DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 3, DAY 5, AFTERNOON

March 18, 2022

On the 18th day of March, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. JEFFRIES: Well, good afternoon and welcome back, everyone from lunch. I hope everyone had a chance to get up, stretch, feed themselves. We're going to start this afternoon session. And at this point, I'm going to turn it over to the Department. So, Greg.

MR. MARTIN: Thank you, Cindy. At this point, the Department would respectfully request a caucus with the state attorneys general. So, I would like to request a 10-minute caucus to include Mr. Finley, me, and the state attorneys general.

MS. JEFFRIES: Okay. Alright. So, with that, Greg, do you have an idea for just so people can gauge duration?

MR. MARTIN: It's 1:05, we'll call it. Yeah, I think I think 1:15 should be adequate.

MS. JEFFRIES: Okay. If more time is needed, we can always adjust to that. So, with that, we can go ahead and stop the live stream. And Brady, if you would, if you're ready. We are back in the main session and broadcasting live. I will turn it back over to the Department with Mr. Greg Martin.

MR. MARTIN: Thanks a lot, Cindy, and as I indicated earlier, we need to have an additional caucus that I'm to be called with and so I get the names right, Cindy I'll let you list the names for the caucus.

MS. JEFFRIES: Okay. My understanding is that this caucus will take place with Greg from the Department, Steve Finley from general counsel, Travis Horr, and Barmak Nazarian, who are the representatives for service members and veterans, as well as Brad Adams and Michael Lanouette, who are from proprietary institutions, correct?

MR. MARTIN: That is correct.

MS. JEFFRIES: Okay. So, with that, we can go ahead and stop broadcasting and- Okay, welcome back. Thank you, everyone, for being patient during the caucuses that have taken place. They are per protocol and necessary functions from time to time. So, with that, I think I'll turn it over to Greg and he can take us from there.

MR. MARTIN: Thank you, Cindy. Where we left off was in A5, so I'll ask Vanessa. I think it's still Vanessa to bring up the document. There we go. And then if we look at under A4, let's get this correct here by romanette three. So, we're going to go to romanette three where we left off. And this discussion here that we're going to have is on income share. Yeah, there we go. This is income share agreements. And I want to point out that. Well, let me just go through this text first. So, in A5 here, we've added romanette three and romanette four to clarify how the Department treats income share agreements in the context of 90/10. This is new language. I do want to run through it. If the institution wants to include an income share agreement or any other alternative financing agreement as cash in its attestations in which the agreement is with the institution only or with a related party to include any entity in the ownership tree, any common ownership or any contractual agreement or continuous financial relationship. For this section, then the following must be included in the agreement. The institution must clearly identify the institutional charges that are being covered by the agreement. The charges must be the same or less than the stated rate for institutional charges. The maximum time and amount a student would be required to pay is clearly identified, including the implied or imputed interest rate and any fees. All payments must be applied in accordance with debt repayment regulations. Interest and fees would not be included in the attestation. The imputed or implied interest rate cannot be more than the Federal Direct Unsubsidized Loan interest rate for the same borrower type at the time the agreement was signed. And in romanette four, only cash payments representing principal payments on the income share agreement or other financing agreement that were used to satisfy tuition fees and other institutional charges may be included in the attestation. No amounts from the sale of the income share agreement to other financing or other financing agreement may be included in the attestation. So, this is our inclusion of income share agreements. There was some discussion around the table. I know that. And about the extent to which an income share agreement is a loan. And there was some interest in the Department taking the language that you see in three and placing it under romanette one, which clearly identifies loans made to students or credited to the students account at the institution. The Department is aware of CFPB rulings and also our own recently issued guidance on ISAs. However, at this time, we don't feel that we can legally move that language up as under one identifying as a loan. However, we do want to make certain that as it is a form of revenue generated from institutional aid, we identify it as such and regulate how these instruments can be, how the payments from students who took advantage of one of these instruments offered by the institution would be counted. And again, just so we know where we stand. These would be ISAs offered by the institution as this is under institutional aid. So, what we can commit the Department to doing is in the in the preamble section of the of the of the NPRM, we will make it clear what the Department's position is on ISAs vis a vis there being loans. What our position is at that point and that would be consistent with what CFPB's guidance is at that time. So, we will address that in the NPRM and the preamble portion. And I want to make clear, the Department takes ISAs very, very seriously, and that we want to make certain that they are not used as a means of obtaining revenue that does not have to be counted as institutional aid. And in this respect, we're treating it much the same since this is an ISA with institution would give the student funding and then the student essentially has to repay that through work that we are still only allowing the amount that is repaid and then only under the terms that we list here. So, it's very similar to what we do with institutional loans. And with that, I'll open it up for [audio]

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

MR. ADAMS: I'm curious. The decision in D romanette 3D on using the unsub loan interest rate as the rate. I think it's about three and a quarter percent. And I'm just curious on the thoughts there versus a Grad PLUS Loan versus one of the other rates.

