

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING PROGRAM INTEGRITY
AND INSTITUTIONAL QUALITY
SESSION 3, DAY 1, AFTERNOON
MARCH 4, 2024

On the 4th day of March, 2024, the following meeting was held virtually from 1:00 p.m. to 4:00 p.m.

P R O C E E D I N G S

MR. WAGNER: Welcome back, everyone. My name is Kevin Wagner, and I'll be the FMCS facilitator for the afternoon and also for the public comment section which will begin at 3:30. Looks like everyone has their naming conventions correct. I know we we're talking about distance ed as we went into to lunch. And I do see a hand. Jo, go ahead.

MS. BLONDIN: Yes. I wanted to call a caucus to discuss the asynchronous clock-hour issue and bringing back an approach. I would like to ask the following people to be in that caucus: Denise Morelli, David Musser, JoEllen Price, Zack Goodwin, Jamie Studley, Erika Linden, Scott Dolan, Laura Rasar-King, Jillian Klein, David Cohen, Michael Cioce, John Ware, Robby Anderson, Jessica Morales, and Emmett Blaney. 15 minutes.

MS. JEFFRIES: Brady, do you need anything repeated on that list?

MR. ROBERTS: I think I got them all, but Jo, I'll add you last, and you can correct me if you see any stragglers.

MR. MUSSER: Can I make a request about that? Did I hear Greg Martin's name on the list of Department folks who would be included or not?

MS. BLONDIN: No.

MR. MUSSER: If not, I think Greg should be included from the Department if Denise and I are.

MS. BLONDIN: Okay.

MR. MUSSER: Okay.

MR. WAGNER: Brady, do you have everybody? Just want to make sure.

MR. ROBERTS: I do, yeah. I'm going to start adding folks to room seven now, so you should see an invite momentarily. And again, if I forget anyone, Jo, I'll add you last. Just feel free to remind me.

MS. JEFFRIES: Okay. So, we can go ahead and pause the live stream.

MR. WAGNER: Welcome back. It's 1:28 p.m. Eastern and the caucus is back in the main room. Is there anything that anyone would like to report out that was in the caucus?

MS. BLONDIN: Yeah, so I'll just say that we had a good conversation and really appreciated the Department staff engaging in this discussion about asynchronous and its definition and how that's going to impact programs moving forward. Of course, quality is the most important aspect, and that is a concern here as

well. And we recognize that. And then also the Department said that they had concerns about how to enforce some of these emerging issues. We also talked about utilizing best practices and engaging stakeholders in this conversation. And so, with that, I'll ask David Musser if he would like to share more information from the Department's perspective. Thank you.

MR. WAGNER: Thanks, Jo.

MR. MUSSER: Thanks, Jo. So, I do appreciate the discussion that we just had in evaluating the original proposal that we received to put a limit on the percentage of a program that could be offered through asynchronous clock hours. As I mentioned, we didn't think that that was sufficient given that the Department's concerns are really focused on asynchronous clock hours generally, and 50% is a significant portion of the program. We don't think that a percentage threshold would work. However, we heard from the committee that there were a number of folks who were interested in offering alternative guardrails to this that could help with some of the Department's concerns. And I wanted to reiterate sort of what our concerns are here. So, we're primarily concerned with the use of asynchronous technology to count clock hours toward a student's Title IV eligibility when there is no academic

engagement or active learning happening at the student level. That could take a variety of forms. And there is an incentive for schools that might be cash strapped to do that in order to avoid having to use complicated technology to track every single clock hour. So, the Department's concern is first narrowly focused on that, meaning how you ensure that the hours that are counting toward Title IV eligibility, which are intended to be part of active engagement and learning by the student, include that level of engagement and are being monitored appropriately by the institution. So, the student can just push a button and walk away and get six hours of credit toward their next Title IV disbursement. The larger issues of academic quality sort of blossomed from that narrow concern, because if a school is allowing students to earn clock hours simply by pushing a button and watching some videos or not watching it, in the worst-case scenario, that calls into question the strength of the program and what the student is really gaining from that experience. Now, we heard some concerns about fully discontinuing asynchronous clock hours. The Department proposed that because we were unable to come up with guardrails for example, on the technical side, that would be effective at preventing the things that we're concerned about while also not being so

