On the 14th 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.
MR. ROBERTS: Alright, welcome back. It is 1:02 Eastern. I hope everyone had a good lunch, a couple of things, just a reminder that public comment for today's session will begin at 3:30 eastern. Also, Steve Finley has joined us, is in for the Office of General Counsel and we were going to pick up where we left off. We had several people with their hands raised. I have the order of which they raised their hands. So I'll go ahead and do that and then we'll take it from there. Okay? Alright. When we last left off, we had Amanda. She had her hand up first, so Amanda, you have the floor.

MS. AMANDA MARTINEZ: Thank you. Just because we didn't really close out or it didn't feel like there was a closure to the previous conversation before we left for lunch on H1 related to the deadline language there, I'm just wondering if other negotiators, who brought up the issues related to the concerns of the deadline and incorporating that language there, was Greg or the Department of Education's intention behind that language as it relates to federal, you know, deadlines, hearing that was, did that really subside any deep concerns or potential scenarios that could you know be harmful to students or did that hopefully, yeah, address your concerns? And if it didn't, is there something is there an example you can help me understand because I suggested this language to the Department of Education. So I'm just trying to understand specific examples or scenarios in which that language would be harmful. Like is it related to potential passive acceptances of award letters and having a deadline
there that you're concerned about? If you could, if anyone could just please help me understand the real issue here. And hopefully, the Education Department's original explanation hopefully subdued any other types of scenarios that you were concerned about.

MR. WAGNER: Okay, Greg, do you have anything on that?

MR. MARTIN: I don't have anything beyond what I said earlier, we have we could in that in H1, you know, before a deadline we have, we would suggest instructions and applicable deadlines for accepting and declining if that would help assuage people's concerns.

MR. WAGNER: Okay, I appreciate that, thank you, Greg. Also, we have Ashley Schofield in for minority serving institutions. We'll go to Jamie, you're up next.

MS. STUDLEY: Okay. I raised my hand to speak to the issue of career services about which I feel pretty strongly. The current language is overbroad as a number of people have said, and I agree with Barmak that focusing in on number three would get at the abuses that might be troublesome. So I will propose that the language be along these lines, focusing on three, provides career services that it has publicized to prospective and current students, or consistent with its claims to prospective and current students. I appreciate, Greg, your explanation that the Department needs particularly egregious situations, but that's there's a danger that that won't be clear to people because there's also language that says must demonstrate. As a former career services dean, I
fear that this language, coupled with that must demonstrate requirement, could distort the field and worry institutions that they all have to make or be prepared for the showing that's based on numbers and non-existent ratios when all the Department's best thinking and accreditors' best thinking is moving in the direction of capacity, effectiveness, and results, and been telling us to think about outcomes. If you have concerns about capacity, I think you have the tools and that that language just talking about claims that have been made for career services would cover the need, which is understandable and reasonable.

MR. MARTIN: Okay, I'll take that back.

MS. STUDLEY: If I have a second, I'll say that I think any deadlines or any applicable deadlines, there's a lot of voice for that. And on the section afterward about clinicals, we like the addition of other and think that's a good change.

MR. MARTIN: Thank you.

MR. WAGNER: Thank you, Jamie. Barmak, you were in queue before lunch, so you're up.

MR. NASSIRIAN: I'll be very brief. And I've put this in the chat, I want to echo Jamie's and Brad's comments with regard to career services. We have all heard the modernist dictum, less is more. In my experience, less is usually less. But this is an area where less really is more. Adding fluffy, unenforceable, vague language to regs as an aspirational sort of indication of toughness actually discredits the regs. Because regs ought to be actionable, regs ought to be
meaningful to the regulated entities, and the Department has
to realistically have the resources, the capacity, the
experience, the qualifications to act on them. This is just
forgive me for my bluntness, but this is almost like word
salad. I think the single most concerning area of abuse is
where institutions promise lucrative careers that they don't
deliver on. And I think if the Department focused its
resources on where the real problem is, we can come back to
the more grandiose vision down the road. So I would really
courage the Department to avoid the tendency to just create
more voluminous, meaningless regs. Thank you.

MR. MARTIN: Thank you.

MR. WAGNER: Thank you, Barmak. Debbie, you're up.

MS. COCHRANE: Thank you. I would I too also share
the concerns about ill-defined ratios for institutions not
knowing what it means and not potentially being helpful for
the Department. I will add, though, you know I actually would,
that would take me to a place maybe in a different direction
than Jamie, who kind of talked about leaning into the career
service the institution has publicized to its students. That
one seems to me, certainly, institutions should not be
misrepresenting what services they are offering to students.
That seems very clear. But what they advertise or publicize to
students seems like it actually bears very little resemblance
to the sufficiency of those services from an institution they
don't publicize the availability of services, but they still
don't offer them. That doesn't actually mean that the services
are sufficient, so I would probably take that one out, too,
and then try to get at the misrepresentation of career services in a different group.

MR. MARTIN: Thank you.

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

MR. ADAMS: Yeah, it may make sense to let Jessica finish out the point here, so I was going to move to my next point, but if there's still good discussion, which I think I agree with what Barmak and Jamie have both just said, I'll put my hand down and come back once we're finished with H and I.

MR. WAGNER: Okay, Brad, thanks. In that case, then Jessica, you have the floor.

MS. RANUCCI: Thanks. I just in reflecting on these, I just I think that there are actually two different types of representations that a school might make that are relevant to career services. One is representations about the career services themselves, something like lifetime job placement services. And the second are representations about, in fact, the careers that one obtains that would be impossible to effectuate without some career services by the school. And I think maybe separating those could help clarify what exactly, because I think only the first one of those two categories is captured in number three, but not the second. And perhaps it's captured elsewhere and that's fine, but I do think those are both really important things that need to be considered.

MR. WAGNER: Thank you, Jessica. Yeah, I don't see any other hands. Greg. Oh, sorry, Brad. You had your hand up.
MR. ADAMS: Yes, so I'll move down to my next set of points in K, if that's okay. Have we gotten to K, Greg? I can't remember where we stopped before lunch, I'm sorry.

MR. MARTIN: I'm sorry, I'm on mute. Have we got to, no, we were with I and J. We we had yet to move on to K.

MR. ADAMS: My recommendation, based on all the commentary on I that the Department considers the proposed language that either Jamie or myself has made and come back to us, but we can finish out the rest of the issue paper first on that day.

MR. WAGNER: Jamie, you had your hand up. And you're on mute.

MS. STUDLEY: I think that Debbie and Jessica's points are well taken and that the combination of both claims about services, or maybe it's three claims about services, connections with employers and results are also potential areas for misrepresentation. So maybe we could marry all of what Brad, Barmak, Debbie, Jessica and I have been saying to do something that hinges it to the claim section, but recognizes the multiple ways that that could happen, either by making it broad or specifically calling them out. I'd be happy to work with you offline if that would be helpful in that drafting. I don't have language right now for the misrepresentation section.

MR. WAGNER: Okay, thank you, Jamie. I don't see any other hands. Greg, you want to continue?
MR. MARTIN: Oh, sure, I didn't, I wanted to make certain that there were no other points about I before we move on to K. Brad, you didn't have any comments you wanted to make about that before we move on to K? I just want to make sure we-.

MR. ADAMS: Not [inaudible]. Thank you for asking.

MR. MARTIN: Okay, sure. So in that case, then we're going to move on to K. Has got that up already. And here we are at K, disburses funds to students in a timely manner consistent with the student's needs. And then then we go on to the Secretary does not consider the manner of disbursement to be consistent with the students' needs if among other conditions and we list those conditions below to address negotiator concerns and clarify our meaning here, we have further streamlined the language in this section by breaking out the examples into individual items that you see below. We have removed the cross reference to 668.164. That seemed to create some confusion during our last negotiation session, so you can see we broke all those items down. The Secretary is aware of multiple relevant student complaints to make it clear that we don't mean one complaint from a student. The institution has high rates of withdrawal attributable to delays and disbursements. The institution has delayed disbursements until after the withdrawal date requirements in 668.22 B and C or the institution has delayed disbursements with the effect of ensuring the institution passes the 90/10 ratio. And next, we'll move on to move on to M, we'll do comments on K and M both. So let's look at M here. This is this refers to the institution, offers Gainful Employment
programs that are subject to subpart Q and at least half of its total Title IV revenue in the most recent award year is not from such programs that are failing under subpart Q and at least half of its full-time equivalent, Title IV a full-time equivalent, Title IV receiving students are not enrolled in programs that are failing under subpart Q, and this is accounting for negotiators' concerns during session two about the technicalities of how this language would work. We sought here to clarify that the administrative capability requirement applies only to the calculation of what percentage of total students and revenue are affected. So hopefully this clarifies the calculation somewhat. So before we move on, I'll entertain the comments related to paragraphs K or M.

MR. WAGNER: Thank you, Rene, for sharing. Okay, Brad, I see your hand, followed by Anne. Brad, go ahead.

MR. ADAMS: I'll start with K and, you know, slept since the second session, so I forgot the concerns what the concerns were with the reference to 34 CFR 668.164. You know, I know that section governs student disbursements, and I thought it did seem relevant here to ensure institutions are complying with those requirements. So remind me or what the concerns were from the committee on why we took out the reference there and then added in the language here.

MR. MARTIN: As I recall, back in session two, there was just some confusion about the reference to 164 and some because there is in 164 a considerable amount of latitude in disbursing, if you look at the timeframes for disbursing as strictly defined in 164, it essentially allows the institution to disburse any time during the payment period, and that is
the overarching requirement. But I think here we're more concerned with practices that the school's engaging in that where it is disbursing, not in accordance with student needs or but with an eye towards delaying disbursements or somehow manipulating with those disbursants occur for reasons other than to the benefit of the students. So it we felt it would be more clear if we just spelled those out here as opposed to a reference to 164. And of course, 164 stands as it is and still is, still provides the basic guidelines for disbursing aid.

MR. ADAMS: But why would we want it written two different ways in two different spots? You know?

MR. MARTIN: Well, this is not addressing. I mean, 164 simply addresses the mechanics of disbursement. This addresses disbursing to students in accordance with consistent with student needs. The two are not necessarily the same, you know 164 provides the limits, but this addresses and remember here we're talking about administrative capability, assessing an institution's administrative capability and as part of that, looking at the way in which the institution disburses and whether or not within the framework of what's provided of what's allowed for in 164 the institution is disbursing aid in accordance with student needs, and that's why we've spelled those out here. For instance, you know, delaying until after the withdrawal date of students in 668.22 that I don't think it's a common practice now. It used to be that institutions that didn't want to do, they weren't necessarily trying to get out of returning funds, but just didn't want to be bothered with the calculation. So would wait until after the 60 percent point had elapsed before they would even disburse funds to
students. So things along those lines where clearly the practice has nothing to do with what is in what is in the student's benefit, but what the school tried to avoid some administrative requirement or manipulate disbursements for some other reason, 90/10. So I think the two are really different things, Brad.

MR. ADAMS: And then I've got a point on item one and two under K, romanette 1 here, where it says the Secretary is aware of multiple relevant student complaints. This is a new add coming into this session, and you know, I of course, understand that you want to consider complaints, but the word multiple, I'm not sure how many that means. And the other concern is just sometimes students don't understand the Title IV process. And so a complaint about the rules and institutions failing to comply with Title IV should be considered. So is there Department planning to verify if the complaints are significant before making any findings here? And how many does it consider to be multiple? Is that more than one?