MR. MARTIN: Again, we're talking here about, and you know, we're not saying. We want to make it clear. We're not limiting, we don't have the authority to limit what types of ISAs an institution can offer. What we're saying here is if the institution wants to include an income share agreement as cash in its attestation, that the imputed or implied interest rate cannot be more than a Federal Direct and subsidized loan interest rate for the same borrower type at the time the statement was signed. This, we feel that using the unsub rate is fair as that is the loan most students take advantage of and well obviously some the subsidized rate but the unsubsidized one is both fair to students at the institutions and does cap it at a reasonable point. Whereas at least Undergraduate PLUS Loans are not borrowed by students.

MS. JEFFRIES: Okay. Thank you, Greg. Jaylon.

MR. HERBIN: Yeah, I want to thank the Department for making some of the changes. I want to just clarify one thing here. You stated in your comment, you said that you cannot add the term ISAs under the loan component because of the authority, correct? But you are willing to add that in the Revenue Department if

I'm correct here. Correct?

MR. MARTIN: So all of this under 5, if you go up to 5, which is revenue generated from institutional aids. So, this deals with what revenue that results from institutional aid can be counted as revenue. And, you know, for loans, what we've said is with institutional loans, an institution doesn't get to say here's a $5000-dollar institutional loan and then say all of that counts as revenue since it comes from the institution, and it has to be repaid. Because it has to be repaid, we only allow the amount, the principal payments on that loan to be counted on a cash basis as they are made. So, we're doing the same thing with respect to ISAs. We're not identifying them as institutional loans as such, but we're treating since it is an instrument where it works very much the same way and we are basically requiring that institutions count the amount repaid only it's being repaid through this as a percentage of the income the student earns as opposed to a traditional loan where you just simply make the payments that we're still going to only count those amounts of those amounts. So, it's kind of restricting not what institutions can give students as far as institutional aid goes, but what portion of that they can count as revenue if that makes sense.

MR. HERBIN: I mean, essentially, you're accounting the principal and not the interest, I think. But my concern would be that not want to foreshadow any future work or anything but the ISAs if you look at previous administration how they view the ISAs and we're trying to exempt them from some of the lending laws, so to speak. I think that it should be counted as a form of a loan, because that will open up other predatory products, essentially, that will harm borrowers and the students attending these universities and looking at it. And also, I will bring up Marvin's request if the Department could email us this proposed language so that we can all at least look at it and have time to analyze it real quick before we make a caucus decision.

MR. MARTIN: Well, I cannot issue preamble language before the preamble is issued. All I can say, I can commit the Department to a discussion of that in the preamble as, the Department doesn't, the agency that would make determinations about what is a loan and what isn't. That's more along the lines of what's in reg Z, Treasury, and also CFPB. The Department would yield on that on that determination. The CFPB has made some determinations, but they're there within a strict, strict context. And I can have Steve elaborate on that, but we just don't, our attorneys have determined that at this time we cannot we can put this in here. And I think it does protect students, because we're saying if we didn't include this language at all, then it would allow an institution, to execute an income share arrangementor agreement with a student and essentially count all of it with no, so I think if we didn't address it, it would be far more, there would actually be incentive for institutions to steer students into these arrangements if they offered them. Whereas with this language it very much restricts what can be counted. But as far as the legal aspects of it go, I'll let Steve address that.

MR. FINLEY: Thanks, Greg. Thank you. I think the Department generally views these ISAs as a form of institutional loans. We’ve come out and agreed with the position that the CFPB is taking on this, but at this point the CFPB has only taken that position in a settlement agreement with one entity. And our intention is to remain aligned with how they've established it. But we understand that in doing so it may change a little over time. So, we're putting this in a separate section. I think we are willing to restructure it and move it from romanette three up to romanette two. So, it's closer to the provision where the institutional loans are actually described. But we will clarify in the NPRM that you know the intention here is to be aligned and remain aligned with the CFPB position. But Greg's right, those aren't written until they're written, and that's not going to happen today.

MR. MARTIN: I've just been informed that we do give negotiators an advance copy of the preamble before we make it public. But I could not do that today. There's no way.

MR. FINLEY: Well, that's true, if it's an issue on which consensus was reached.

MS. JEFFRIES: Let me just clarify.

MR. MARTIN: That's assuming if we were, that's right, Steve, if we reach consensus today.

MS. JEFFRIES: Can I just clarify something here? Marvin's request was not necessarily for the preamble language. His request that he put in there was could they get a copy of the amended text that you are sharing on screen?

MR. MARTIN: What I'm sharing currently is not amended.

MS. JEFFRIES: Okay.

MR. MARTIN: What we are willing to say what we can share what the Department also agreed to was take what was in an almost neglect to do this is to take what is currently, I messed up here. Okay, take what's currently in romanette three and move it, just move it up to romanette two. So, if you look at romanette two, it's for scholarships. It discusses scholarships provided by the institution. And we would just move romanette three up to the position of romanette two to be closer to the, so it would immediately follow the discussion on loans be closer to the loans discussion. So, we would simply flip what is in three and what is in two. Those are the only changes to the actual reg text you see here that would be making. We can pull that up if we need to.

MS. JEFFRIES: Alright. Thank you, Greg. Adam.

MR. WELLE: Steve, did you? I think Steve was ahead of me.

MS. JEFFRIES: I think his hand was still up or did you have something more, Steve? Yeah.

MR. FINLEY: Thank you. My apologies.

MS. JEFFRIES: No worries. Go ahead, Adam.