complicated that they're almost impossible to enforce and difficult even for schools to implement. So, we are open to suggestions about reasonable guardrails that could mitigate the Department's concerns in this area. Those could be technical. Although as I mentioned, the Department has concerns about things being too complicated. So, we wouldn't want to have too much in that respect. But they're also related to the difficulty of enforcing this requirement, which is highly technical, requires a lot of resources to ensure whether a school is doing it well, and frankly requires someone with expertise to go in and actually ascertain whether a school is doing it. But I think there's a recognition from the community that could be accomplished through other organizations having more upfront reviews of this process, evaluating it at regular intervals in some way. So, we're open to those sorts of things as well if there are suggestions from negotiators regarding how these concerns could be mitigated. So, for all those reasons, the Department is willing to postpone the consensus vote on this topic until Thursday if negotiators indicate that they are interested in providing those kinds of alternatives by Wednesday at noon, so that we can evaluate them and make decisions and then come back the next day. Now, one other thing I want to mention. The

Department's current proposal only prohibits asynchronous clock hours. It does not prohibit synchronous clock hours, so make sure that you focus on that with any recommendations that you make.

MR. WAGNER: Barmak, go ahead. You have the floor.

MR. NASSIRIAN: I appreciate the Department's open mind, and I certainly will strive to keep a similarly open mind. But I have to tell you, this may be a wild goose chase, because what we are talking about is the substitution of some sort of amorphous, unspecific technology somewhat better than recorded videos for instruction. And as you just pointed out, Dave, we are talking not about a traditional curriculum in which recordings, interactive CBT-based language training, whatever, could be just a component of the broader package. But we're talking about a program that is literally measuring by the hour and is seeking to replace instruction time with canned content. And we are once again being invoked as a utopian solution with no specificity as to exactly what it is that is being used to substitute for actual faculty interaction. We'll keep an open mind. But this is sort of like attempting to agreeing that something is wrong and I'm no aspersion on this concept, but it's sort of like trying to create

ethical bribery. The concept is incompatible. You either have instruction or you don't. And if you don't have instruction, you don't have instruction. This doesn't mean these programs can't use YouTube. Yes, there are plenty of good added content online, and people should be directed to them as adjuncts, as additional support material. But that does not allow somebody to charge tuition on the taxpayer's nickel and the student's nickel for canned content. So, we'll be open to see what kind of a technological solution is going to overwhelm the obvious here. And we can vote on Thursday. But I just find it very problematic that the Department is even considering anything but cleaning up this mess by saying instruction is instruction. Thank you.

MR. WAGNER: Scott, go ahead.

MR. DOLAN: I mean, I went back and forth on whether I would even respond. Barmak, I understand your perspective, but I think we also need to have a very frank conversation about how learning occurs and how the delivery of content, including the curation of that content is a component, right? Contact hours, one hour of direct instruction for every two hours outside of the classroom. A book which is a technological advancement is canned content that has been created to transmit knowledge. Instruction would be I

choose which books you should read. I assess how well you understand that book. And I look at that book alongside all the other books that I've assigned within my classroom. We're talking about innovation around teaching and learning, of which technologies of all kinds have helped us provide more and more access than we've had previously. It doesn't mean that we shouldn't also be paying really close attention, which you've raised on a number of occasions, to the quality and the outcomes associated with those experiences. But let's talk about that. Because inputs can come from a variety of different perspectives, and we can use technology in really exciting and innovative ways to support students in ways that we haven't previously. So that's my only response.

MR. WAGNER: Thank you, Scott.

Barmak, your hands up.

MR. NASSIRIAN: Briefly. Scott, I understand. Yes, there is plenty of knowledge in books. Curated content in the old days used to be called the curriculum, not instruction. DC can weigh in on this one. Are we playing semantic games here? I think we are. You know, the great Library of Alexandria was a library. It wasn't a University of Alexandria. Just because you have canned content in books, on tape, on

servers, on YouTube, that does not make it a learning facility. It makes it a repository of information, and it's disorganized or it's curated, and curation has a value. It's called a curriculum. It is not instruction.

MR. DOLAN: And we're not removing instructors from these programs or active engagement. We're saying that this would be a component that's a supplement, right? So that's the conversation. I look forward to working [inaudible]-

MR. NASSIRIAN: I agree with that. That's great. If you do that, we're on the same page, but you're trying to count the hours when the instructor is absent as hours of instruction. That's the problem. Otherwise, I have no objection to having 150 hours, 300 hours, 600 hours of instruction with massive amounts of additional support being wrapped around it. That's not the issue. It's whether that minimum number, that 600 hours is instruction time or all the support stuff around the mark.