MR. MARTIN: Well, we don't have a number that we place on it. Certainly more, certainly more than one. Well, I mean, it might be possible that one complaint is of such a serious nature or as seems to be so to raise concerns sufficient to have us look into it. But very seldom do we look at one, we will look at that complaint. I wouldn't say we don't, not look at a complaint, but we don't view one complaint as normally as indicative of a pattern of a difficulty at a school. And yes, we do look into those. We do look into those complaints even where we get multiple
complaints. It could be that the students are not understanding of just the rules for related to disbursing funds, but I can say that in most cases, in my experience with multiple complaints when we've had, you know we've had institutions that are having difficulties with you know financial difficulties where they don't have a lot of staff or, you know, you'll get 30, 40, sometimes more than that student saying they haven't received their disbursements for a specific period of time or, say, for the fall semester. And when we see something like that, we generally will look into it further, and that would be indicative of conditions where an institution was not disbursing in a timely manner. I don't think we can, you can ever really narrow it down to, you know, would it be three complaints or four complaints? A lot would depend on the size of the institution. There is a certain amount of subjectivity involved that I don't think you can, get out of here. But this does give the Department a valuable tool to look at instances where schools' practices are, you know, prejudicial to students and we've seen this before, where, you know, students can't pay their bills because an institution is not disbursing in a timely manner, and sometimes they've had difficulties with turnover or something along those lines. But all that notwithstanding, it's if some of these students don't get their aid, they're unable to pay, you know, to pay their basic expenses. So we feel it's an important and necessary element for this and tool for the Secretary to have. But to your point, Brad, I don't know that I can put a number on it. Is it three or four or five? Well, that depends on the circumstance. We do look and we do evaluate. I will just say, we do evaluate those claims and the
validity of them. And there've been plenty of times where I've had to tell students that what they thought was a violation was simply a misunderstanding of rules.

MR. ADAMS: Thank you, Greg. I did propose some language. I think if we just put a clarifier in there that basically is adding a few words to the back end of K romanette one that says the Secretary is aware of multiple relevant student complaints and this is the insertion and as verified, the legitimacy of such complaints to consider. And then my last comment is on K romanette two, and if I run out of time, I can get back in line. But again, I've mentioned this in the first two weeks that the Department still has not defined what a high rate of withdrawals is and even how it could approve they were attributable, the withdrawals were attributable to the delays and disbursements. I don't know how in the world the Department, number one, if we don't know what the high rates are, we don't know what we're whether or not we're administratively capable. But number two, how you could then prove that those high rates were attributable to delays and disbursements. And so the Department here, can you please help me define what high rates of withdrawal [30 seconds] and how those delays would have been or those withdrawals are attributable to those delays?

MR. MARTIN: Oh, no, we've not given a number here as to what, again, what is a high rate of withdrawal. And there is some subjectivity here as well. But whether, I've not, as far as a situation that would be where withdrawals are attributable to the high rate to the high withdrawal rates, I'm sorry where delays in disbursement are attributable to the
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high withdrawal rate. I'm not certain of exactly what an example of how that would, how that would work. We have seen situations where a school was, in the instance I'm thinking of, just having difficulties financially and administratively and just wasn't able to get their disbursements done so yeah, I mean, if you saw students having to withdraw from that, I don't think you would have, you might not have an official withdrawal rate associated with that because we'd rather be tied to that particular term or whatever, but I'll take that back and see if we have some more clarification on that. But I do understand your concerns there, Brad.

MR. ADAMS: I just struggle that the Department can't tell us what that means in this session. How can we vote for language that the Department does not know how it would apply to us? But thank you for listening.

MR. WAGNER: Thanks, Brad. Let's see. Anne, you're up.

DR. KRESS: Sure. I have a quick question and really probably looking for the Department's thinking on this. So in both I1 and in M, there's a reference specifically to only Gainful Employment programs. And certainly you know there are lots of programs within higher education where students come to college seeking a career. My first degree is in finance. So, why is Gainful Employment specifically called out in those items?

MR. MARTIN: Well, yeah, if we look at M, this has to do with the revenue. The whole concept of failing programs, failing GE, the failing of GE rate is only associated with
Gainful Employment programs, you know, programs to prepare students for Gainful Employment and recognized occupation, which would be all programs or proprietary schools and non-degree programs for the most part at a not for profit, public and private institutions, so it has to do with the fact that that's a statutory category, Gainful Employment programs. And that with this, and when you talk about at least half the Title IV revenue is from programs, at least half the Title IV revenue in the most recent year is not from programs that are failing. The only programs that would be subject to failing or passing are Gainful Employment programs. Which is not to say that, I mean, your point being that and in contemporary education a lot, yes, a lot of programs, certainly that are not considered Gainful Employment programs, are still preparing students for in some cases specific fields like engineering, finance, accounting, nursing. But they're not they're not, in most cases, Gainful Employment programs under the statutory definition.

DR. KRESS: Okay. Alright. Thanks.

MR. WAGNER: Any specific comments on K or M? Okay, Greg, back to you.

MR. MARTIN: Okay, we'll move on to let's move on to O. This is I'll wait for Rene to pull up the issue paper again. There we go. Alright. Has not been subject to a significant negative action by a state or federal agency or an accrediting agency and has not lost eligibility to participate in another federal education assistance program due to administrative action against the institution. And here we have made a technical change to use, subject to which we
believe is more common parlance for state and/or federal actions. And that's everything for O. And then if we move down to, let's see. Why don't we move down to Q? And that is not and does not have any principal or affiliate of the institution, as those terms are defined in 2 CFR parts 180 and 345. Or any individual who exercises a substantial control as defined in 668.174 C3. And this is added language that closes the gap between the existing definition used for principal or affiliate and the current past performance regulations for an individual who exercises substantial control by incorporating both cross references. And continuing, and that was that was in Q1. And if we, we'll move down to Q3, has been convicted of or pled nolo contendere or guilty to a crime involving the acquisition, use or expenditure of federal, state or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of the law involving these funds. And here we have also added an additional provision supported by a negotiator related to crimes involving federal funds or findings of fraud. And in 4, a current or former principal or affiliate, as those terms are defined in 2 CFR parts 180 and 3485 or any individual who exercises or exercise substantial control as defined in 668.174 C3 of another institution whose misconduct or closure, misconduct or closure contributed to liabilities to the Federal Government in excess of 5 percent of its Title IV HEA funds. And here we have made several changes to this item to use existing to use an existing definition of a principal or affiliate of the institution to clarify that the individual in question may still be employed by the institution if the institution is still open, and to clarify
that the individual has contributed to liabilities to the
Federal Government. We've also capitalized Federal Government.
And I'll stop there. That would be through, through Q, and
I'll take any comments.

MR. WAGNER: Thank you, Rene. Thanks, Greg. Let's
see, I see, Jamie, your hand's up, you're first.

MS. STUDLEY: Okay. Mine is pretty simple, it's on O,
and O says has not been subject to a significant negative
action by a federal state agency or an accrediting agency.
There's just a question of time here. There's a danger that
that could be misread to be any time in history. And we this
issue has come up in another location on something similar,
and I suggest that perhaps there be a time horizon or that you
clarify in some way that if there was a negative action that
was resolved in the institution is in full compliance or has
been for whatever period of time the Department wants. It's
just a time saver because I don't think you mean it to be
eternal.

MR. MARTIN: No, the intent, the intent here is not
for it to be forever, certainly not if the institution has as
resolved the problem or the whatever the factor was that led
to that significant negative action taken. Did you did you
have any proposed parameters around this or language?

MS. STUDLEY: I really was seeking the Department
sense of, I mean, are you looking for is now in compliance or
would you like to see compliance for a certain period of time?
I can try and work up language, but I really think it's
important.
MR. MARTIN: I think any significant action, certainly, I worry about a time limiter here because I think any significant action taken by any of these entities that is yet to be resolved is a factor, I think. But rather so bring some, some timeframe. I wouldn't want to say two years, but it is resolved and therefore, it would not be considered so.

MS. STUDLEY: Yeah, no, I understand that.

MR. MARTIN: To the extent it's to the extent that it to whatever it is that precipitated the action has not been resolved.

MS. STUDLEY: Maybe it's as simple as is not subject to a significant negative action. If what you mean is not now under that kind of order. I think the solution is simpler.

MR. MARTIN: I'll take that back, I don't know, you know, whether or not we've and there could be, you know, in just in thinking this through, there could be situations where a school maybe has resolved these. But there are ongoing issues that keep arising where they are subject to these significant negative actions. And I would ask the committee. I mean, does anybody have any thoughts about that limiting it if we were to limit it to those that are outstanding or, you know, what about the concerns of an institution who may have resolved some of these but has ongoing issues with negative actions being taken against them? I just throw that open if anybody wants to comment on that.

MR. WAGNER: Carolyn, is that specifically on that question?
MS. FAST: Yeah, I just, I'm not sure that resolved necessarily would work here because, for example, you could get, a state or a federal agency could get a judgment against a school of finding misconduct and that that would be a resolved situation. I think the Department might want to have be able to consider like in other words, that a court case could end and be resolved.

MR. MARTIN: Yeah, and I think this does give us, you know, the way it's written gives us that sufficient latitude for that. I mean, if the concern is, I mean I could say that we certainly wouldn't look at an institution had a negative action taken 10 years ago and significantly resolved and sufficiently resolved that. Would we say that school is administratively incapable, going forward forever? No, I we would not do that, but I don't, I'm just not sure how, and to your point, how we could put language in here that would give us the latitude that we need, not just limited to those that have not been resolved, but yet make it clear that we don't mean forever. I can just say that the Department's intent is not going to be forever. I don't want to say anything limiting the Department to not being able to look at this merely because something has been resolved. I mean, the resolution could be very important. We always want to see things resolved. But again, there could be an ongoing pattern of problems that, for whatever reason, the institution is able to resolve to the satisfaction of one of these entities, but still indicates the institution that we have a lot of concerns about the institution. So I will, we'll look at that.
MS. STUDLEY: And I would just suggest that if there are other concerns, they should be at a level that they are covered by something else so that there is notice. So I think that is not subject to a significant negative action is one way to go if you want to be able to continue to look at the basis for that, I understand, then I think some way of assuring that it's not, the Department would follow the negative action to its conclusion if there were resolution, but I'm not trying to add a lot of words.

MR. MARTIN: No, I see what I see what you're saying. You have concerns about it being in perpetuity. You know that if somebody resolves, if the institution resolves something in you know, 2022 that in 2035, the Department would say, oh, but you know, you had this-

MS. STUDLEY: You once had this problem.

MR. MARTIN: You once had this problem if you're not administratively capable. I can say we wouldn't do that. But if we're looking for something, you know, more assurances in the language, I'm not 100 percent certain what that would be, but it's a good point.

MR. WAGNER: Okay, thank you. Thank you, Jamie. Do you have anything else to add? Okay, thanks. Thanks for your patience. Brad, you're next.

MR. ADAMS: And I think Jamie's proposed language is better than currently written. I do think some sort of resolution is important here. I like the word unresolved. I don't, I'm not a lawyer here, but I'm not sure how you could resolve something and the Department still think it's
significant, but I've obviously never seen an instance of that. So but I do think there's some language there that needs to be added and potentially maybe something in P romanette one could be utilized here, but I'd like to go to new N romanette two. I'm sorry, romanette, or no, I apologize. Just N, new N under misrepresentations and aggressive recruiting. I'll let you get there, Greg.

MR. MARTIN: I see where you were.

MR. ADAMS: Okay. As you know, the Department's proposal here allows for it to find an institution administratively not to be administratively capable if it engages in these misrepresentations and aggressive recruitment. And as I mentioned in the previous two sessions, you know, we still don't have a definition for aggressive recruitment, and we're still not including anything in front of misrepresentation, which I've proposed the word significant misrepresentation. But given we've had a lot of back and forth on that, I'm wondering now why we're including the word, including twice here. Are there any instances that the Department is referencing here where an institution is in compliance with subpart F and subpart R, but is somehow not compliant with this subsection N? Are there other types of misrepresentation aggressive recruiting that violate this section but do not violate subpart F and subpart R?

MR. MARTIN: So you're asking does not engage in representations of misrepresentations as defined in subpart F of this or of this part or aggressive recruitment as defined in subpart R. So you're saying, is there, I'm not sure I understand your question, Brad. Are you you're saying, is
there some way that they could not be engaging in
misrepresentation as defined in subpart F, but still be
violating subpart R?

