they invited me to visit. They talked up their photography program and promised that financing would be accessible. I submitted an application, and I was immediately accepted. The financial aid office encouraged me to fill out Sallie Mae student loan applications, telling me not to worry because I was sure to secure a high-paying job after graduation, which would allow me to easily repay my

loans. As a young person with English as a second language, I believed the optimistic picture they painted of my life and financial future. Three years later, as a junior in college, my mother was injured at work, leaving her incapable of rejoining the workforce. I left the Art Institute and returned home to support my family. When I started to work at minimum wage, it dawned on me how enormous my student loans were compared to my meager income. Even worse, when I matriculated, they told me that I that I could transfer credits, but when I tried to transfer to my local community college in Connecticut, I learned that not a single credit from my three years at the Art Institute would transfer. To complete my degree, I would have to take out even more student loans which left me devastated. My student loans have followed me throughout my career with an average yearly school cost of over \$43,000. My loans have grown to a total of over \$100,000. This debt has made it very difficult for me to live a full life, pursue good jobs, and give back to my community. I'm still dreaming of finishing my bachelor's degree. I joined the Student Loan Bond, Student Loan Fund Borrowers Collective because I wanted to change the predatory systems of student debt and higher education financing that disproportionately impact people of color and first-

generation student students like myself. Rules need to be put in place to protect students like me from these predatory institutions. The Department of Postsecondary Education and the Biden Administration must restore Gainful Employment rules-

MS. JEFFRIES: 30 seconds, Luis.

MR. LUNA: Thank you. For institutions eligible for Federal Aid programs authorized under Title IV of the Higher Education Act. Thank you for your time.

MR. WAGNER: Thank you, Luis. Alright, Brady, who do we have next?

MR. ROBERTS: I just submitted Matt McCoy, who was representing themselves.

MR. MCCOY: Yeah. I'm here.

MR. WAGNER: Alright, Matt, welcome. You have three minutes for your public comment, which will begin when you start speaking. You have the floor.

MR. MCCOY: Thanks. I just wanted to join everybody today and let you guys know about my experience at Phoenix. I graduated high school all the way back in 2003. I went to a four-year university traditionally like everybody else did. It really wasn't for me and didn't necessarily enjoy the experience. So, I went into the Air Force. I did that for four years and

then moved out to California and realized that you know I wanted to use the GI Bill that I had acquired to go back to school. And so, I went back to school, and I went to University of Phoenix specifically because you know like a lot of other members who have gone in the military, when we get out, we're forced to transition back into the workplace. We don't have a lot of time. We have families. We have a lot of other stuff going. I had a job, two internships, and I just didn't have the time. And it really wasn't feasible to go to a four-year university and sit down in class at 9 a.m. with everybody else. And so, the only university that allowed me that opportunity was really Phoenix when I looked at it. And so, I went to school there. I did an in-class learning once a week and then everything else I took over the computer. And really enjoyed my experience. I feel like the education that I got there really was as good of quality as you get anywhere else. For the most part, you know, I actually thought it might even be a bit more than you have to do on a day to day basis because, you know, you're forced to actually, rather than just being given a book and saying, read this chapter and then take a test, you know, you're forced to get in these forums and comment and leave feedback on what you actually just read. And so, I forced myself, it

basically forces you to do the homework and you can't say you just did the homework and then take the test and stuff like that. And so, I really felt that I had the ability to and was afforded the opportunity to go to school when, like I said, I might not have been. So, I really enjoyed my experience and it set me up after I got out, you know, I got out and I've now been at a nonprofit for the last four years where I have a marketing role and position. And all that was really due to the flexibility that I received at Phoenix to get that education that I needed. So, I'll keep it short and brief for you guys. But if you have any questions, I'm available for those.

MR. WAGNER: Thank you, Matt, for your comment.

MR. MCCOY: Absolutely.

MR. WAGNER: Alright, who do we have next, Brady?

MR. ROBERTS: I just admitted Matthew Feehan, who's representing themselves.

MR. WAGNER: Welcome, Matthew. Can you hear me?

MR. FEEHAN: Welcome. Can you hear me?