MR. DOLAN: So, I appreciate your openness to a compromise.

MR. WAGNER: Denise, I see your hand.

MS. MORELLI: I just wanted to keep everybody's focus to that we're talking about clock-hour programs, right? There is a difference between clock-

hour programs, traditional clock-hour programs, which are the hands-on programs and other credit-hour programs, which might be the lengthier degrees that you get in various areas and then the students that I've dealt with, and I've spoken to hundreds of students and not just this issue, but somebody brought it up in the caucus, they're paying for a program, right? And they're paying for a hands-on program. And a lot of times we're talking cosmetology, you're talking HVAC, you're talking a bunch of different things like that that we're dealing with here. So, I just want to make sure everybody remembers that we are talking about a specific set of programs and not everything, and that a lot of times we are talking about hands-on instructions necessary for them to get a job in the field, for them to pass a licensure exam. So, I just wanted to make sure everybody remembers that we are focused on a set program.

MR. DOLAN: I will say that hands-on is necessary, but not sufficient, right? So, when I teach an electrical engineer, I don't tell them to go use electricity right away. I ask them to read a little bit about how that operates in practice and abstract in theory, right? So, there are theoretical and didactic components to this work, and that supplements the hands-on stuff. So, I understand completely the programs that

we're talking about. I'm just saying that the learning that we can use as an input can come in a variety of different forms. So, I appreciate.

MR. WAGNER: I appreciate the discussion. I'm going to hand it over to Greg. Greg, where should we go at this point in light of the postponement?

MR. MARTIN: Okay. Well, first of all, David, do you have anything else you want to discuss with respect to distance education before we move on?

MR. MUSSER: No, I think we're good. Thank you, Greg.

MR. MARTIN: Okay, a couple things. The Department's going to request a brief caucus before we begin state authorization. Before I do that, there were a couple of issues that were on the table generally before we broke for lunch. And one was a request that the Department consider whether taking consensus by topic or by issue paper, whether distance education be willing to take consensus votes on individual sections of that issue paper of that topic. And our response to that is that no, we are going to continue to take consensus votes based on the entire topic. Our reasons for that are we feel that doing anything else would violate the spirit of negotiations. And we don't look at whenever we propose

language on a specific topic, we don't look at it in terms of just you can accept one line or not another line, or I'll take this, but not that. We, look at it holistically. So, we believe that it is necessary and desirable to take the consensus vote on each topic. So, although I can certainly appreciate the concerns voiced and that it might be possible where consensus could not be reached on an entire topic to reach it on various parts. But for all the reasons mentioned, I don't think that's the advisable way to go. So, we're going to stick with consensus on each topic. The other question we had was, once these negotiations are concluded, would it be possible for negotiators to continue to submit documentation to the Department for consideration? The negotiations aren't for the negotiations to be done in good faith, they need to be completely transparent. And that's what this negotiation process is all about, so that during that process, everybody, not just those of us on the committee, but the public, all concerned individuals can hear what's being discussed. The Department takes great pains during this process not to discuss these matters with people outside of these negotiating sessions. Once the negotiations are concluded, they're concluded. There is no more negotiated rulemaking as part of the process. At that

point, we move on to putting together a notice of proposed rulemaking, and then there will be an opportunity for people to comment on those proposed rules. At that time, once these negotiations are ended, there's no restriction on anybody sending anything to us that they want to. We do have another mechanism where parties can request meetings with us to give us their viewpoints on certain topics. However, the negotiation process will end on Thursday such that the Department would not be taking additional submissions and using those the way we do during the negotiation process. So, with that said, we are going to take a 15-minute caucus for the Department to have some discussions prior to state auth. I'm sorry, David, do you have something you want to say?

MR. MUSSER: Yeah, apologies, Greg.
Real quick.

MR. MARTIN: No problem.

MR. MUSSER: So, I heard in the chat from several negotiators who wanted to return to some language about the virtual location concept. So, let me ask you, actually, Greg, do you want to do that before we caucus between the issues?