MR. ADAMS: No, what I'm saying is we've added the
word including here twice now from week two to week three. And
so I'm asking why we're doing that and could you be in
compliance with subpart R and subpart F under these two as
described in those subparts, but not be in compliance with
this in an administrative capability? Is there a reason why
we're adding the word including in two parts right here?

MR. MARTIN: I see what you're saying, does not
engage in misrepresentations, including those defined in
subpart F or so you're saying, would it be possible for
someone for a school to be in compliance with the letter of
subpart F and subpart R, but still run afoul of N in that it's
because it's does not engage in misrepresentations, including
those?

MR. ADAMS: Yes.

MR. MARTIN: Does this extend to misrepresentations
beyond what is defined in subpart F and subpart R? Yeah, it
does give the Department flex. Well, it does give the
Department the latitude beyond you know what is what is
defined in the subparts. Because as it's written, it does
engage in misrepresentation, does not engage in
misrepresentation, including those, I would imagine that most
of those would be covered under subpart F or subpart R, but it
does leave the possibility for the Department to view
something as a misrepresentation that is not strictly defined in the subparts as written.

MR. ADAMS: To me, I would think being administrative capable is a, you know, a level above those other subparts. And to me, I would think if you're I'd be surprised that you could get past the definitions in subpart F and subpart R and not being administratively capable, so.

MR. MARTIN: Well, you wouldn't be if you were to run afoul of those, you wouldn't be administratively capable. But this says does not engage in misrepresentations, including those. So those are definitely stated, but it would be possible for there to be a type of misrepresentation that is technically not included in subparts F or R. So I mean, I know, there would be no way of not being compliant with or running afoul of misrepresentations in subpart F, for instance, and still being compliant with within.

MR. ADAMS: Well, in addition to the comment not included, I don't want to forget my first comment that the fact that we're not saying a misrepresentation has to be significant to be administratively capable is extremely important, in my opinion. And again, we are defining aggressive recruitment that is yet to be defined or referencing a definition that has yet to be defined in administrative capability. So I have a real problem with that as well. Thank you.

MR. MARTIN: Thank you.

MR. WAGNER: Thank you, Brad. Let's see, Barmak, you're up.
MR. NASSIRIAN: Yeah, my comment is on O, but I want to echo Brad's concern about the use of the word including because it expands the universe of potential trip wires here and they're not articulated anywhere else except in in the citation. So I would I would advocate deleting including so that subparts F and R basically articulate what the issues are. I don't agree. I'm not that worried about the fact that we don't have a regulatory definition of them that is outside the scope, whatever it is, that's that has gone through its own process and we need to treat it as a black box unfortunately. I just wanted to flag on O, and I've said this when the issue has arisen in financial responsibility triggers. Remember that I do not believe any other agency well, some other consumer protection agencies might, but federal agencies, particularly the VA and the DOD, do not deal with the entire institution and their judgments. They deal with programs offered by institutions so an institution could actually run afoul of VA rules and lose eligibility for three of its programs while retaining eligibility for three others. So you may want to consider, I realize this is maybe nitpicking, but you may want to consider changing the opening of subpart A by saying, you know, up top, you have an institution you could start O by saying or any of its programs have not been subject because the judgment would typically in the case of VA and DOD with regard to programs, not with regard to the institution as a whole. Thank you.

MR. MARTIN: Thank you, Barmak. We do consider that we have authority under this this rule, retain the ability to apply the finding if a sanction or action is applied to a program within an institution. So we have looked at this and
conclude that we and consider rather that we do have such authority, but you don't think that this is strong enough language?

    MR. NASSIRIAN: I defer to your judgment. If you think you have the authority, then that's fine. Let's not complicate it.

    MR. MARTIN: We do, we have checked with counsel and we do believe that this does [interposing]

    MR. NASSIRIAN: Good enough for me.

    MR. WAGNER: Thank you, Barmak. Let's see, Ashley, you're next.

    MS. SCHOFIELD: Yes, I just wanted to echo my support for what Jamie's comments were earlier related to discrimination. HBCUs in particular have experienced systemic offenders [ph], particularly sex. And so just making sure that there is clarification regarding the language as it relates to including the words that Jamie mentioned earlier, excluding the words and so just wanted to just echo Jamie's sentiments related to discrimination and the encounters that HBCUs and MSIs in particular have had with their accreditors.

    MR. MARTIN: Thank you.

    MR. WAGNER: Thank you, Ashley. Carolyn, you're next.

    MS. FAST: I just wanted to express support for the inclusion of the language in N that relates to misrepresentations, including the including language. The reason why I think that is actually helpful here is that there
are relevant state laws on misrepresentation and aggressive recruiting that are or may be broader than what's in the what's going to be in the federal regs. We don't know what's going to be in the definition yet, but we have some idea based on the negotiated rulemaking. And it seems to me that that language could be potentially the proposed or whatever came out of the rulemaking language is narrower than some state laws that might define aggressive recruiting, more potentially more broadly. So that's a situation where, you know, even under there could be relevant Borrower Defense claims that referenced the violation of state law and misrepresentations, and that is a relevant consideration for administrative capability. So my suggestion would be that it would be meaningful to leave the language that is current is currently proposed about misrepresentations and aggressive recruiting for that purpose.

MR. MARTIN: So you're saying you would favor retaining where we say including as defined in subpart F and R, but not absolutely limiting the Department to those to those to what is defined in those subparts, correct?

MS. FAST: That's right, because I think that there is a purpose for that which would be to make sure that if there are broader state laws that are violated, those are captured as well here because it seems like that would be relevant if a state law was violated too.

MR. MARTIN: Right, thank you.

MR. WAGNER: Jessica, you're next.
MS. RANUCCI: Thanks. I was going to make the same point as Carolyn, but perhaps in a less sophisticated way, which is just, I think that we would all agree that an administratively capable school does not engage in misrepresentations. Period. And if that's true, then I think that including language is the correct language to be there, which is we can give examples of the types of misrepresentations that that school does not engage in, but that the higher level principle stands. And then separately, I just wanted to make a quick note on O, which is I'm not sure if this would assuage Jamie's concerns or anyone else. But this provision, as I read it, just says it administratively capable school has not been subject to negative action in these various ways. And I think that is different. Like what this isn't saying is a school is administratively incapable if these actions have happened, and I'm not sure if the daylight between those two things would maybe help your concerns, but I just wanted to point it out.

MR. MARTIN: Thank you.

MR. WAGNER: Yeah, I don't see any other hands for O or Q. Greg, you want to continue?

MR. MARTIN: Sure. Let's move on to, I just want to make sure I get all my all my letters correct here. We're moving on to V. I'll wait for Rene to pull that up. I think all of us are going to be seeing crossed out letters in our sleep, trying to determine which paragraph it is. Okay, so here we are in V. And this is, no, we don't, let's see if we have any changes here. I don't believe we have... no we don't have any. There are no changes for V, I don't believe. So, I'm
going to move on. I thought there was a change in V, but no. And oh yeah, we are staying in, yes, there is. I just was in the wrong place, so we were going to V, V2, that's where I want to be. I was in the wrong part of V. So this is a, there it is, thanks, Rene, I'm sorry for the for my confusion. So in V2, a high school diploma is not valid if, it does not meet the requirements established by the appropriate state agency in which the state where the high school is located has been determined to be invalid by the Department, the appropriate state agency in which the high school was located or through a court proceeding, was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent to a high school diploma in 34 CFR 600.2 or was obtained from an entity that maintains a business relationship or otherwise affiliated with the eligible institution at which the student is enrolled and is not accredited. So we are aware that some states do not regulate public, nonpublic high schools, and so there could be a concern that such diplomas are not recognized. So what we have done here is to put in some suggested language that indicates that diplomas are invalidated if they do not meet the requirements that are established by the state. If the state does not establish such requirements, including for nonpublic high schools, then we would generally not apply this requirement, absent other indications of fraud. So I'll stop there because that is the last section in admin capability we have to discuss, and I'll open the floor.

MR. WAGNER: Thanks, Greg. Kelli, you're up.
MS. PERRY: Thanks. I put in the chat some additional proposed language as it relates to the concern from private high schools, then the concerns that they have as it relates to not necessarily being regulated by states and all the different states having different rules for consideration because I think the original proposal that we had submitted was not accepted. So this is kind of a compromise between the two.

MR. MARTIN: And do you have any further comments on the nature of these changes?

MS. PERRY: Well, I think, I mean, I don't know if you can open the Word document, but in one romanette two, it the recommendation would be to take out if the high school is regulated by the overseas state agency and just say confirming where the receiving documentation from a state agency that was registered or meets requirements established by that state agency and then changes in two romanette one and two, where romanette one would just say is not valid if was obtained from an entity that does not meet one romanette two as opposed to the language that's there. And then the second one romanette two has been determined to be invalid by the Department and strike the appropriate state agency from that language.

MR. MARTIN: Okay. Any comments on that?

MR. WAGNER: Thank you, Kelli. Let's see, Brad, you're up.

MR. ADAMS: Thank you. I have a question on the V1 romanette one, and it's, you know, a question that has been raised several times throughout this rulemaking, and I don't
believe it's been answered yet, so I'll try and ask it as
directly as I can. How can an institution verify a high school
diploma by contacting the high school if the high school has
closed? It's an important part of a problem that the
Department has yet to answer and are we supposed to deny all
such students' admission from closed high schools no matter
what? It's not clear to me how we go about getting one of the
three items in romanette one A, B, and C if there's no one
there to send it.

MR. MARTIN: You know, I can address that. We,
remember here that we're only we're requiring the institution
to have to develop adequate procedures to determine the
validity of a high school diploma. And we don't believe that
the occasional individual whose diploma cannot be verified
will fall out of compliance with this requirement because we
certainly understand that may well be the case. So we, you
know, we're not going to say that where schools closed in an
instance where the school's unable to do that, that that means
you've run afoul of the regulation as long as you have put
into place adequate procedures to determine the validity of
these diplomas. We do think it's critical to hold institutions
to a higher bar for regular procedures in the event that the
school or Department believes the diploma to be invalid and
require the institution to exhaust those procedures to the
extent that is practicable in these cases. So obviously,
there's always the possibility that a student's school is
closed and that you will not be able to obtain that
information from that closed entity. But we but we still feel
that the regulation is written is necessary to hold schools to
the standard. But again, we want to reiterate that the
inability to do that for the odd student's whose school is closed is not a violation here. We expect that would happen.

MR. ADAMS: And, you know, I proposed adding a romanette three. It basically said if the high school the student attended is no longer open, the institution must take other reasonable steps to verify the validity of the diploma, such as contacting the entity that may serve as a repository for the closed high schools critical records, if applicable. But the student is not barred from participating in Title IV HEA programs solely based on the high school is no longer open. So again, I think it's the, Greg, this actually says kind of what you just verbally replied with and would be important to add for students or schools to know what to follow.

MR. MARTIN: Thank you, Brad.

MR. WAGNER: Thanks, Brad. Barmak, you're up.

MR. NASSIRIAN: Yeah, a couple of concerns. One of which has to do with the high likelihood that the kind of diploma mill you may be most concerned about could be an online high school that is that has methodically sought out the least rigorous place it be recognized and then reaches out and touches people across the country. So as a general practice, it may be better to index the state recognition process. Not so much to the location of the high school, but to the location of the students when they enroll. Because it’s really the satisfaction of the secondary educational requirements for the student where that student is, that creates a meaningful high school diploma. So you may want to
change that language where you refer to the location of the high school by indexing the location to where the student is. Now, if a student from Bethesda, Maryland, goes to a private institution in the district, the student is located in the district for purposes of this language. So we're not talking about the residence state of residence, but where the student is receiving the instructions. We have kind of parallel language down the road that I'll send around for higher education distance programs. But in this case, I really think the area of greatest concern would be online high schools. So I think indexing the state recognition process to the location of the students would be pretty meaningful. And also, I am aware of a of a legal memo that our friends at [inaudible] circulated, and I think Kelli is sort of partially attempting to encapsulate some of that memo's ideas into her language. I worry about that because again, here we have just the recognition of a state as the metric. And I don't know that what the least rigorous state may approve is necessarily appropriate for a student somewhere else. So, so I have some reservations about that. I understand the concern that that private high schools have, but we also have to concede that that the likely area of fraud, unfortunately, really, [30 seconds] you know, it's not going to be in the publics, it's going to be within the private secondary system. It'll be an entity that purports to be a private nonprofit. So, you know, I think this language we have is generally reasonable, but I'm happy to hear any counterarguments if anybody wants to offer them.