MR. WAGNER: Yes. You have three minutes for your public comment and that will begin when

you start speaking. You have the floor, Matthew.

MR. FEEHAN: Beautiful. I really appreciate it. So, I'd just like to continue the conversation. I know the Department of Education is going to look at 600 [inaudible] and come back tomorrow with some additional comments. But just to start with, my name is Matthew Feehan, by the way. The disclosure requirement. So, for the Department of Education is right here keeping the students in mind and keeping the prospective students in mind as far as the disclosure requirement. 90 days to the effective action, I don't think it's going to cut it. So really, when these discussions start happening and we're talking about for-profits and conversion to nonprofit status, the prospective students and the current students need to be involved in the discussion as early as possible. I don't really consider the argument you know, the administrative burden argument really that strong. Multimillion dollars in revenue, they can just hire consultants. So, involving the student body and the faculty in that process, in the disclosure process is something we should really be looking at. The second thing, so for scrutiny for the private non-profits, kind of getting caught in the flak here for the regulatory burden. I think that the Department of Education's 100

percent correct here in how they're phrasing this new regulation. So, a lot of private nonprofits are forming these smaller, for-profit contractual relationships with the private for-profit sector. And I don't buy the argument that it's just a small population of contracts or small percentage of business with these private nonprofits. We're talking about hundreds of millions of dollars here. These are massive contracts. So, the Department of Education is right to be to be putting that extra scrutiny on these relationships. And the conversion relationships are where we should be going. The fact that it might inadvertently you know cause some extra scrutiny for the private nonprofit sector and their third-party relationships. Again, I don't understand how that's a problem. Hire consultants, you know? And finally, with respect to, the other representative beyond owner. So, the Department is expanding that that net beyond just the owner of the institution and to, you know, existual [ph] contractual relationships with other parties within the organization. And again, the Department is 100 percent accurate, really, their heads are exactly where they should be.

MS. JEFFRIES: 30 seconds, Matthew.

MR. FEEHAN: Thank you, ma'am. Just

trying to better encapsulate these third-party agreements with these private nonprofits beyond just the simple revenue sharing agreement with prior owners. So that's all I really had to say. The Department's right. We should keep the language, the proposed language that it has. It's addressing the student concerns very accurately here. And then as far as the administrative burden argument, I don't know, it's hundreds of millions of dollars. Just hire some consultants. So that's-
[interposing]

MS. JEFFRIES: Your time is up, Matthew.

MR. WAGNER: Thank you, ma'am.

MR. WAGNER: We're coming to our last public commenter of the day, and who is that, Brady?

MR. ROBERTS: I just admitted Deborah Dunn, who was representing Lancaster School of Cosmetology and Therapeutic Bodywork.

MR. ROBERTS: Thank you. Deborah, can you hear me?

MS. DUNN: Yes, I can, Deborah Dunn.

MR. WAGNER: Yes. Welcome. You have three minutes for your public comment, which will begin once you start speaking. You have the floor.

MS. DUNN: Thank you. My name is

Debbie Dunn. I'm the president of the Lancaster School of Cosmetology and Therapeutic Bodywork in Lancaster, Pennsylvania. Thank you for allowing me the time to speak. I have been in private postsecondary career education for 43 years. However, I did start in the public sector, and it's a sector I will never return to. The reason it does not matter if a two or four-year traditional school assists with job placement for any of their graduates, it does not matter if only 32 percent of their students graduate on time. To me, it's a poor educational statement that our traditional two and four-year schools do not have to meet any specific completion placement or licensure pass rates. I'm not sure what they're afraid of. As for this school. For the most recent reportable year 2020, we have the following, an 86 percent completion rate, an 84 percent job placement rate, a 98 percent licensure pass rate, all during COVID. We also have a three-year cohort default rate of 2.2 percent with a median loan debt of less than \$4,000. In my 43 years, I have yet to determine what was 85/15 and is now 90/10 has to do with the quality of a career school. All this does is discriminate against the low-income population. And at a time when Democrats preach no discrimination, this could not be more hypocritical. In addition, Gainful Employment has different meaning