MR. MARTIN: I think so. If there are other areas of distance to be discussed, I think we

should discuss those before we go to the caucus,
certainly.

MR. MUSSER: So then actually, I'll
have Vanessa bring up the language around virtual
locations so that we can take a look at that as we talk,
and then I'll just remind everyone quickly what the
proposal here is. The proposal is to add a definition
under the definition of an additional location that
refers to a virtual location in which the institution
offers 100% of an educational program through distance
education or correspondence courses, notwithstanding
requirements for students to complete on-campus or
residential periods of 90 days or less. I'll turn it
back over to the committee for additional comment on
this.

MR. WAGNER: Any comments? Jamie, I
see your hand. And you're muted.

MS. STUDLEY: I would defer to the
institutions who understand this better. But I'm just
trying to tell on this virtual location, my understanding
was that it was so that the Department could get
information about outcomes and performance of students
who are pursuing their education in a distance form. And
that it was primarily or entirely a pathway to subdivide
the population and understand the outcomes. But I've

been asked whether this would be needed, given that through another provision that we just looked at, the Department would be getting a new kind of reporting about distance students and their outcomes. Is this addressing the same problem? Is this still needed or is this virtual provision here necessary for the Department to get the information that it's looking for to understand the results for student achievement from distance education programming? It's the articulation of this and the provision that we worked on this morning.

MR. MUSSER: Thanks, Jamie. So, the virtual location proposal was intended to achieve, I guess I would say three different ends. The first one, which is probably the biggest one, is the one that you just mentioned, which was to obtain better information about individuals that were enrolled in distance education so that we could better understand which programs they were in, where they were actually from but that all of those kinds of things that were related to enrollment in a fully distance education program. However, we also have a separate concern about cases where an institution ends all of its distance education offerings. There have been some reports that some institutions are relying heavily on outside providers of resources that are used to provide online programs. If

one of those providers ceased to exist suddenly, a school could find itself in a position where it's not offering distance education at all anymore. It doesn't have the capability of doing so, which in that case, under the concept that we were proposing, the school that the students who were in those distance education programs when they were abruptly discontinued, could qualify for closed school discharges. That is the main secondary, but still very, very important piece that we were trying to accomplish with the concept of a virtual location. And that cannot be accomplished with merely obtaining information about students at the student level through, for example, NSLDS enrollment reporting. The third one is really an understanding of the reach of fully online programs, which fits into the very first one, but it is a sort of separate consideration. The Department wants to understand where schools are providing their programs. And it's hard to know that by simply knowing how much the student took in a particular semester or a particular period. Knowing that they are enrolled in a fully online program tells us more about that than the other piece. And so, I'll stop there.

MR. WAGNER: Thank you, Dave. I did want to mention that David Cohen was in for Jillian, representing proprietary institutions, and he has his

hand up. So go ahead, David.

MR. COHEN: Just in the construct of the earlier requirement or that the Department was seeking that accreditation visits include all locations and branches, it would be the Department's expectation that we would be visiting every online location as well, now that we'd be forming virtual campuses or considering them as separate locations?

MR. MUSSER: No. I think we did briefly talk about this. I don't think we got into much detail in an earlier session, but the Department's intent here is that whatever requirements you're subject to currently with your accreditor and your state in order to offer distance education and the Department which has a much more limited requirement, you would still need to meet. And by meeting those and documenting that you've met those in the way that you currently do, you meet the requirement. There's no requirement, for example, a separate accreditation visit to a virtual campus. The requirements for distance education for oversight of this remain the same. That's the intent here. So, this was primarily a mechanism, as I mentioned, of doing those two broad things, improving our understanding of students who are enrolled in distance education and receiving Title IV funds and ensuring that they can qualify for closed

school discharges. Yeah.

MR. COHEN: And would it change your perspective if the online was run out of a separate building in a separate location or it doesn't change that analysis?

MR. MUSSER: No.

MR. COHEN: Okay. Thank you.

MR. MUSSER: I want to quickly respond to a comment by Scott that the mention of third-party providers that provides more context than what we provided in January. We did mention in our original issue paper that closed school discharges were part of our rationale for developing virtual locations and that sudden closures of distance education programs were an important piece of that. In recent months, it's become clearer in the news that third-party providers may in fact, not always be available to institutions that rely on them. And also, it's not just that, it's certainly that institutions may decide to discontinue the distance education offering themselves. It's really both of those things that we're concerned about from the student perspective, where we want to ensure that they get similar protections to what students get when their physical location closes.