MR. WAGNER: Thank you, Barmak. Anyone else have any comments or questions on V2? Yes, Jessica.
MS. RANUCCI: I just wonder if this, again, is a place where the word applicable might be some of the work that we're concerned about, rather than be requirements of applicable requirements, because I understand, maybe I'm misunderstanding Kelli, but I understand the largest concern is that in the absence of applicable requirements, what happens?

MR. MARTIN: Exactly where would that be, Jessica? Would you consider-

MS. RANUCCI: Sure, I was thinking of it in B two romanette one.

MR. MARTIN: B two romanette one? Does not meet the requirements established by the appropriate state agency, of which the appropriate the appropriate state agency or the state that the high school is located. Is that what you're talking to there?

MS. RANUCCI: Yes.

MR. MARTIN: Addressing rather. So you say it does not meet the applicable requirements?

MS. RANUCCI: It's just a suggestion for concerns that weren't mine. So I'll let someone else speak to that. I don't know if that would address the concerns, but as I understand it, it might.

MR. MARTIN: Then I go back to again, you know, we're looking at, let's see what we're trying to address here. These are situations where the institution of Secretary has a reason
to believe the high school diploma is not valid, so we're not, you know, we're not talking here about assessing the quality of high schools overall or even the quality of those online or, it's a matter of where there's reason to believe that. It's the high school where you have reason to believe that it wasn't valid and it makes it, I think, puts the burden on institutions to look you know where they're aware that there is a diploma that seems spurious or certainly where institutions are knowingly and willfully engaging in a practice of contracting with high school degree Mills. And we've seen a lot of that out there. This gives us what we need to do to go after that. If there are no other comments, we've had a lot of, there have been a lot of suggestions here and I am assuming some of these things you want to see addressed before a consensus vote. So if it pleases the facilitator, I would like to take, I would like to adjourn for approximately, let's call it till 2:30 and have a discussion, internal discussion and come back with a reaction to some of the language that's been proposed here since this is our last this is our, you know, sort of our, not our absolute last shot at it, but we are going to take a consensus for it. So I'd like to have some discussions before we come back and do that if that's, if everybody seems amenable to that.

MR. WAGNER: Sure, sure. But we have Kelli's hand up. Do you want to go to-

MR. MARTIN: Oh, sure. Yeah. And take everybody's comments first. Yes. I didn't mean to suggest we're cutting
off. I'm not cutting off discussion at all. I didn't see anybody else's hand up, my mistake.

MR. WAGNER: I see, okay, so I see two hands up, that first would be Kelli. And then let's see Sam. Go ahead, Kelli, you're up.

MS. PERRY: Yeah, no. I just wanted to address what Jessica just said was the thought process of maybe adding the word applicable because that may work because I think the concern is that you know when we talk about not meeting the requirements established by the appropriate state agency, some of these privates are not required. There are no requirements for a state agency, so if in fact, depending upon the state they were in, if the said potentially, you know, requirements, if applicable, established by the appropriate state, that might get there because that way it kind of pulls out the ones that don't have those requirements.

MR. MARTIN: Okay, that's noted. Thank you.

MR. WAGNER: Thank you, Kelli. Sam, you're on mute.

MS. VEEDER: Apologies. Sorry about that. I just wanted to go back again to section each one before you break, before the Department breaks for discussion and again say that on behalf of the Financial Aid Administrators Group, there's significant concern about the words and deadlines in H1 and support Kelli's proposal to just strike those as they don't, they don't add value. They create a perception that deadlines are required so students might or schools might manufacture deadlines that aren't necessary, and then that students particularly low income and first generation students who
already struggle to meet and understand deadlines might miss those deadlines and lose access. It just creates more obstacles all the way around and doesn't add value in the context here.

MR. MARTIN: I'm trying, and I don't I guess I'm just trying to be to understand this fully. So you're talking about, going back to H1. But if the institute-

MS. VEEDER: It's a deadline reference because-

MR. MARTIN: A deadline reference.

MS. VEEDER: Deadlines, yeah, because I think it creates an incorrect perception that deadlines are required and need to be addressed and then schools who might not need deadlines or have them currently might feel like they have to add them. And then students will miss them and not understand. It will delay disbursing of aid and processing of aid. And particularly because we find that the students who are historically late when we do have application deadlines in place are low income and first generation students.

MR. MARTIN: Okay, I'll take that, I do want to clarify, though, that the Department is not, this is not imposing any deadlines. If an institution's policy was that they had no deadlines to disclose then or to assist in the disclosure requirement to provide in providing adequate counseling that they have, you know, that there are no deadlines, we're not. I can see your point that maybe an institution could, could you know, take this to mean that there needs to be deadlines, but-
MS. VEEDEER: Right. All the more reason to take it out if you're not suggesting, you know.

MR. MARTIN: But to, let me just ask this question. But to the extent that an institution does have deadlines, we know some do, many do, should those not be, should students not be made aware of those?

MS. VEEDEER: Absolutely, they should. We, we have, deadlines typically apply to applications that need to be completed for FAFSA. Other applications-

MR. MARTIN: Right.

MS. VEEDEER: -labeling, but not deadlines for accepting, declining or adjusting award amounts. Those are-

MR. MARTIN: Okay, I see what you're saying. So the reference here to whether the deadlines are the deadlines as applicable to the acceptance or decline or [interposing]

MS. VEEDEER: Applicable works, but I just don't think there's a reason to have it at all. It still creates unnecessary confusion, even when I read it the first time at the end of last week, it, it made me think, oh my gosh, I, you know, we don't have deadlines for accepting awards, and now what? It just-

MR. MARTIN: Okay, alright, I'll take that back.

MR. WAGNER: Okay, thank you. We have Kelli and then Marvin. So, Kelli you're up.
MS. PERRY: Yeah, and I just want to add on to what Sam just said and go back to the whole concept of that. If there are deadlines as it relates for accepting, declining or adjusting, it's going, those are going to be in the instructions. So we don't need to say instructions and deadlines because that will be in the instructions for accepting, declining, and adjusting award amounts.

MR. WAGNER: Okay, thank you Kelli. Marvin.

MR. SMITH: Yeah, kind of to both their points that, you know, applicable deadlines should be part of any communication from financial aid, not just about accepting, declining, or adjusting awards, it's about completing verification, it's about applying for aid. It's about completing promissory notes. So it just, I totally agree with Sam. It just adds more confusion and maybe sets up a scenario where a school says, nope, we didn't hear from you, and we're going to cancel all your aid, and I don't think that's what you intend. So I think deleting deadlines and it's going to be in our instructions fixes this issue.

MR. MARTIN: Thank you.

MR. WAGNER: Thank you, Marvin. Adam, you had your hand up.

MR. WELLE: Hi, so I was looking at number two on the validity of the high school diploma and what, I just want to confirm, I think the intent is that if there was a concern raised before about high schools that have closed, so I just wanted to confirm I think the Department would consider the degree valid if the student, you know, obviously the school
was open at the time, the student got their degree but has since closed. So if I could get confirmation that's the intent here that if a school has closed, the degree is still valid, but if so, I just maybe it could be phrased to make that clear. Like saying that doesn't you know meet the requirements established. I'm sorry if the degree was valid at the time the student completed their degree, so putting some sort of time descriptor in there, so it's clear that if the school is now closed, the degree is still valid.

MR. MARTIN: I mean, it certainly the degree being the school being closed would not in and of itself invalidate the degree. I don't know that we would want to say that if the schools closed, it necessarily will be out of compliance, it necessarily is valid. So I think that is a something we have to consider. So you would want something that would say if the institution is confirmed to be closed, that it would automatically be a valid degree or that the institution, the institution would have been considered to have exercised its adequate procedures to make that determination?

MR. WELLE: Just that the validity of the degree is based on the recognition of the school at the time they obtained the degree. So I guess I'm not sure on the exact language to best achieve that, but just to make that clarification somewhere within two.

MR. MARTIN: Okay.

MR. WAGNER: Thank you, Adam. And it's a little after the fact but just wanted to announce for everyone that Adam
was in for state attorneys general. Going back to the queue, we have Jessica.

MS. RANUCCI: Thanks. If I just if I understand what Adam's saying correctly, it's that under two, V2 romanette two, three, and four in past tense, but romanette one is a present tense. And I think what Adam is saying it or what I understand, Adam, I'm sorry, I don't mean to put words in your mouth, is that perhaps two romanette one needs to be tied to the time period at which the student attended the school so that it would be something like did not meet the requirements applicable requirements established by the appropriate state agency at the time of attendance or at the time, I don't know. It's outside my area of expertise, but that just makes sense to me from a common sense perspective.

MR. WAGNER: [Inaudible]

MR. MARTIN: Oh, sorry. No, I just wanted to say I saw where she was.

MR. WELLE: I was just going to say, sorry, yeah, Jessica, I think that's correct, I think maybe within two romanette one saying did not meet, so as opposed to does not mine accomplish the concern or address the concern.

MR. WAGNER: Thank you, Adam, for the clarification. I don't see any other hand. Before we pause a live feed, Greg, I know you were looking at about a 30 minute break and it's about 2:19. Is that what you're still proposing?

MR. MARTIN: Yeah, I think we need a little bit time to review all of this. It's a lot. I want to make sure we give
everything due consideration. Yeah, so. I'll leave it to the facilitators to do the math.

MR. WAGNER: Yeah, it's 20 after, 2:50 by my count. So why don't we pause the live feed until 2:50 and then we can come back. Welcome back, everyone. We're back from our break. It is 2:52 Eastern, I'll go ahead and turn it back over to Greg.