MR. WELLE: Since I've been pushing this issue, and I can say that I think I'm comfortable moving on from here. You know, my concern was the ambiguity within the proposal you know around whether an institutional ISA would be covered by both A5 romanette one and A5 romanette three. And then secondarily, if they do fall under A5 romanette three whether that would conflict with the position expressed by a few weeks ago on ISAs. I'm comfortable, I think I'm you know, I'm disappointed that this can't be clarified further. But I appreciate the Department's assurance that that this is intended to be applied consistently with the CFPB's position and that this will be clarified in the NPRM. So, I appreciate that assurance and I think I'm able to move on from this.

MS. JEFFRIES: Okay, great. Thank you, Adam. Jessica.

MS. RANUCCI: Just on the reg text. So, I think what you're saying, Greg, if I understand you, is we did see a document that has blue highlighting that we have not had access to. But the only blue highlighting there is to switch the orders of two provisions and not change a single word of text. So, you don't want to send it to us because there's nothing substantive. Is that right?

MR. MARTIN: There's nothing. Yeah. Nothing would change except for the flipping of two of romanette two and romanette three. So, where you see two there, where it says for scholarships provided that would now go down to three and three. If an institution wants to include an income share agreement which flip up to where two is directly below romanette one, which is loans.

MS. RANUCCI: Yeah, I don't think anyone has a problem with that. It's the idea that you're working off a document with blue highlighting we've never seen. So, we'll take your word- [interposing]

MR. MARTIN: No, the document I'm working off is the exact one you have. I'm just telling you we agreed to switch it to-

MS. JEFFRIES: Okay, I don't see any-

MR. MARTIN: Vanessa can you pull the document back up, Vanessa? So, if we go a little. Yeah, that's, go up a little higher. To the stem of three. Right. So, three, that's three. And then above that is let's go up a little higher to two right there. No, Down, down a little further. I'm sorry, Vanessa. So, just keep arrowing down. That's one for loans. And then let's try to find romanette two, which is struck out a little bit lower. Right there. If institution wants to, no, where's loans? Oh, go down below that. Right here. It is changed. I'm sorry we've [audio] here. This does reflect the change. I'm very sorry about that. This is the change. I wasn't aware that we had that language up. So, this does reflect the moving it up.

MS. JEFFRIES: Anything else on that, Greg? If not, Jaylon's hand is up.

MR. MARTIN: No.

MS. JEFFRIES: Okay.

MR. HERBIN: I think Jamie's was before me.

MS. JEFFRIES: No, you were. I have it on order in my screen, Jaylon, so unless Jamie had it up and then put it down, that would be the only thing that changed it. So, if you wouldn't mind, please go ahead and make your comment.

MR. HERBIN: Yeah, absolutely. I think I just have one. What was, I guess, the logic behind adding the scholarship component to the ISA language? That because that's still a little unclear to me as far as when I look [audio]

MR. MARTIN: The scholarship, that's separate. The scholarship is separate. That's a separate subparagraph. So, all of this is under institutional aid. Scholarships have not changed. We've not changed any anything there. That's pretty much our existing language.

MR. HERBIN: So, you just changed-

MR. MARTIN: That's not part of an ISA. It's-

MR. HERBIN: Okay. That's what I wanted to make sure that- [interposing] Okay, perfect.

MR. MARTIN: Flip [ph] into positions because it had been asked that we move ISAs if we couldn't include them in one, then we're moving them in romanette one, then moving them closer to directly under the under the discussion of loans.

MR. HERBIN: That's [audio]. I just wanted to clarify to make sure that we that we were not actually merging those two together. Thank you.

MR. MARTIN: No, no, not at all. They're entirely, entirely separate things.

MS. JEFFRIES: Okay. Thank you. Jamie.

MS. STUDLEY: I think [audio] hard at the paragraph on scholarships. I think I may have found the answer, but I wanted to clarify that it's very hard where the established restricted account is the institutions, how the funds from an outside source that is unrelated to the institutions would be read. I think your purpose is that the funds initially came from, for example, a donor who genuinely was setting up a scholarship fund. But now the fund is the institutions because it's an established restricted account that is provided for scholarships by the institution. I don't know that you need to answer it now. You may just want to see if that reading could be made a little easier because I found my head going back [audio] [interposing] understanding the purpose.

MR. MARTIN: The purpose here is to not- [interposing]

MS. STUDLEY: Is the school [inaudible]?

MR. MARTIN: Yes. If the intent here is not to allow what is essentially a tuition discount to become as an institution of scholarship, that if it's going to be counted as an institutional scholarship, it comes from a restricted fund for that purpose, because otherwise I could just discount the tuition and call that a scholarship. So, it needs to be dispersed from an established restricted fund and may be included as revenue only to the extent that that funds in that account represent designated funds from an outside source unrelated to the institution [audio]. So, the funds need to come from an outside source to the restricted fund to be used for making scholarships. So, you couldn't have, for instance, a parent company contributing money to a fund from which scholarships are made.

MS. STUDLEY: Right. Or an owner or [interposing]

MR. MARTIN: Correct. It's supposed to bring into line more or less the way scholarship, the way that those scholarships are done. And I guess it sort of mirrors a more traditional model.