MR. WAGNER: Alright. Thanks, Dave,

for the follow-up on that one. Are there any other new comments related to virtual location language? Okay. I don't see any hands oh, one hand, there we go. Jamie. Jamie, you're on mute.

MS. STUDLEY: Simply that the word location might be misleading. Just following up on David's comment. I wonder if there's some way to call it a word that's not used anywhere else or indicating that it doesn't trigger any other place that refers to location. So otherwise, we'll be counting locations and getting these in a way that could be confusing.

MR. MUSSER: Thanks, Jamie. Yeah, I very briefly discussed this earlier, but it probably deserves some additional discussion, especially in the accreditation context. I don't think we can change the term as it's used here, because that is the key term that allows us to qualify students for discharges under the closed school regulations. However, we could be clearer in the accreditation rules that these are not among the locations that accreditors have to evaluate using the same requirements that they do for all locations.

MS. STUDLEY: Right. You might also consider whether you want them counted or not counted. For example, how many additional locations does your favorite school have? Do you want to get a report of the

things that you're creating for data purposes, or would that throw off your understanding of the nature of the field? I'll leave it there. You get it.

MR. MUSSER: Okay. Yeah, and I would mention that we do say physical locations in the accreditation rules to try to distinguish between these two things so that we don't get too much confusion there. Other comments on this language?

MR. WAGNER: I don't see any hands, Dave. Greg, we last spoke with you. You had requested a 15-minute caucus for the Department before we dive into state authorization. Do you still want to do that now?

MR. MARTIN: Yes, please.

MR. WAGNER: Okay. So, we can stop. Barmak, can you hold that comment, or is it something related to the-

MR. NASSIRIAN: Related, in the interest of saving time, a group of us would appreciate an opportunity at the end of the Department's caucus to meet with the Department. This way, things will go more quickly instead of coming back and making the request at that point.

MR. WAGNER: Okay, thanks.

MR. NASSIRIAN: Can I just send the list to you, Kevin?

MR. WAGNER: Sure.

MR. NASSIRIAN: -request that
Department? Thank you.

MR. WAGNER: Yep, yep. And-

MS. JEFFRIES: Just Kevin. Hang on.
Barmak. Let Brady set up, he's got the caucus for the
Department. But could you, before we break livestream
now, call off the names of the people who you want to
meet with the Department so it's a matter of record so
the public that's viewing is aware?

MR. WAGNER: Thanks, Cindy.
Appreciate it.

MR. NASSIRIAN: Of course. So, I
would request that the group include myself, Carolyn,
Emmett, Diana, and Robyn. And also, the alternates as
appropriate.

MS. FAST: And the Department, or no?

MR. NASSIRIAN: And the Department,
obviously. We want to join the Department. Yes.

MS. FAST: Gotcha, gotcha, gotcha.

MS. JEFFRIES: So, Greg-

MR. NASSIRIAN: We can talk to each
other all the time.

MS. JEFFRIES: Greg, from the
Department side, when you're finished with your caucus,

then Barmak requested this caucus with the Department,
who would you want in that?

MR. MARTIN: I- Barmak, was your
intent- well, Barmak is calling it. There were specific
individuals at the Department you wanted, Barmak, besides
me?

MR. NASSIRIAN: I defer to you, but
the topic will be state authorization.

MR. MARTIN: Okay.

MR. NASSIRIAN: All the appropriate
colleagues are welcome to join.

MR. MARTIN: Alright, Cindy, well,
then it would be me, it would be Denise Morelli. And
also include David Musser in that as well.

MS. JEFFRIES: Okay.

MR. NASSIRIAN: And it'll be very
brief. No more than ten minutes,

MR. MARTIN: Okay, that's fine.

MS. JEFFRIES: So, I'm going to ask
that for the ease of this, that when you're done, Greg,
with your Department caucus, come back to this room and
we'll move you into the other room at that point in time.

MR. MARTIN: Okay, that's fine.

MS. JEFFRIES: So, the public knows
what the process is going to be, why we're pausing the

live stream. Okay?

MR. MARTIN: Okay, excellent. Thank you very much.

MS. JEFFRIES: Thank you.