MR. MARTIN: Hello, everyone, and thank you for bearing with us in the last 20 minutes or so. Before we have a vote on consensus here, we're going to pull up some revised text and just take a look at some of the revisions we've made here to address the comments we've had, I'll explain where we are with these, the first the place we'll start with is H1. And you can see here that we have made the we've retained the nature of the aid and the applicable deadlines. We've added applicable deadlines for accepting, declining, and adjusting award amounts. Our reasoning here is first of all, this was largely language from advocates that are concerned about students having all information that is that is necessary for them if there are applicable deadlines. And I want to reiterate that there may not be applicable deadlines. It does not this does not in any way obligate the school to impose deadlines of any sort. This is the admin capability provision. So it's not in the you know operational language in 668.164 for example, that's pertinent to disbursements or 165 to notice as an authorization. So it is here as a measure of admin capability that to the extent that there are those deadlines and they are applicable, that they should be, conveyed to students through the provision of adequate
counseling. And want to make sure I hit everything, so the next place we're going to move to would be, I think. Okay. If I'm not mistaken, might have to rely upon Rene to steer me in the right direction here, yes, in K, here we have a revision. This is disburses funds to students in a timely manner consistent with student’s needs. The Secretary does not consider the manner of disbursements to be consistent with the student’s needs if, among other conditions, the Secretary is aware of multiple and verified relevant student complaints. So we have made an adjustment there to indicate that the complaints would have to be multiple in nature and have been verified. So that is a change there. And then if we go down to I believe N, does not engage in, right, if I'm not mistaken, right? We, elected not to make any changes here in N, just to review this. The does not engage in misrepresentations, including as defined in subpart F or aggressive recruitment, including as defined in subpart R. We did not want to limit the Department to, although we believe that the majority of misrepresentations or aggressive recruiting would indeed be covered in subpart F or subpart R respectively, we didn't want to limit the Department to that because there could be other areas of misrepresentation that perhaps would be relevant state law and we want to retain our authority there. And with respect to misrepresentation itself, it is our belief that any misrepresentation is not a good thing. I mean, certainly there is more significant misrepresentations than others. However, unlike I think you can easily make a case. If we were talking about, for instance, you know, I don't know, I'm trying to think of something that would be, you know. R2T4 calculations, the institution did you know 200 of them correctly and one
incorrectly. That's an error that obviously thresholds apply there and should. With respect to misrepresentation there, that is generally something done with an intent to deceive. We determined not to make gradations there about what type of misrepresentation that would be. Moving on to the next thing one [inaudible] changes. I think we're at, in V if I'm not mistaken. Right, and this just hold on a minute here, I want to make sure we didn't have any, I didn't miss anything else, I'm trying to go back and, oh, Rene, can we go back to O? I don't think, I'm not sure we did O. I'm going to apologize to everybody. Yeah, thank you very much, and I'm sorry I missed this one. This is another revision we have made here. Has not been subject to significant negative action by a state or federal agency or an accrediting agency where the basis of the action is repeated or unresolved and has not lost eligibility to participate in another federal education assistance program due to an administrative action against the institution. So here we have to address those concerns about where there may have been an action in the past that has now been resolved. We have added that it would be where the basis of that action is repeated or unresolved so that if it's unresolved, obviously. But if it's a pattern of negative actions taken where even if the institution is resolving those in some way that we still have the ability to look at that if it is repeated. There could be situations, for example, where you know an institution just agrees to pay a liability without any admission of wrongdoing or something, but where there could obviously be something there that we are concerned about. So we think this covers all those bases. Okay, Rene, then we can move on to let's go back to V. And here you see a revision to
high school diploma being valid. High school diploma is not
valid if it does not meet the applicable requirements
established by the appropriate state in which this agency in
the state where the high school with a high school and the
student is located. So we did make a we did make a revision
there. And I don't think we have any, I think that is it.
That's correct. So with that, I will. Those are the, you know,
we went, I took it back. We did have a discussion amongst the
Department staff and those are where the Department feels it
has to be at this point. So I would I guess we could move for
a vote on consensus unless anybody has any final comments
before we do that. I'll turn it back over to the facilitator.

MR. WAGNER: Thank you, Greg. There are, let's see,
there's one hand, I think it's Barmak, oh two hands, Barmak
and Jamie before we take a consensus check. Go ahead, Barmak,
you're up.

MR. NASSIRIAN: Jamie was ahead of me.

MR. WAGNER: Oh, her hand went down. Okay, Jamie, go
ahead. Take it away.

MS. STUDLEY: I'm not going to play jockey if we were
in person, we would see the hands. First, Greg, I just want to
be sure that you didn't skip over a change to little (i) and
the career services issue. Is the Department saying there's
nothing you concede or approve that one? For example, even
dropping the number and distribution of career services staff.

MR. MARTIN: Yeah, in other career services, we this
on, let me see back there. Yeah, provides adequate that's
provided adequate career service to eligible students who
receive program assistance in determining whether an institution provides adequate career services, Department considers, and then the following. In this case, the Department elected to make no changes to that. We feel that it's that we don't want to limit our ability to look at this to those services specifically expressed by the institution that are offered because it limits our, it limits us in addressing institutions that offer you know negligible or no or no such services.

MS. STUDLEY: I think it's a, has been all along, we've said right from the beginning that it seems an inappropriate weighting of the Department into a program quality issue, and I'm surprised that the Department doesn't want to move in the direction it urges all the rest of us to move in about thinking about outcomes and not inputs like the number and distribution of career staff. I understand you're trying to get at a problem that could be serious, and I think we, having sat through three weeks, understand what administrative capability means, but I fear that there will be behavior out there in which institutions think that they have to design career services to meet this and nose counting as opposed to letting services be reviewed alongside all of the other student and academic services by the institution and their accreditor. So I respect the concern, but I think it is a serious one, and I'm surprised that you can't move in the direction of at least dropping the item number two. But I'll step back and listen to others other comments before I decide how to vote.

MR. MARTIN: Thank you.
MR. WAGNER: Thank you, Jamie. Barmak.

MR. NASSIRIAN: Yes, I wanted to go back to section V and the change you made to the location language. I really don't think you want to have you don't want to limit it to only those cases where the high school and the student are located in the same place. Far from it, the concern is where the high school is in one place and the student somewhere else. So it really has to be pegged to the location of the student. This handles face to face even when it's across state lines, because the student is located in the same state as the high school when the student goes there. But specifically with distance ed, you really want the laws of the state where the student is located to be satisfied that the high school is legitimate so that that conjunction has to go. I would suggest deleting high school and simply indexing the issue to the location of the student.

MR. MARTIN: Can you pull that back up again, Rene? Okay, so we're looking at it, high school is not valid if it, is not valid, if it does not meet the applicable requirements established by the appropriate state appropriate state agency rather in the state where the high school-

MR. NASSIRIAN: Where the student is located.

MR. MARTIN: And so you would want in the state where the student is, in the state-

MR. NASSIRIAN: Just for clarification, this is sort of jumping the gun. But between the two sessions, Carolyn and I were schooled by our friends at WICHE and WCET on the issue of pegging of requirements to students and that language we
will bring forward for you. But they really convinced me that
the proper way of controlling for these things is to focus on
the location of the student.

MR. MARTIN: I'm just trying to play that out, so if
in a traditional situation where a student was attending a
traditional high school brick and mortar, then the location of
the students would necessarily be where the school is located,
right? But it would-

MR. NASSIRIAN: By definition, yes. When you're, it's
either within the jurisdiction or the state. As in this area,
somebody may be leaving Maryland to go to D.C. to high school.
And in that case, the location of the student is D.C., even
though their residence may be Maryland. But if a student is
taking an online high school and the high school is in
Wyoming, then the student's location in that Wyoming school
has to satisfy Maryland requirements. And that's the right way
because the student is, you know, we have a compulsory
secondary education law in the state of Maryland, and high
schools have to satisfy that. The student is not leaving the
jurisdiction, as would be, if the student wanted to move to
Wyoming, that'd be fine. But if you're sitting in Wyoming
delivering programs in Maryland, the approval has to be pegged
to the state of Maryland's standard.

MR. MARTIN: I am concerned about the burden for
institutions on this, do you see any additional in determining
whether the high school meets the requirements of the state
that the student's actually from?
MR. NASSIRIAN: We're not talking about where the student is from. We're talking about where the student is located.

MR. MARTIN: Where student is located rather, right.

MR. NASSIRIAN: No. Because then if that student is not attending a real high school, in the case of somebody who's younger than 18, they're subject to state truancy laws because they're not attending a high school that the state recognizes. Our population we're concerned about are probably not below 18. But that's a really nice way of thinking about what constitutes an acceptable high school. If it's not good enough for people below the age of 18 who are subject to compulsory secondary education should not be good enough for the Department.

MR. MARTIN: Okay, so. Hold on a second. Alright, let me pull that back up again. Bear with me. Okay, applicable, so right now we have, so you want to pull out the state- you want to delete state where the agency in the state where the high school and just take that out and the state where the and just have it be the state where the student is located. Correct?

MR. NASSIRIAN: Yes, sir.

MR. MARTIN: Is that what you want?

MR. NASSIRIAN: Yes.

MR. MARTIN: Any other any other comments on that from anybody? Okay. Alright, I think we can I think we can agree to that, Barmak.
MR. NASSIRIAN: Thank you. You won't regret it, I hope.

MR. MARTIN: Alright. Any other comments?

MR. WAGNER: I see Kelli's hand up. You're up.

MS. PERRY: Yeah, actually, Emmanuel is going to step in, he wants to add something to this diploma conversation.

MR. WAGNER: Okay, Emmanuel is in for Kelli.

MR. GUILLOMY: So we heard from a lot of our members that are smaller that the requirement to basically validate the high school diploma and have to meet multiple and have to basically determine whether or not based on multiple state requirements, that that high school diploma is valid does present a challenge in the ability with the capacity to be able to successfully do that. So I do understand what my colleague, Barmak is saying, I understand where he's coming from. I just wanted to share just what we're hearing from a lot of our members that are pretty much, they're smaller in size. And so we've been trying to figure out you know a way we could work on compromise language and that can maybe resolve the issue, which is why we had introduced, I guess, the compromise to what we had originally proposed today. We're happy that the Department came back with us with some revisions with the applicable language. So thank you so much for doing that. We're very happy about that piece, but there still remains this concern that we're hearing from our members regarding the ability to realistically and successfully validate that diploma if there are multiple state agency requirements just across states. And how do you do that
realistically? So I'll be remiss if I did not share that on behalf of the members that I've been in communication with about the issue.

MR. MARTIN: Thank you.

MR. WAGNER: Thank you, Emmanuel. Jessica.

MS. RANUCCI: Thanks. I just wanted to speak briefly in support of the Department on both of these points. And just to encourage people to not let the perfect be enemy of the good here. I think on the high school diploma piece again, this is just if the institution or Secretary has a reason to believe that the high school diploma is not valid. So I think it is far from imposing a wide-ranging requirement that would apply to every student. And I think you know as the career services, I think that the theme, what this prohibits by its language is what it requires is adequate career services and that the in the specific are points that the Secretary can consider and what determines adequate career services. I don't think that the high level point is controversial. I think there's largely agreement here, and I'm not even sure that there's disagreement that the sub bullets are somewhat rational, the Department still consider them. I think the disagreement perhaps goes further down the line in terms of how people might perceive those requirements to apply.

MR. MARTIN: Thank you.

MR. WAGNER: Thanks, Jessica. Okay, any other comments? Okay, I don't see any. So just a reminder we're going to, does it make sense at this point, let's say to take a consensus check? And if so, let's see, everyone as a
reminder, make sure that you hold your thumbs up high so we can see them either up, you can live with it, or down. And then just as another reminder, if you do vote down, you know if you could identify what is a deal breaker, how you change it. And also, is there any specific language that you could propose to try to reach a consensus? So that being said, if you could please hold your thumbs up so we can all see them, I'll go through a roll call just based on who I can see. And if I miss someone, please let me know. Okay, I see Marvin Smith is okay. Jamie, do you have your— okay, was it Greg's?

MS. STUDLEY: [Inaudible]

MR. WAGNER: Okay, thank you. Sorry about that, let's see. Anne can live with the consensus. Barmak is up. Adam is up, Ashley to the side. Debbie is up. Carolyn is up. Ernest is up. Jessica is up, Amanda is up. [Inaudible Kelli?] to the side. Sam is to the side. Brad is voting against, and Jamie is to the side. Are we, based on what I see, we do not have consensus on this issue, so Brad, do you have deal breakers or is there specific language you'd like to propose?

MR. ADAMS: You know, based on all the feedback, I'm surprised I'm the only one that was a no, but it was three things for me, career services not defining that, not defining high dropout rates and no change to the misrepresentation piece of. So, but those were clearly spelled out in my comments over the last three sessions and have been consistent on that every week. So no, no real change in theory in week three.
MR. WAGNER: Okay, thank you, Brad. Okay, since we don't have consensus on administrative capability, I'll turn it back over to Greg. Would you like to start with the Gainful Employment?

MR. MARTIN: Just give me a second to pull that up.

MR. WAGNER: Yeah. And just while you're doing that, just so everyone has a time check, it is 3:16 Eastern. We have 14 minutes before public comment starts.