MS. STUDLEY: Community or nonprofit public institutions [interposing]

MR. MARTIN: But basically, yes. Yes, the basic thing being to prohibit it being a tuition.

MS. JEFFRIES: Okay. Greg, I don't see any further hands. Are you ready to move to the next section? Can you hear me?

MS. MILLER: Greg, I think you're on mute.

MS. JEFFRIES: I think you're on mute, I don't know if you can hear me or?

MR. MARTIN: I'm sorry. No, I'm on mute. [Audio] [interposing] tons of problems with it with the feed. No, noIn this case, it was me. So, we have one more change. Let's move on to six. So, moving past five. Moving to six. This is minor. And this is in six romanette five. It's just that we've corrected the order in this item, so it appears between the last two items and that is it. So, it's a very minor change there. And let me ask. That is, it for the paper. Steve, do we have any more information on the other issue? [Inaudible] for Steve to come back. Oh. Okay. I'll yield to Brad.

MS. JEFFRIES: Yeah, I think he's looking for something. Okay, Brad.

MR. ADAMS: Yeah. I think it may be appropriate to call another 5-to-10-minute caucus with maybe me and the Department.

MS. JEFFRIES: The, when you say Department, can you-

MR. ADAMS: Yes. Steve Finley and Gregory Martin, please.

MS. JEFFRIES: Okay. And did you want Mike in there?

MR. ADAMS: Yes, please.

MS. JEFFRIES: Okay. Alright, Brady, can you-

MR. ADAMS: That's assuming we've gotten all the way to the document and there were no-

MS. JEFFRIES: We have one hand up.

MR. MARTIN: We have, we would be ready for consensus.

MS. JEFFRIES: Okay. Emmanual's hand is up, so I think we need to take that question or comment before you do. Okay. Emmanual.

MR. GUILLORY: Yeah, I have a comment. I've been sitting here in silence trying to hold my tongue for as long as I possibly could. But as a person who has observed this, the previous neg reg session online for the public viewing, they have no idea what's going on in these caucuses. When you're caucusing for an hour and a half, which I think that was the last, correct me if I'm wrong, when we got back from break, the caucuses right until 2:30, either was an hour, an hour and a half. We're going to another caucus. Caucuses, we can do that by the rules and regulations. They're needed, I understand. So, we need to do them. But when this is happening virtually and people are observing and trying to understand what's going on, they have no idea what's going on. So, it would be great that if you do go into caucuses for an extended period of time, then when you come back, if you can share a little bit about what those caucuses were about, I mean, I understand that there is some privacy in that. That's why you want to go caucus. But if there's any way to just let the public know, overall, we were trying to work through this issue, but we weren't able to, blah, blah, blah, it would probably be helpful for those who were just viewing this and have no idea what's going on and they can't see the chat either, so they have no idea what's going on in the chat. I just wanted to.

MS. JEFFRIES: Thank you for that concern, Emmanual. Caucuses are confidential and private, and it is entirely up to the parties that participate in that how they want to handle them. So, and they are allowed per protocol. So, your concern is noted. And with that, Brady, do you have the room set up? [Interposing] Okay. If you could open it up. You- Okay. We are back live. And Greg, unless you have something you want to say, I think the next step would be the consensus check on the 90/10 issue paper.

MR. MARTIN: And before we do that, I'd like we have and to address some of the caucus decisions here. We have had some revised text proposed under in revenues generated from program activities in three so and specifically in romanette three. So, I'm going to ask for Vanessa to pull that back up again and back up to the number three revenue generated from programs and activities. We have some new language there. No, go back up, Vanessa, to page two, revenue generated from. There we go. So, so arrow down to romanette three there. Right. Let's stop right there. Okay, so we do have some proposed changes to the text that I want to bring up before we take a vote on consensus. And I want to say that this language represents discussions between the proprietary representative and the representatives of the veterans. And what we're hoping to do here is to get to mutually agreeable language so that we can get to consensus. And so, what I'll do is I'll read this language out to you. So, in three, this is we're talking here again about revenues generated from program activities. And this is the institution must consider as revenue only those funds it generates from and under romanette three funds paid by a student or on behalf of a student by a party unrelated to the institution, its owners or affiliates for an education program or training program that is not eligible under 668.8 and does not include any courses offered by an eligible program. The non-eligible education or training program must be provided by the institution and taught by one of its instructors at its main campus, or one of its approved additional locations, or at a school facility approved by the appropriate state agency or accrediting agency, or at an employer facility. The institution may not count revenue from a non-eligible education or training program where it merely provides facilities for test preparation acts as a proctor or oversees a course of study. The program must, and you can arrow down there, be approved or licensed by the appropriate state agency, accredited by an accrediting agency, recognized by the Secretary, and then provides an industry recognized credential or certification. And we have added back in below here you'll see D and E. This is a change over what the paper initially said provides training needed for students to maintain state licensing requirements or provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements. So, I know this is new. Give you a second to digest that. I do want to open the floor for any comments on limited to this particular to this particular text before we go on. I do want to say that we have worked hard to find some common ground here where the Department and the veterans advocates, and the proprietary sector can agree so that we can hopefully reach consensus on something which is fair to all parties and protect students. Thank you. I'll open the floor for-

MS. JEFFRIES: Okay, the floor is open for comments on this this section only that Greg just presented. Jessica.