MR. WAGNER: Welcome back, everyone. It's 2:35 Eastern, and we had two caucuses that just took place. And before we get started on state authorization in between, I did see that Jamie had a question on virtual location. Jamie, do you still have a question related to that before we move on? Okay. Let's see, Jamie. Alright. It is in the chat. And in that case, since there were a couple caucuses with the participants and the negotiators that were in the caucuses like to report out on those caucuses.

MR. NASSIRIAN: I requested the second caucus with the Department and of student consumer advocacy groups. Throughout the negotiations on this topic, we have heard concerns about institutions with regard to state authorization and the sort of expansion of authorization requirements to many more institutions. In the spirit of compromise, we have submitted something that the committee should have. Carolyn submitted a set of proposals on our behalf to the committee. I think they have been distributed, but we just wanted to explain to the Department that the purpose of our proposal is to

attempt to relieve the largest number of institutions where we have seen the fewest types of challenges and problems from the state authorization mandate. So, the two categories that we have suggested to the Department would include institutions recognized through state legislation. Currently, there is a five-year sunset on those institutions being deemed authorized. We want to make sure that the states have the option of recognizing institutions through political acts like legislation or granting of charters. And the other has to do with the founding of the institution, the history of the institution's participation in these programs. Currently, there is a 20-year timeline with a five-year sunset being proposed. We suggested to the Department that institutions founded prior to the enactment of the Higher Education Act of 1965 should simply be allowed to be exempted permanently. Obviously, we don't want to circumscribe the state's right to require particular authorization requirements, but we also want to enable the states, if they so choose, to exempt institutions that have existed prior to 1960, to the enactment of the Higher Ed Act, provided that there has not been a change of ownership because we do not want institutional founding dates to be sold like taxicab medallions, we want to make sure that the institution that was founded

has remained essentially unchanged in terms of its control and ownership. So those are the two exemptions we are proposing. This is a little more complicated. We are suggesting that we can share some data with the committee on this. We noticed that the number that the Department has placed in terms of the ceiling on utilization of reciprocity for institutions based on enrollment is 500. We ourselves have even thought in terms of larger numbers before this. But we did some research, and it turns out that the footprint of the vast majority of institutions is actually far smaller than that. And again, we think the whole point of reciprocity is to enable a minor participation or incidental footprint of institutions so that, you know, a tiny liberal arts college that happens to have two students in a given state isn't forced to go directly to obtain authorization from that state or a community college that may have a particularly appealing program that happens to attract, you know, five students from another state shouldn't have to go seek direct authorization. We want to make sure that the reciprocity mechanism is really intended as a convenience for those purposes, as opposed to a back door to direct authorization from the state. So, we are proposing that the number be dropped to whatever is appropriate. Based on our digging, we think

even 100 may be the right number in a given state, but we would encourage the Department to do its own research and pick a number that makes sense to exempt institutions that don't purposefully go through reciprocity simply to circumvent direct oversight to take advantage of reciprocity without undermining the state's right to regulate delivery of education to the various state residents. So that's the suggestion. One adjunct to that suggestion is that as we plug more institutions into direct authorization, we have suggested kind of a runway of a few years to enable the state to enact appropriate rules to ensure that there is a mechanism for out-of-state institutions to obtain direct authorization. Some states don't have those mechanisms, and it takes some time to put those things in place. The Department has not reacted to any of our proposals. Nor did we expect them to react. We just wanted them to understand what we were doing and why we were doing it. And again, all of this was in our proposal submitted to the entire committee. But we wanted to make sure that the Department kind of took note of our attempt here. Thank you.

MR. WAGNER: Thank you, Barmak.

Alright. In light of that, Greg would you like to get started with state authorization?

MR. MARTIN: Sure. Before we do that, the Department's caucus was basically just to discuss the fact that the proposal Barmak just referenced had been submitted to us. So just to apprise all the Department people that it was there and just to look at it. But then subsequent to that, they had requested a caucus from us. It was pretty much on the same thing. So, with that, we'll begin our discussion of state authorization. We've got a little less than an hour because we do have to go to public comments at 3:30, but we can get started with state authorization. I'm not optimistic about concluding within the next 45 minutes. So, the discussion will begin again tomorrow. We originally had TRIO scheduled for first thing tomorrow. I don't know exactly what we're going to do with the schedule there, whether we'll continue this discussion tomorrow prior to TRIO or break for TRIO. So, I'll wait for confirmation from my people behind the scenes as to how that will work. But we will start with state authorization this afternoon. And I see Vanessa has pulled up the paper here. I'll give everybody a chance to get that up for them. We have made a number of significant changes to the regulatory text and state authorization based on the previous proposals that we did receive. And to clarify our intent, since there was some