MR. MARTIN: So before we get into Gainful Employment, yes, you know, obviously we only have 15 minutes, remember that tomorrow I'll just introduce maybe to a couple things here. Tomorrow we have the presentation on data from Mr. Looney will be joining us again. Always good to hear from him, and he's got a great amount of expertise on those issues. So like the rest of you, I'll be excited to hear from him. Before we get into Gainful Employment, I want to remind this is not so much for the negotiators as it is the public in general. We've been receiving a number of comments, many emailed to me or to the negotiation site with respect to a couple of issues. But I just want to reiterate that the Department cannot take comments in that way at this time. So currently, the only mechanism for making comments is through the public comment period and then comments will be solicited once we publish a Notice of Proposed Rulemaking and there'll be at least 30 days for individuals to make comments, the only the other way to express your opinions would be to let one of the negotiators whose constituency you share know your feelings on that so that they could convey it. But you know, when we get the comments, there's really nothing we can do
with them when they're simply emailed to us. So I just want to point that out. Okay. That said, we're moving on to issue paper number three. And even if we don't get very much into this, we at least have raised the issue today and will be ready to go on it tomorrow. So this is this is Gainful Employment and a couple of changes here we'll be talking about. So I would like to move into, hold on a second here, I want to see if I'm, right, okay, let's move on to 668, in subpart Q, we'll go to 668.402 in the definitions. And here we are addressing the classification of instructional program or CIP code, and just as a review taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics. Specific programs offered by institutions are classified using a six-digit CIP code. However, for the purposes of this subpart, the Secretary uses the first four digits of the CIP to identify Gainful Employment programs. And for simplicity, we have deleted some of the extraneous language here. You can see that we have that comparable in content objectives and just simplified that language. Staying in 402, and moving over to the cohort period that is looking at one for the two-year cohort period. And I'll just review that. For the two-year cohort period, well actually before we get to the third and fourth years prior to the year for which the most recent data are available from the federal agency with earnings data at the time, the D/E rates and earnings threshold measures are calculated pursuant to 668.44 and 668.405. For example, given current data production schedules, D/E rates and earnings threshold measures are calculated to assess programmatic eligibility in award year 2022-2023 would
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be calculated in 2015 and 2016, and earnings data would be measured, would be measured for the calendar years 2018 and 2019. And then you can see in romanette two for programs whose student are required to complete a medical or dental internship residency the sixth and seventh award years prior to the year for which the most recent data are available from the federal agency with earnings data at the time, the D/E rates and earnings threshold measures are calculated. For example, given the current data production schedule, D/E rates and the earnings threshold measure calculated to assess programmatic eligibility in the award year '22-'23 would be calculated in 2021. The two-year cohort period is award years 2010, 2011, 2012, and 2012-2013. So just some background here. We've updated the text here to ensure the timing of the metrics and the years in which the cohorts are measured are accurate. Note that the rates will be calculated using earnings data from three years out, rather than two years out from which the students graduate from the institution. And I will leave it there and open the floor for discussion on that topic, since it's a little bit, was a little bit of substance there, so will entertain any comments at this time.

MR. WAGNER: Thank you. Trying to get my computer to show me who's next, I'm sorry. Hold on. Anne, you're up.

DR. KRESS: I was just seeking some clarification, I know when the data came yesterday, along with some of the data definitions, we were advised that there would be a presentation that we would receive on the new earnings threshold and other aspects before we went into the revised language. So is that not going to happen?
MR. MARTIN: Yes, that will happen tomorrow morning.
First thing tomorrow morning.

DR. KRESS: Okay.

MR. MARTIN: So we will have that presentation on
data at that at that time. I just wanted to get a heads up on
this and introduce some of this and see if we have any. But
no, I'm not precluding the data presentation which you will
get, you will get first thing tomorrow morning.

MR. WAGNER: Thank you.

MR. MARTIN: I will say, let me just throw this out.
If people, if it's the consensus, let's not use the word
consensus, if it's the opinion of the group, that it would be
better to wait for that presentation before we have any
discussion about this. I'm willing to do that. We're
approximately seven minutes away from public comments, we can
take a brief break until that point. Is that, does anybody
object to that? Let me put it that way. Okay, I'll just make a
decision. I'll ask, let me ask the facilitator how they feel
about it.

MR. WAGNER: It's fine. I was just, yeah, that's we
have what looks like it's 3:24 Eastern. We have public comment
in about six minutes. If you want to hold off and start fresh
with that presentation in the morning after roll call, seems
like a logical point.

MR. MARTIN: Yeah, I think that might be best and in
view of the comments. So I thank the commenter for sort of
insinuating that and we'll perhaps wait for that presentation
tomorrow morning. I think that would be a better, a better segue into our discussion.

MR. WAGNER: Okay, we still have three hands up. Are those hands related to that particular issue, is there something else that would like to be [inaudible]? And before I get to any of you just so you know, Emmanual is joining us for private nonprofits, and Travis has stepped in for service members and vets. So-

MS. JEFFRIES: I just want to make sure, can you hear me because I switched to my headset?

MR. MARTIN: Yeah, we can hear you, Cynthia.

MS. JEFFRIES: Okay. I would just pose the question. We only have just a couple of minutes, six minutes before public comment. Emmanual, Marvin, you had your hands up. Is there something you'd like to say? Because I'd like to give you that opportunity prior closing off today, I see Marvin shaking his head and Emmanual. It's up to you Emmanual, you're up first, but I do want to give them the opportunity if they would like to take the time.

MR. MARTIN: Thanks, Cynthia.

MR. GUILLORY: So my comments are substantive to the changes, so I'm happy to wait until tomorrow when we have that substantive conversation as long as I can still be in the queue. So.

MR. MARTIN: No way, you can't be in the queue. Yeah, absolutely you'll be in the queue.
MR. GUILLORY: Okay, thanks.

MR. WAGNER: You'll be listed first.

MS. JEFFRIES: Right. Okay. And then Marvin you were indicating, yes, you wanted to speak.

MR. SMITH: Yeah. I don't know if it's possible for tomorrow's presentation, but I'm really interested in small program rate data and how that's going to be shared with institutions and what we can do with that information. And if there's ever any chance that we can get at more specific small program data because you know, the Department's the only one with that information. And so we're kind of in the dark about what that small program rate means for institutions and the same for students. I think they'll be in the dark. So I don't know if that's on your radar to talk about or if NCES could talk about it, but I just throw that out as a suggestion.

MR. MARTIN: We can certainly bring it up tomorrow. You know, after the presentation, the data presentation's over, we can certainly address that.

MR. SMITH: Thank you.

MR. WAGNER: Okay, we have about three minutes, and I see, let's see Jamie and Amanda, if you keep your comments brief, it'd be appreciated. And I also see before we get started, Jamie, that Brad also would like to have his comments be deferred till tomorrow. So, Jamie, take it away.

MS. STUDLEY: Okay. Real quickly, because maybe somebody wants to be thinking about this. We, the, this is a
definitional issue not related to the data presentation. We now have regulations that address medical and dental programs that require residencies or internships following the education portion and relate to the timing of salary information. I have learned that there are other programs that for which a person cannot be licensed until they have completed those residency and other training programs that would like to be included in that provision so that their salary period runs from the time that the person is actually has actually completed the necessary elements for being a full scale professional in that field. I'll follow up with that tomorrow.

MR. MARTIN: Okay, if you have a specifics tomorrow, please bring those to our attention.

MR. WAGNER: Thank you, Jamie, and Amanda, go ahead.

MS. AMANDA MARTINEZ: Yeah, I included my request in the chat, but just to have it out loud for the public. The data we received last night had designations and control for HBCUs and tribal colleges and universities, but did not have a designation or control for institutions designated as HSIs. So it would be helpful to also see the earnings threshold and other impacts of the GE rule on each HSIs.

MR. MARTIN: Thank you, Amanda.

MR. WAGNER: Thank you, Amanda. And we have less than one minute until public comment. I guess we can wait for about 30 seconds.
MS. JEFFRIES: Kevin, I would suggest you go ahead and start with the public comment.

MR. WAGNER: Okay, sure, sure.

MR. ROBERTS: We have folks in the waiting room so I can start admitting them.

MR. WAGNER: Go ahead. Who do we have up, Brady?

MR. ROBERTS: I'm first admitting Christopher Barto, who is the vice president of government relations and community affairs at LIM College.

MR. WAGNER: Thank you, Brady. Christopher, can you hear us?

MR. BARTO: Yes, I can.

MR. WAGNER: Wonderful. You have three minutes for your public comment, which will begin when you start speaking, you have the floor. Go ahead.

MR. BARTO: Okay, thank you. Thank you to the Department and negotiators for the opportunity to provide testimony today. My name is Christopher Barto, vice president of government relations and community affairs at LIM College. LIM College is a third generation family owned and women led institution founded in Manhattan in 1939. The college is well known as a pipeline of top talent for the fashion industry and has a long history of successfully educating students and preparing them to become gainfully employed in the business of fashion and its related industries, offering a wide range of innovative bachelor's and master's degree programs. The
college has been accredited for over 40 years by the Middle States Commission. For 16 years, the Princeton Review has named LIM to their best in the Northeast list of colleges. Earlier this year, a Georgetown study focusing on the ROI for low income students highlighted that LIM College's 40-year net present value of $975,000 dollars is higher than the median MPV for low income students across all sectors of higher ed. LIM College alumni number over 10,000, over 90 percent are women and almost 50 percent are alumni of color. Most have gone on to build successful careers in middle and senior management at well-known fashion and related companies. Our history of strong career outcomes and earnings provides a perfect example of the inherent flaw of the GE regulations. Looking at recent College Scorecard data for our most popular degree program, a bachelor's degree in fashion merchandizing, we see that LIM's program has the fifth highest earnings of 51 similar degree programs. Based on the 2014 metric and the Scorecard data, this would have a D/E rate of 5 percent, while similar degrees at Eastern Michigan and Immaculata would have rates above 8 percent, with program debt almost equal in median earnings. But the Department's current proposal to lower the failing D/E threshold from 12 to 8 percent would leave students in these underperforming programs unprotected. On every objective measure of Gainful Employment, LIM's degree programs are succeeding. But when you then factor in the cumulative effect of other changes to the D/E calculation currently being proposed, including counting student debt above the previous tuition, fees and books and supplies limit and co-mingling Parent PLUS Loan debt with student loans is much higher median debt amount that includes borrowing for
living expenses will have a disproportionate impact on colleges and higher cost urban or suburban areas and those with significant resident student populations. And we estimate that this piling on of new debt, in spite of LIM's strong earnings and employment outcomes, will have the net effect of causing most, if not all, of our degree programs to fail GE and that most bachelor's, master's, doctorate or professional degrees across all proprietary colleges will also fail. This is going too far. What are the Department's intentions here? If the strongest programs are successful can't pass, what is being proposed, what is progressive about this policy? If it could eliminate high quality programs that are serving well the very students [30 seconds] who are presumably trying to help. The vast majority of college students attend a public or private nonprofit college and intend for their education to lead to jobs. To purposely exclude these institutions, indicates that lower outcomes and poorer returns on education investment are unimportant for students in the same type of degree programs at public and private nonprofits.

MS. JEFFRIES: I'm sorry, Christopher, your time is up.

MR. BARTO: Thank you very much. Appreciate it.

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

MR. ROBERTS: Alright. I just admitted Steve Patterson, who is here representing the Veterans Education Project.

MR. WAGNER: Welcome, Steve, can you hear me?
MR. PATTERSON: I can, yes.

MR. MARTIN: Okay, you have three minutes for your public comment, which will begin when you start speaking. You have the floor.