MS. RANUCCI: I don't want to delay things. I appreciate the time. I appreciate your effort.

Can you email it? I just it's just if we're going to vote in, like, very soon, it would be very nice to have [inaudible]. Thank you.

MS. JEFFRIES: Any comments or questions on what you just saw before you? Travis.

MR. HORR: Yeah, I'll just comment on this, that this is you know a compromise language that that we support, and we worked hard for it. And we appreciate the Department of Education going back and forth with all of us on this. And we appreciate that the faculty members that are teaching these courses, they have to be real you know educators at these accredited at the approved programs in order to cover concerns that we had there. And. Sorry, [inaudible] a couple different things, but yeah, we really appreciate the Department's work on this and we're supportive of this.

MS. JEFFRIES: Thank you, Travis. Brad.

MR. ADAMS: And I also just want to second that you know we moved away from a lot of our talking points throughout the past three weeks in order to get to a resolution that I think we can live with. I want to thank all the all the folks that have worked on this. But I do want you to know, the industry that I'm representing this was very important to and there were a lot of other things that we moved away from in order to get to this point. But thank you to the Department.

MS. JEFFRIES: Additional comments, questions? [Audio]

MR. MARTIN: Yeah. I do want to point out, before we close that out, as I said before this, this does represent you know a compromise position on the part of the Department. And I think on all parties, we do have concerns about the types of revenue that we're talking about here. We want to just make it clear that you know although we think consensus is certainly important and everybody worked hard to get to this point, I do want to point out that, you know, we do remain concerned about this issue. And we think this language that we have proposed puts some reasonable constraints around it, that as much as we're requiring that that the revenue if it's going to be at a employer facility, that it be a true facility. And that would be an actual agreement whereby there is construction going on. So, I do want to point that out before we before we move to a consensus vote, but I also want to point out how happy I am that we were able to. It took a lot, but to be able to get to this, we were able to get to this point. And I think if we, I want to make a pitch for consensus here that if we are able to, I know that perhaps everybody doesn't find the language perfect. But I think if we can get to consensus here, especially on this particular topic, we are doing a lot to protect students. As I said before, we do have we do have some concerns about with 90/10. There's always you know, especially here with schools, we don't want to open up an avenue for schools to avoid the consequences of 90/10. And so, we are concerned that the programs being offered by, or the training being offered by institutions offsite is of adequate quality. And we have seen evidence of things that we didn't feel met that standard, which is why we originally proposed the language. And you know we go back to the original intent of 90/10, which is to ensure institutions have educational programs of sufficient quality that can generate the 10 percent. And we still believe that is the spirit of 90/10. However, as I said before, in the interest of reaching consensus today, we have put forward some additional compromise language and we do feel this strikes the appropriate balance. I really want to encourage all of you today to look at this and consider that we are, I think, doing a great service to students here. If all of us can reach consensus on this, it sends a powerful message that the community as a whole is in agreement on this. And I mean, while it's true that if there is no consensus, the Department you know can write regulations and will write regulations, I think it certainly adds another level if we can reach consensus and maybe put aside some of the areas we might not be 100 percent you know thrilled with in order to come to some agreement that is mutually beneficial to everybody. So, with that and an encouragement here to have everybody to make, to ask everybody, rather to think about this before they vote. I'll go on to ask Cindy to call the consensus vote at this time. And I thank you all for your consideration and your patience and bearing with us on this issue.

MS. JEFFRIES: Thank you, Greg. I appreciate that. So, with that, we will take the consensus vote. Remember a thumbs up, you're 100 percent on board with it, sideways thumb means you can live with it, and a downward thumb means you have serious reservations that would cause you to dissent. So, with that, if I could please see your thumbs, we will do a verbal rollcall of the vote. Okay. Anne Kress, thumbs up. Brad Adams, sideways thumb. Jamie Studley, thumbs up. Debbie Cochrane, thumbs up. Travis Horr, thumbs up. Adam Welle, sideways thumb. Marvin Smith, thumbs up. Jaylon Herbin, sideways thumb. Amanda Martinez, thumbs up. Carney King, sideways thumb. Emmanual Guillory, thumbs up. Sam Veeder, thumbs up. Jessica Ranucci, sideways thumb. Beverly Hogan, thumbs up. And Gregory Martin, sideways thumb. So, I want to say to the committee and all the hard work that you put into this, congratulations, you have reached your first consensus of this negotiated rulemaking, and it was on a very, very difficult topic. So, congratulations. Adam, you have a comment?

MR. WELLE: I just wanted to say that you know I, just about previous discussion around income share agreements. We had strong concerns about that. And my side vote was, it was based on and conditioned on the assurance we got from the Department that there would be a statement in the NPRM that was discussed previously around income share agreements. So, I just wanted to make that clear. Thanks.