for each student, and this is about students. Exactly how a school can force a student into a full-time job receiving a certain salary and convince them to report all of their income is beyond my understanding. We have students who come to school for many reasons. Many want to work part-time while raising their children. We have retirees who just want to supplement income. We have others who are working part-time while they attend another type of education. However, somehow all of these reasons are not acceptable. A strong school could be forced to close due to some random formula that has yet to pull accurate data. Continuing to add regulation on top of regulation is not a solution. You have made these negotiations about the type of school that should follow certain regulations, some schools more than others. All negotiators should be caring about is the student. It's the student's right to use their financial aid however they deem fit. It's not the negotiators. It's not the Government's or anyone else's. These negotiators, we feel, our students feel like they've literally been told they made bad choices by attending our school. Well, they do disagree. So, please, as you continue to negotiate [30 seconds] try to remember, it's about the student's choice, not yours.

MR. WAGNER: Thank you, Deborah, for

your comments. And I want to thank all the other public commenters this afternoon. It is 4:01 Eastern. We are wrapped up for day number three, we'll be back tomorrow, 10:00 a.m. for day number four of this week of our regulatory negotiations. I want to thank everyone for their hard work today and we will see you all tomorrow. Stay safe and have a good rest of your afternoon.

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

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

if the department deletes the short term borrowing discretionary trigger we discussed earlier today in paragraph d 10 then it would need to delete the second half of new section f 1 iv

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

+1 Kelli on the composite score driving institutions to make bad financial decisions. Specifically around getting bad scores to refinance debt and sign long term leases.

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

David Socolow is going to come to the table for state agencies for the remainder of the day.

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

also in (f)(1)(iv) - once the reference to B10 is removed not later than 10 days following "each transaction" should be changed to "the transaction.

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

Johnson is coming back to the table for legal aids

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

+1 Carolyn and Yael

From David Socolow (A) State Agencies to Everyone:

+1 to Carolyn and Yael regarding returning to the 2nd session language for definition of "nonprofit institution"

From Amanda Martinez (P) Civil Rights to Everyone:

Strongly urge the Department to revert to previous language proposed in Session 2.

From Ashley Schofield (A) - MSIs to Everyone:

+1 to Kelli's comment

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

It would be helpful to know what the problem the Dept is trying to solve with the "associated with" requirement.

From Yael Shavit to Everyone:

+1 Barmak

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

+1 with Barmak on distance ed

From Johnson Tyler (P) Legal Aid to Everyone:

+1 with Barmak on distance

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

+1 Jamie

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

can you put the version 2 language on the screen

From Yael Shavit to Everyone:

+1 Johnson

From Emmanuel Guillory (A) PNPs to Everyone:

+1 Carolyn

From Yael Shavit to Everyone:

+1 Carolyn

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

+1 Carolyn

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

+1 Carolyn

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

I support current language as proposed. The session 2 language limits the secretary's discretion on approving transactions.

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

I would also like to know what "generally" means before the vote.

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

per Donna's response at the February session that emails are okay, the "recently updated copy" language at (g) (3) (i) and (ii) should be removed, and the current language supplemented with documentation that such licensure/accreditation remains in effect as of the day before the change in ownership. New language would be:

Documentation that the institution's State license, as of the day before the change in ownership, authorized or will authorize the institution to provide a program of

postsecondary education in the State in which it is physically located;

Documentation that the institution's accrediting association, as of the day before the change in ownership, granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

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

. By way of example, for purposes of participating in the federal student aid programs, a nonprofit institution is generally not an institution that:

(A) Is an obligor (either directly or through any entity in its ownership chain) on a debt owed to a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution; or

(B) (B) Either directly or through any entity in its ownership chain, enters into, or maintains, a financial agreement or relationship with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution; or

(C) Engages in excess benefit transactions with any natural person or entity.

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

Certainly not giving schools room to hide -- but how firm does the deal have to be to qualify as "proposed" (agreed to by both parties? ? Donna said 90 back from closing -- that's hard because closing can be a fluid

point. I'm not objecting to the provision but noting that it could be difficult for institutions.