MR. PATTERSON: Good afternoon, my name is Steve Patterson. I'm a veteran of the Air Force and served as a military police officer, I'm also the executive director of the Veterans Education Project. Thank you for the opportunity to speak today. We've heard from veterans, policy experts, organizations about how restrictions on veterans education benefits will hurt individual veterans, their families, their future earning potential and military morale, recruitment retention throughout our armed forces. We echo those concerns, as well as calls for more representation from impacted constituencies like current student veterans. Ever since we participated as negotiators in the last neg reg, we've called upon the Department to include student veterans themselves in these discussions and are dismayed that their voices are only heard through public comments and not at the table directly. We'd like to see more representation of student veterans. I'd like to, however, use my few minutes to share our concern about the continued vilification of schools many servicemen and women are proud to attend, as well as call upon the implementation of data-driven policy that is equitable to veterans students at all institutions of higher education. Student veterans choose to go to schools that are committed to serving their unique needs, not because of a school's tax status. While we commend the spirit of accountability, it's frustrating to try and understand how policy makers so easily
look past the great number of underperforming public schools, the institutions that veterans overwhelmingly enroll in, and not hold those schools to the same standards as private institutions. This is especially concerning as changing the 90/10 rule will force a significant number of veteran students to be limited to nonprofit and public institutions that have far less federal oversight. We're committed to data-driven policy and the further accessibility of data relevant to student outcomes at all institutions. Part of the problem with focusing so much on 90/10 is that it evaluates nontraditional schools, not by student outcomes, but by revenue sources. A more effective policy would be to assess student outcomes directly, which is why we urge the implementation of waiver pathways for schools with good student outcomes so that student, veteran students are not collateral damage of the 90/10 rule. A better path forward for veteran students is to make the Gainful Employment data of all institutions more transparent and easily accessible for prospective veteran students. This transparency would empower veterans to make an informed decision on where to use their earned benefits and help answer the concern that prospective students are disadvantaged consumers. This kind of change in transparency would remain relevant and beneficial for years, even with changes and innovations within higher education that regulations struggle to keep up with. The best protection for student veterans is to provide good information so they can be empowered [30 seconds] based on its real-world merits. Thanks for the time to speak with all of you today, and we hope to continue this conversation.
MR. WAGNER: Thank you, Steve. Alright, Brady, who do we have next?

MR. ROBERTS: I just admitted Ryan Ziegler, who's here on behalf of the Special Operations Association of America.

MR. WAGNER: Thank you, Brady. It looks like he's logged in, but he's still getting audio, etcetera. Do you want me to move on to the next speaker and I can message him?

MR. WAGNER: Sure.

MR. ROBERTS: Okay. Next up, we have Dr. Sara Partridge, who's here on behalf of the Payne Center for Social Justice at the Thurgood Marshall College Fund.

MR. ZIEGLER: How's it going, guys?

MR. WAGNER: Hello, Ryan.

MR. ZIEGLER: Yes.

MR. WAGNER: Let's see. Okay, you can hear me good. You have three minutes for public comment, which will begin when you start speaking. Take it away.

MR. ZIEGLER: Okay. My name is Ryan Ziegler. I'm a member and board member of the Special Operations Association of America. Thank you for the opportunity to speak before you, before you today. I'm a physician assistant, a former Special Forces Green Beret. I hold a master's degree obtained using the VA's vocational rehabilitation program and have utilized both the Montgomery GI Bill and the post-9/11 GI Bill for my
undergraduate degrees. There have been concerning discussions regarding the regulation of veterans' earned benefits. Looking at the student outcomes of the affected schools where these veteran students enroll and the data indicate that changes to the 90/10 rule will likely hurt veteran students and their families as the student outcomes at these private universities and schools are either on par or better than their public school peers. But the 90/10 rule doesn't care about student outcomes, in our view that means it doesn't care about student veterans. Waiver pathways must be implemented that take into account a school's student outcomes or else these changes will only end up restricting where veteran students can use their earned education benefits, eliminating the School of Choice and narrowing their options of where they can obtain an education with their earned benefits. I want to focus, however, on how the vilification of these private schools hurts veteran students. The word predatory is thrown around without any clear definition, and when we look at the student outcomes of these private schools and universities and compare them with less regulated public institutions, we see not only acceptable institutions, but institutions that are serving veteran students quite well. The continued slander of this entire sector is an attack on veterans' education, not only in the eyes of the Department, but most importantly in the eyes of their potential employers. Veterans deserve to pursue their first choice in education at schools with good student outcomes and whose who have made the effort to adapt to the needs of nontraditional students like veteran students. As veterans enroll in all sectors of education, we would want to see data-driven policy that regulates all of higher education.
One of the many drawbacks of the 90/10 rule is that it only regulates one sector of higher education. Public and nonprofit institutions are not being held to the same standards and are clearly exempt from some standards altogether. It is time to care about all veterans in the sector of higher education and ensure quality education for veterans in all sectors. Now, there have been discussions that we think are promising and continuing those discussions would greatly benefit veteran students in all institutions. For example, simply publishing the Gainful Employment data of all institutions at the programmatic level [30 seconds] would greatly improve transparency for disadvantaged consumers and would allow veterans to pursue programs based on real merit. I just have a little bit longer. We listen to data when it comes to policy and support greater accessibility of data relevant to student outcomes at all institutions. As already mentioned, one of the problems inherent to the 90/10 rule is that for-profit schools are not evaluated by their student outcomes, but by buckets of money. The ratio of these buckets is supposed to be a proxy for quality when much more nuanced, equitable [inaudible] policy should be able to be assessed outcomes greatly.

MR. WAGNER: Alright, Brady.

MR. ROBERTS: I believe Dr. Partridge is ready to go.

MR. WAGNER: Can you hear me?

DR. PARTRIDGE: Yeah, and thanks.

MR. WAGNER: You have three minutes for public comment and that will begin when you start speaking. Take it away.
DR. PARTRIDGE: Thank you for the opportunity to address the committee today. My name is Dr. Sara Partridge and I'm a research fellow with the Payne Center for Social Justice at the Thurgood Marshall College Fund. We at the Payne Center applaud the proposed rule changes that would go far to protect students and borrowers, including reinstating, reinstating the Gainful Employment rule and closing the 90/10 loophole. We would like to add to the discussion around financial aid award letters and cohort default rates. Choosing to attend a postsecondary program will be the biggest financial decision many people make in their entire lives. The student loan crisis today shows that borrowers overwhelmingly struggle to pay back their loans. We believe that the current proposed language around financial aid letters is not nearly specific or detailed enough to fully inform borrowers of the terms of their awards. We recommend that the concerns raised by Amanda Martinez of Unidos be more fully addressed. In addition, we propose the following mandatory disclosures to financial aid letters. First, a standard set of definitions of financial aid terms and the accurate categorization of each type of award or loan. Second, key information such as the total cost of attendance, a breakdown of direct and indirect costs, and the net cost to the student. Finally, directions to access the College Scorecard, Data Navigator, and the Federal Student Aid Loan Simulator. These important soft accountability mechanisms will only have an impact if students are made aware of them and the financial aid letter is the most relevant opportunity to do so. Next, there is evidence that the way the cohort default rate is calculated can incentivize forbearance steering. A loan may be put in forbearance for up to three
one-year periods, a timeline that could potentially push defaults past the three-year period of oversight. Inappropriate use of forbearances is extremely harmful and expensive for borrowers, will pay more over the life of their loan for forego time on the path to IDR forgiveness and lose the opportunity to use these pauses in a case of future hardship. Loan servicers offer CDR management plans to schools, which may allow for collaboration, which runs counter to borrowers’ interests. A 2018 GAO report showed that it was also a common practice for schools to hire CDR management consultants, and there were instances where these third parties encouraged abusive forbearance patterns. With this in mind, we propose the following changes. First, targeting program reviews, for institutions—

MS. JEFFRIES: 30 seconds, Dr. Partridge.

DR. PARTRIDGE: Program reviews for institutions that have high rates of extended and serial forbearances during the first three years or high rates of default in the fourth or fifth years. Second, requiring schools to disclose their default management plan contracts with loan servicers and third party consultants. This issue further points to the need for an Income Driven Repayment waiver similar to the PSLF waiver, which would help rectify the financial impacts of a system that steers borrowers towards harmful forbearance patterns in multiple ways. Thank you.

MR. WAGNER: Thank you. Thank you for your comment. Alright, Brady, who do we have up next?
MR. ROBERTS: Alright, I just admitted Joan Hannant, who is the founder and president of the Soma Institute.

MS. HANNANT: Hello.

MR. WAGNER: Hello, Joan. Can you hear me?

MS. HANNANT: Yeah, I can hear you.

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

MS. HANNANT: Good afternoon and thank you for giving me the opportunity to speak today. My name is Joan Hannant and I'm the founder and president of the Soma Institute, a private vocational school located in downtown Chicago. Soma specializes in alternative health care training with a focus on clinical massage therapy. Students graduate from Soma with an average median debt of $7,900 dollars and earn an average of $40 an hour. Our on-time graduation rate is currently 79 percent. Focused, inclusive and supportive for-profit education can work. We believe all higher education institutions should be subject to strict performance metrics, and we agree that quality assurance metrics such as Gainful Employment should be applied on a program by program basis using their six digit CIP code. This will ensure that each training program is evaluated separately and not grouped together with other programs in related but distinct fields. The current proposed Gainful Employment metrics of debt-to-earnings and discretionary income are arbitrarily low and unnecessarily complex. As we understand it, the aim of Gainful Employment regulations is twofold. One, to ensure that
students are not saddled with heavy debt repayment obligations relative to their earning potential, and two, to ensure that Title IV funds are not being wasted on certificate programs that do not lead to Gainful Employment. Perhaps a better way to achieve these goals would be to establish caps on the total amount of debt financing that a school can provide to a student based on their program of training. Reasonable Gainful Employment metrics such as the debt-to-earnings ratio could be used to set the cap. We also believe that adding a second metric of an earnings threshold, such as the average earnings of a high school graduate, is not appropriate. The use of such a metric would eliminate vocational program choices available to students and limit their career options. The biggest problem with the proposed Gainful Employment regulations is that they are selectively applied and targeted at for profit institutions. All higher education institutions, regardless of their profit or not for profit status should be able to justify the investment of time and resources that our students invest in their education. Let's make the Gainful Employment rules simple, fair, and equally applied. Thank you so much [30 seconds] for your time today.

MS. JEFFRIES: Thank you.

MR. WAGNER: Okay, Brady, before I go to you, real quick, if there are public commenters that are registered, they need to log in now and they need to log in under the name they've registered under. That being said, Brady, who do we have?

MR. WAGNER: I just admitted Michael Cole, who is here on behalf of the Tulsa Welding School.
MR. WAGNER: Welcome Michael. Can you hear me?

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

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

MR. COLE: Alright. Thank you, guys. As noted, my name is Michael Cole. I'm the campus president at Tulsa Welding School in Jacksonville, Florida. But today I wanted to speak to you as a former student of a proprietary for-profit school. Out of high school, I went away to the traditional route and found myself in a situation where I had to return home due to life circumstances and wasn't sure what I was going to do. Had some of the rules like we're proposing here go through, I wouldn't have had much choice. I chose to go to a school in Pittsburgh, Pennsylvania, called Western School Health and Business Careers. And in doing so, I was able to get my diploma. Actually, my associates degree in pharmacy technician and I was able to find a job that helped me provide for my family and allow me to parlay that into another private school and getting my bachelor's degree and master's degree. Had it not for the choice that I had option, I wouldn't be able to sit here in front of you and have had the living and the opportunity that I've had for my family. I ask that when you're looking at rules, please be fair and consider what could happen to students in my situation that don't have the circumstances all the time to go to a traditional school or go to the traditional route, or when life happens and changes, it makes them have to change a different course. And I have the opportunity right now to work in the skilled trades, and I
know that we're in a situation where we need a ton of skilled workers. And I'm proud to say that Tulsa Welding School contributes more welders than anybody else in the country to that to that growing demand. Please again, when you're considering these rules, take that into consideration. We need welders just as much as we need doctors and lawyers. We have to have people that can build the things that everybody wants to use for the traditional schools. My ask again, one more time, please just be fair when you're making the rules that come forth and impact all of us and don't just look at it from one side. Thank you.

MR. WAGNER: Thank you for your comment, Michael. Alright Brady, who do we have next to comment?