MR. MARTIN: Yeah, also we did agree to that and since I'm sure I will be one of the people writing the NPRM, I don't see how I'm going to get out of it. Yeah, we'll make certain that unless they physically restrain me from doing it, I will make certain that way that I hold to our end of the bargain there. Thank you. And I want to thank everybody again for you know the consensus vote here, because I think it's very important. With that, Cindy, what I'd like to do is if we could if we could try to build on our success here for a moment, since we're at 3:35, I'd like to go back and ask Vanessa, you know what they say, everything old is new again, or is that the way it goes? I think I misquoted that or- anyway, that's the way I'm going to quote it. But if we could go back to issue paper one, and I want to remind everybody that you know with issue paper one, we came pretty close and we hold on one second here. I hope I'm not jumping the gun. Just a second here. Sometimes the virtual world can be very difficult. Let me just say that. So, Vanessa's pulling that up. Let's get to the proper section. Let's go down to let's go to E. Vanessa, if you can pull that up and issue paper one and I apologize for making you go all the way back to the first day? I know everybody doesn't want to probably go back to the first date again. You're thinking, wow, half an hour before it ends, you're really going to make us do this. And the answer to that question is, yes, I am. So, we're looking at and this is on page six, Vanessa. And we're looking at yeah 56E. I'm sorry. Did we lose you, Vanessa? Okay. I'm being told, I'm being told we need a caucus. Hold on a moment, please. I have to request 10 minutes, Cindy.

MS. JEFFRIES: Okay. Not a problem, Greg. Who would you like in the caucus?

MR. MARTIN: The Department.

MS. JEFFRIES: I'm sorry, who?

MR. MARTIN: I think just, I think just the Department. The Department staff.

MS. JEFFRIES: Okay.

MR. MARTIN: I mean a break. I should call it a break.

MS. JEFFRIES: Okay. Alright. So, we'll take a 10-minute break.

MR. MARTIN: Anne Kress, Will Durden, I guess Mr. Finley and myself.

MS. JEFFRIES: Okay. You got that, Brady?

MR. ROBERTS: Yep, they're ready to go.

MS. JEFFRIES: Okay, so you think, what, about 10 minutes? Yeah. Okay. Go ahead and open up those breakout rooms and we can stop the- Okay. We are back on livestream. With that, I'm going to turn it over to Greg from the Department.

MR. MARTIN: Thanks, Cindy. So again, I wanted to go back, you'll recall the issue paper issue paper one, which was Ability to Benefit that we had, we were very close to consensus on issue paper one. The only sticking point was under the state process, and I want to remind everybody that this is only applicable to the state process. We do, just to reiterate, all know that for a student to participate in ATB, it has to be through an eligible career pathways program, but that the state process is a small subset of that. So, this is only applicable to where the state process where we currently say in E, and I'll ask Vanessa to pull up the screen for us. So, I want to go to page six in the document, Vanessa. Oh, there we are. That's it. We're right there. Fantastic. So, you'll see there [audio] year period we discussed this on day one, in paragraph B of this section, the state must reapply for continued participation and in its application demonstrate that the students it admits under that process, at each participating institution, have a success rate as determined under paragraph F of this section that is within 95 percent of the success rate of students with high school diplomas. That is an extremely high rate. We were asked if we think that, Will had some concerns about that and asked if we could you know consider moving a little bit in that direction. Specifically, he said he would be willing to accept an 85 percent success rate, which I still want to add is very robust. If you think about average success rates at schools and what, you know, what completion rates are, I think we would all agree that 85 percent is not a low hurdle to clear. I still think it puts a great deal of protection on, it is perhaps a little more of a reasonably attainable goal than 95 percent. And as much as what we want to do here is to in addition to the protections that that this, that these regulations offer, and there are a lot of them we are adamant about not just, you know, opening floodgates to ATB that these be these be programs that really move students in a positive direction. And a lot of students who are participating in ATB come from stressed backgrounds. We know that. We did not want to open the door to abuse here, and this does not do that. Remember, these are state processes. These are being put forward by states approved by the Department. So, with 85 percent in mind, we don't have time now to produce changed text. But I can go on record officially as saying the Department would change in E1, we would now say demonstrate that the student it admits under that process at each participating institution have a success rate as determined under paragraph F of the section that is within 85 percent of the success rate of students with high school diplomas, making no other changes to the document, and reminding the negotiators that we did reach consensus on that with the exception of that element. And I think it would be great if we can reach consensus on this as well, because again, something that really benefits students and sends a signal to the to the community, I think the legislators, that we are in agreement of where we should be going with ATB. So, and again, I apologize for not being able to offer the language there for you to look at. But all we are doing is changing the nine to an eight. And I can assure you that we will make that change. So-

MS. JEFFRIES: Okay, thank you, Greg.

MR. MARTIN: [Inaudible] document, Vanessa, thank you.

MS. JEFFRIES: With that, I'm not seeing any hands. What I'd like to do is call for consensus on the overall document, recognizing that that will be the only change in the, as committed on the record that they will go to 85 percent for state processes. Correct?

MR. MARTIN: That is correct.

MS. JEFFRIES: Okay. So, with that, could I please see your show, a show of thumbs? Alright. Sam Veeder is a thumbs up. Jessica Ranucci, thumbs up. Carolyn Fast, thumbs up. Travis Horr, thumbs up. Will Durden, thumbs up. Mike Lanouette, thumbs up. Emmanual Guillory, thumbs up. Marvin Smith, thumbs up. Adam Welle, sideways thumb. David Socolow, thumbs up. Ernest

Ezeugo, thumbs up. Amanda Martinez, thumbs up. Jamie Studley, thumbs up. And Greg Martin from the Department is thumbs up. Alright, congratulations. You now have two consen- papers that you have reached consensus on. Congratulations. What a great job and what a way to end this session. So, with that, we can go ahead with the closing of this negotiated rulemaking. On behalf of FMCS, we'd like to thank everyone for their hard and dedicated work on this very important project and commend you on how well you handled this and your professionalism. And it was our distinct pleasure to work with every single one of you esteemed negotiators, the Department, the advisors, the whole thing. I'd like to have Greg do some closing comments if he wants, and then there's been a request that the negotiators have a few minutes to say their goodbyes.

MR. MARTIN: Thank you very-

MS. JEFFRIES: Emmanual. Emmanual, you have a hand up. Emmanual, did you need something?

MR. GUILLORY: No, I just wanted to say my goodbyes just whenever.

MS. JEFFRIES: Okay. Alright. Thanks. We'll let Greg speak and then-

MR. MARTIN: Oh, thank you very much. I have about an hour of prepared remarks. No, not at all. I just I want to thank everybody for their participation this week and not just this week, but in the previous months as well. I know it's been a long couple of months. It's been my privilege to have served in this capacity with all of you. And every time I do this, I learn something else. It certainly keeps me on my toes. I want to thank all of the negotiators, thank our advisors, and I especially want to thank all the Department staff behind me who make this possible, especially our, the support we get from OGC, our general counsel's office, who are always on and always have to be ready for me to say I would like this person to comment on that and have to do it at the last minute. So, although we didn't reach consensus on five items, we did on two, one of which was very difficult, I think, to get to, but we did. And the other one, a very important thing, safeguard for students as well. So, I think we did do some good work. We've, you've given the Department a lot to think about and constructing the NPRMs as we go forward. And I just want to wish all of you a great spring and I hope that as we emerge from the virtual world and maybe go back to actual conferences again, I see some of you around and in some of those settings. So, with that, again, it's been a pleasure and goodbye. I think you might be on mute, Cindy.

MS. JEFFRIES: Am I?

MR. MARTIN: You're good now. Now you're on mute.

MS. JEFFRIES: Can you hear me now? Alright. Emmanual.

MR. GUILLORY: I just wanted to add, I see my other fellow negotiators saying their goodbyes in the chat, but I want to verbally thank the Department for all the hard work and effort you put into this. It is not easy to do this, and I know that. And Greg, I know it's definitely not easy to be in your shoes with hearing what we're saying and trying to take it back to folks and trying to work things out. So, I really, really do appreciate it. It does not go unnoticed by any means. And also, I just want to say to my fellow negotiators, I really enjoy getting a chance to virtually know you a little bit better. I have tremendous respect for you, your passion, your perspective. So, by all means, these conversations that we had doesn't have to end here. We would love to continue to have conversations with you if you want to continue to have them with us. And I wish everyone a very, very happy and wonderful weekend. Nice working with you all

MS. JEFFRIES: Thank you, Emmanual.

Jamie.

MS. STUDLEY: Without presuming that I am the senior person on the group, I would like to take just a brief moment for history. Let me start along with the rest of you for applauding the spirit, the preparation, the respect that everyone has shown to each other in this process. And I join with the appreciation for the Department negotiators who have an incredibly difficult job to do all of this. And we know that many different functions come together. Also, for the facilitators. I've seen great facilitators in neg reg and I have seen weak facilitators. And your team, Cindy and all the rest of you have done a really strong job and it makes a very big difference to the tone and value of these conversations. I also want to thank everybody for the unfamiliar opportunity to watch the sunrise. I don't plan to make it a habit, but Debbie and I have tried to remain alert, even in our time zone. In 1993, as a brand-new deputy general counsel at the Department of Education for regulations and legislation called Regs and Legs, I was assigned to figure out how to implement a provision of the new statute called negotiated rulemaking or regulatory negotiation. It's gone by both names. And it has been a privilege to be involved over so many years in trying to reap the benefits of hearing all perspectives in a process like this. I've been in the General Counsel's Office, the policy office, and now for the first time, an official negotiator in a negotiated rulemaking. Steve Finley and I had the privilege of handling a semi negotiated rulemaking on financial responsibility, but we're not sure this is the time to remind you of our role in that venerable, there are other adjectives, process. But each time the value of bringing together different groups to try and see each other's perspectives has actually made a difference. In those, just a minute more, in those early days, we had to not only find student groups who had a policy interest, but we have to train them to understand enough about Federal regulations to participate and make sure that they didn't just get their training from our perspectives so that they can function effectively. And it is really incredible to see the sophistication of so many groups from across the spectrum of consumer and student groups and institutions and state agencies and attorneys general and so forth, who can now make this a much, much deeper and more thoughtful process. It's come a long way. Sometimes we achieve consensus, sometimes we achieve understanding. But for all the challenges, it's just wonderful to see the interchange and respect within this discussion. So, thank you. And to your next neg regs, may they be as thoughtful and engaged as this one. So, thanks again to the Department and-

MS. JEFFRIES: Thank you, Jamie. Brad.