MR. ROBERTS: I am admitting Dr. Aaron Banas who's here representing themselves.

MR. WAGNER: Dr. Banas, can you hear me?

DR. BANAS: Yes, I can hear you.

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

DR. BANAS: Okay, thank you. So again, my name is Dr. Aaron Banas. I am a active-duty lieutenant in the United States Navy, where I serve as a clinical psychologist. I'm joining this call just to share briefly my experience with University of Phoenix, so I'm prior enlisted. I, you know, in high school I did okay. I tried community colleges kind of here and there. Didn't really fit for me, so I joined the Navy
in 2003. Towards the end of my enlistment, one of my peers, who was also going to university at the University of Phoenix, connected me to the program and I jumped into it, and it really felt like a great fit and connection. I learned a lot about a lot of how to write. The writing assignments are on point really helped me in my job in the Navy as a psychiatric technician and really helped me get meaningful jobs after my time in the Navy. Following once I graduated from University of Phoenix in 2010, I continued in and outside of military and military settings. But then I was accepted to the George Washington University Professional Psychology Program, where the skills that I learned at Phoenix really helped me to evolve and grow, and I felt I was successful. I went to a pretty rigorous program and I felt that those the things I learned there were very meaningful. And so I guess the reason why I'm speaking here is in the hopes that people like me in the future also have the same opportunity to do what I did. If they were kind of unsure what to do at first, maybe they struggled with school a little bit, but to have a place to where that's supportive for their academic goals, it kind of meets them where they're at and helps them to achieve greater things and can help, can help them, as Phoenix did with me, achieve career goals, get them on the path [inaudible] to do. And so that's all I have. Thank you very much for your time, for listening and for listening to me today.

MR. WAGNER: Thank you, Dr. Banas, for your comments. Appreciate it. Brady, do we have anyone else in the waiting room?
MR. ROBERTS: No one else is in the waiting room right now.

MS. JEFFRIES: Okay, I would suggest, Kevin, I mean, there are two registered speakers, one with a slot of 3:54 p.m. and one at 3:57. We do need to wait in all fairness, to see if they do log on.

MR. WAGNER: Sure.

MS. JEFFRIES: You could go over any housekeeping items for tomorrow, in the meantime, so that if they do log on, we can let the committee go as soon as they complete it.

MR. WAGNER: Sure. And correct me if there's anything that I'm missing, but from what I understand, we're going to the next session tomorrow, we'll pick back up with Gainful Employment. I believe when we last, before public comment, we talked about presentation towards the beginning of the session after roll call, that'll begin at 10 a.m. We'll go through starting with Gainful Employment and our break at lunch tomorrow will be at 12:00 noon. Greg, is there anything else from the Department regarding, you know, previewing tomorrow's session?

MR. MARTIN: No, we hope to get through Gainful Employment and if I'm being optimistic, I'll start financial responsibility tomorrow. But that's our plan. Yes, you're correct. We have the presentation tomorrow morning and then questions related to that and then we'll go into the issue paper text.
MS. JEFFRIES: I do want to add that I do want to remind the committee that given the fact that if you are in dissent of any issue paper that you do come prepared with, you know, language that would you could present to the Department for their consideration so that we can see if we can get to consensus. And, you know, rather than breaking off on the issue and no consensus, so other than that, I think we are at 3:54, we have about three minutes. Does anyone have any questions about what's going to be on the agenda tomorrow? Brad.

MR. ADAMS: I just want to make a suggestion that we take off smaller components. I mean, I know we went all the way through two and a half pages in the initial kind of flip that Greg did, and I like to take it more in a systematic way so we're not jumping all over the place if possible.

MS. JEFFRIES: Thank you. I think that that would be the intent, and thanks for bringing that up. Today he was just more or less trying to give just a you know get as far as he could into it for an overview recognizing that you had been told that the presentation would be held before the discussion and that was always the intent. So we do appreciate that. Johnson.

MR. TYLER: Yeah, I understand. Professor Looney is going to be talking. If there was someone in the Department of Education who helped prepare the data, who could also answer questions, or I don't know if Dr. Looney did the whole thing himself. I just have some very specific questions that I hope would be answered. Thanks.
MS. JEFFRIES: Thank you. Okay, so our registered
guest for 3:57 has now logged in. So, Brady, do you want to go
ahead and admit, admit them?

MR. ROBERTS: Absolutely. I just submitted Allison
Johnson, who's a veteran representing themselves. So it looks
like they need to enable audio, and we'll be all set. There we
go. They should be able to hear us.

MR. WAGNER: Great, Allison, can you hear me?

MS. JOHNSON: I can hear you.

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

MS. JOHNSON: Thank you. Good afternoon. My name is
Allison Johnson. I'm a veteran of the U.S. Army. I am here
today because I want you to know how for-profit colleges like
Kaiser University takes advantage of disabled veterans.
Shortly after leaving the military, I enrolled at Kaiser to
further my education and to transition to the civilian life.
While I am grateful for the opportunity to serve my country
and have many great memories of my time in the army serving in
the military also involve difficult experiences that left
lasting impacts on my mental health. This January, my doctor
recommended that I take time off from Kaiser so I could get
mental health treatment I needed. Everything started out fine.
I requested medical leave of absence and provided the document
from my healthcare provider to the school requested. The
associate dean notified me in writing that my request was
approved and that I would not be charged for the courses that
term. But a couple of weeks later, my online account showed that I still registered for classes. I contacted the associate dean again, and she said not to worry. She confirmed that I've been withdrawn for my classes, placed on medical leave, and would not be charged. It seems odd that my account still showed I was enrolled, but I thought I could trust the dean. But then, a month later, my academic advisor asked why I had not logged into my classes that term. I've ordered the email showing I was approved for leave of absence, but no one paid any attention. Soon the financial aid office was telling me that in addition to using my Pell Grant, I would need to tell the VA that I took classes that term, so they had given me my benefits or else I would have to pay $5,000 out of pocket to the school. I was shocked and upset. I would never ask the VA to pay for classes that I did not take. So I am continuing to urge Kaiser to remove the charges for my classes they assured me that were taken off of my schedule. Instead of being able to use my medical leave of absence to work on my mental health, I've been I spent weeks dealing with the issue. It's been so stressful that my mental health is actually worse than before. Kaiser preys on disabled veterans like me because they think they can get away with it. The Department of Education must prove them wrong. Please prioritize the well-being of disabled veterans for over profit executives who are trying to just make a buck. If the Department of Education doesn't do more to regulate for-profit schools, disabled veterans will continue to pay the price. Thank you.

MR. WAGNER: Thank you, Allison, for comment and for your service.
MS. JOHNSON: Thank you.

MR. WAGNER: Okay. I think that's it for public comment for the day, the session for today is completed, the next session will begin tomorrow at 10:00 a.m. We can stop the live feed and everyone have a good evening and stay safe.
From Ashley Schofield (A) - MSIs to Everyone:

I am at the table for Beverly Hogan, MSIs

From Sam Veeder (P) Fin Aid Administrators to Everyone:

+1 Greg

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

+1 Jamienne

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

+1 Jamienne

From Anne Kress (P) Comm Colleges to Everyone:

+1 Jamie

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

The language I proposed in my comments prior to session is very similar to what Jamie just proposed. Ours was "makes available career services to eligible students who receive Title IV, HEA program assistance consistent with how the institution has publicized its career services.

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

+1 Jamie and Barmak
From Jamienne Studley Accrediting Agencies (P) she/her to Everyone:

I could support Debbie's (and i think Jessica expands it) approach which I understand to be adding specificity about claims about services and results through the misrepresentation provision.

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

I am proposing we change k (1) to the following "The Secretary is aware of multiple relevant student complaints, and has verified the legitimacy of such complaints;"

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

+1 to Jamie's comment about adding in the word resolved

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

Instead of "has not been" could you say "is not" = it makes it more current

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

why can't we just insert the word unresolved into current wording

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

+1 Carolyn

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

What if we inserted "relevant"? If it is old, or unimportant, it is not relevant.
From Ashley Schofield (A) - MSIs to Everyone:

+1 to Jamie's comments

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

I agree with Brad: delete "including"

From Yael Shavit to Everyone:

+1 Carolyn

From Cynthia Jeffries to Everyone:

Negotiators, I am present but off camera as my internet became unstable and at one point was kicked out of the meeting. But I am back in and present just off camera til it stabilizes.

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

Attached proposed language regarding high school diplomas as it relates to private high school concerns.

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

Here is what I proposed adding previously "(iii) If the high school the student attended is no longer open, the institution must take other reasonable steps to verify the validity of the diploma such as contacting the entity that may serve as a repository for the closed high school’s critical records, if applicable; but the student is not barred from participating in title IV, HEA programs solely because the high school is no longer open."
From Jamienne Studley Accrediting Agencies (P) she/her to Everyone:

  + Kelli's comments about not inadvertently making it difficult for or excluding grads of certain high schools, perhaps due to State law form. If it would indeed fall on small, faith based or other private schools. I don't have a solution for how to solve this.

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

  +! to Jessica's comment. "Applicable" seems the right word and not "appropriate."

From Yael Shavit to Everyone:

  Do you want to raise your thoughts about v(2) before we break?

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

  If there were no deadlines, wouldn't telling students about the lack of deadlines suffice?

From Amanda Martinez (P) Civil Rights to Everyone:

  Doesn't the applicable deadline language work?

From Yael Shavit to Everyone:

  Adam will sub in for aGs

From Jamienne Studley Accrediting Agencies (P) she/her to Everyone:
Still on career services: dropping "number and distribution of career services staff" would not deprive the Dept of the ability to consider that in evaluating admin capability, it could avert unintended misunderstanding across institutions that the quality of programs would be judged by #s v quality, results and student success.

From Kelli Perry - (P) Private Non-Profits to Everyone:
+1 Jamie

From Bradley Adams (P - Proprietary Institutions) to Everyone:
+1 Jamie

From Barmak Nassirian (A) Servicemembers & Vets to Everyone:
+1 on Jessica's point: I understand the concern about validation, but it would only apply in rare instances when colleges have reason to doubt validity of diplomas

From Marvin Smith (P) 4 Year Publics to Everyone:
+ 1 Jamie

From Anne Kress (P) Comm Colleges to Everyone:
+1 Jamie

From Kelli Perry - (P) Private Non-Profits to Everyone:
Emmanuel will be coming to the table for GE

From Bradley Adams (P - Proprietary Institutions) to Everyone:
I thought we were starting off with a presentation from the department before going into GE issue paper

From Anne Kress (P) Comm Colleges to Everyone:

+1 Brad

From Anne Kress (P) Comm Colleges to Everyone:

This was the note that accompanied the materials sent yesterday evening.

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

Agree it would be helpful to start with the discussion of the data.

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

Agreed. Can we get a response on if that's still happening?

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

+1 Anne. Why are we starting GE issue paper comments before the presentation

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

I think that would be helpful personally.

From Debbie Cochrane (P), State Agencies to Everyone:
I would support waiting to start the substantive discussion.

From Bradley Adams (P - Proprietary Institutions) to Everyone:
I agree. Let's hold all section 402 comments for the same day

From Johnson Tyler, Brooklyn Legal Services to Everyone:
I agree with waiting

From Jessica Ranucci (A) - Legal Aid to Everyone:
Johnson is back for legal aids as well

From Bradley Adams (P - Proprietary Institutions) to Everyone:
I will save my comment from my hand being raised until tomorrow

From Bradley Adams (P - Proprietary Institutions) to Everyone:
i would like to be in the queue as well. i had my hand raised behind marvin

From Anne Kress (P) Comm Colleges to Everyone:
+1 Marvin

From Bradley Adams (P - Proprietary Institutions) to Everyone:
+1 Marvin

From Amanda Martinez (P) Civil Rights to Everyone:
In prep for tomorrow's data discussion, would the Department be able to include the earnings threshold impact on HSIs?

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

+1 Amanda

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

+1 Amanda