MR. ADAMS: Thanks. I'll be quick. As the newbie to the committee, I'll just say it's been quite an experience that I will always cherish. I learned a ton and I think everyone in this committee brings a very unique perspective. And I learned from every one of one of you during this process. And sitting in this chair is very difficult, but I cannot imagine sitting in Greg's chair. So, you did as well as could've been asked in the circumstance of us trying to get together. And I think the facilitators did an excellent job as well. So, the Department, congratulations for all your hard work. I know we've still got some work to go to get through the rest of these issue papers, but I really appreciate everything you all did. And thank you for listening to me for the past three months. And good to meet everybody.

MS. JEFFRIES: Thank you, Brad. We appreciate it. We appreciate all these wonderful comments and the success that you've had and the wonderful, robust dialog. With that, there's only one last thing I want to say as a reminder that during this period, the Department cannot do anything with written comments that are sent to them. So, the appropriate time to send those in would be during the NPRM period where you will have at least 30 days to submit written comments. So, please try to refrain from sending them in prior to that point in time, as the Department cannot do anything with them, including posting them on the website. So, please keep that in mind. And with that, we wish you all the best, and thank you for letting us be a part of this.

MR. FINLEY: Thanks, everyone.

Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee

Session 3, Day 5, Afternoon, March 18, 2022

From Beverly Hogan Primary/MSI to Everyone:

I am still on.

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

Is there a chance that new ED language could be sent to negotiators via email?

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

I was not asking for preamble language. Just what was shown on screen

From Jamienne Studley-Accrediting Agencies (P) She/her to Everyone:

+ Marvin -- just sending out or putting the text back you showed us on screen would help

From Jamienne Studley-Accrediting Agencies (P) She/her to Everyone:

was the highlighted section new ?

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

thank you for clarifying jessica

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

I have to leave the meeting at 3:45 today (my son is having an Eagle Scout recognition ceremony!), but I wanted to say that I enjoyed working with all of you and wish we could have done it in person. Until next time!

From Anne Kress (P) Comm College to Everyone:

Congratulations to your son, Laura!

From Cindy-FMCS Facilitator to Everyone:

What an wonderful and commendable accomplishment. Congratulations to your son.

From Emmanual Guillory (A) PNPs to Everyone:

Great working with you Laura!

From Jamienne Studley-Accrediting Agencies (P) She/her to Everyone:

+ if ED is satisfied by the guard rails, this seems like a reasonable way to recognize bona fide revenue generating educational activities by institutions

From Anne Kress (P) Comm College to Everyone:

+1 Jamie

From Anne Kress (P) Comm College to Everyone:

Will is coming to the table for CCs.

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

David Socolow will be returning to the table for state agencies for ATB.

From Jaylon Herbin- (A) Consumer Advocate & Civil Rights to Everyone:

Carolyn will be retuning back to the table for Consumer advocates and civil rights for ATB

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

I'll be returning to the table for Students and Student Loan Borrowers.

From Jamienne Studley-Accrediting Agencies (P) She/her to Everyone:

Nice hail mary pass!

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

It was nice working with all of you over the last couple of months. Have a nice weekend.

From David Socolow (A) State Agencies to Everyone:

Thanks to you all; it was a pleasure working with each of you.

From Sam Veeder (P) FA Administrators to Everyone:

It was nice working with all of you! Have a wonderful weekend.

From Travis Horr (P) Servicemembers & vets to Everyone:

Thanks to everyone, it's been great working and learning from all of you!

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

Appreciate working with everyone and all of your commitment to students!

From Anne Kress (P) Comm College to Everyone:

Thank you for bringing your voices and perspectives to this important work! It was an honor to work with you.

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

It was amazing to meet you all and truly appreciated everyone's remarks and inputs. I have also learned so much over the past three months and enjoyed this process.

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

Thank you, everyone. It's been an honor to negotiate these rules with you all.

From Yael Shavit to Everyone:

Thank you to everyone for a productive couple of months. It was wonderful to work with you all.

From Dave McClintock (Advisor) Auditor to Everyone:

glad to be witness to a group who worked together to help students. I learned a lot and many new perspectives.

From Anne Kress (P) Comm College to Everyone:

Special thanks to the FCMS team, too!

From Jaylon Herbin- (A) Consumer Advocate & Civil Rights to Everyone:

It was great working with everyone! It has been a true honor to represent student borrowers with you all.

From David (A) FA Administrators to Everyone:

Thank you everyone!

From Dave McClintock (Advisor) Auditor to Everyone:

+1 thanks to FMCS

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

Thank you to the negotiators, facilitators, and Department for all your hard work. So honored to work with you all!

From Anne Kress (P) Comm College to Everyone:

Thank you to the Department! Enjoy a non-NegReg weekend!

From Amanda Martinez (P) Civil Rights to Everyone:

I learned from every one of you and thankful to have had this experience with you all!

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

I echo these sentiments. It was wonderful to work with you all. I appreciate all of the serious consideration and input from all points of view, and I hope that we can work together in the future.

From Deborah Stanley (A) 4 year public to Everyone:

Thank You all for this wonderful experience

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

Lovely to have worked with you all these last few months. This group reflects a huge array of experience and perspectives and I've learned from each of you.

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

Thanks so much Jamie!

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

Thank you, Jamie!

From David Socolow (A) State Agencies to Everyone:

Thanks, Jamie!