confusion related to what went on in session two, and I will do that, but first, I want to walk through some of these changes, and then we'll address some of the questions that came up during the previous sessions before opening it up to discussion. So, the first place I want to start here is in (a) (1), 600.9(a) (1). Let's go there. Okay. Thank you, Vanessa. So under (a) (1), we clarified the language to say that the Department considers the institution legally authorized in the state, if the state requires the institution to comply with the applicable state authorizations or licensure requirements and applicable state laws and regulations. Remember that we addressed the exemptions and reciprocity separately in its own section. So, let's take a look at the actual language here. And you can see here that an institution described under 600.4, 600.5, and 600.6 is legally authorized by a state if the state requires the institution to comply with any applicable state authorization or licensure requirements, and all applicable state laws and regulations. Next move to 600.9(a) (3). Thank you, Vanessa. Here we address the exemptions. We clarified the language. We're under existing regulations. Certain institutions may be exempted based on accreditation for years in operation. We've clarified the language to say that these exemptions

will expire on July 1, 2030. This is the same proposal from session two. But there was some confusion about the way the language was written. Finally, we've added language that for an institution that is currently exempt from requirements undergoing a change of ownership, the institution must get approval from their state where it is considered authorized and seek initial approval for state authorization. As mentioned previously, this has been an ongoing concern for the Department since our regulations require institutions get approval from their state for a change in ownership, but because the institution is exempted, this required approval is not occurring. For these institutions, they will not get approved until 2030; they will be required to go through initial approval as part of the change of ownership. Again, we do not deal with reciprocity in this section and instead address everything pertaining to reciprocity in its own section. So, let's just take a look here at the actual language in 600.9(a)(3). The additional language we have here. Okay. And yeah, arrow down a little bit there, Vanessa, to where we start with the new language, right. So you can see there the institution may be exempted from requirements for initial or renewed application for authorization or licensure if its [inaudible] statute, constitutional provision, or other

action issued by an appropriate state agency or state entity, establishes the institution by name as an educational institution and authorizes it to operate educational programs beyond secondary education, including programs leading to a degree or certificate, though this exemption shall expire on July 1, 2030, or if state action exempts the institution based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary, or based on the institution being in operation for at least 20 years, though this exemption shall expire on July 1, 2030. An institution exempt from initial state authorization or licensure requirements under this section that undergoes a change of ownership shall not be exempted from the requirements of 34 CFR 600.20(h)(3) romanette two, which requires the institution receive approval for the change of ownership from each state in which the institution is physically located, or for an institution that offers only distance education from the agency that authorizes the institution to legally provide postsecondary education in that state, and (b) seek approval for the state authorization. Next, we'll move on to changes under 600.9(d). Under 600.9(d), we address state authorization requirements for an institution offering distance education in another state through a reciprocity

agreement. Remove language that was under exemptions to state that the institution may be exempted from initial state authorization or licensure requirements in that state. During session two, we asked how we might address education-specific laws that we might consider allowing states to enforce if they choose, through reciprocity. After considering feedback, we decided that instead of defining which state laws should be allowed to be enforced regardless of reciprocity, we instead focus on which requirements we would consider exempt from enforcing which works towards an institution's benefit in reducing burden through reciprocity. 600.9(d)(2) romanette one. We state that a reciprocity agreement must allow any member state of a reciprocity agreement to enforce its own state laws and regulations, if it chooses, outside of the initial approval for state authorization, except for authorization and application fees and processes. We welcome negotiator input onto what else we might include in this list of exceptions. We remove the language that was duplicative and created some confusion on allowing states to accept, investigate, and resolve complaints. We think that is addressed in the existing language. Finally, we took a modified version of the proposal suggested by several negotiators to require that an institution operating above a

particular size threshold within a state be required to go through full authorization in that state. Under 600.9(d)(4), we propose that any institution enrolling more than 500 students in a state participating through reciprocity would be required to undergo authorization in that state. We think there is value in requiring that institution with a large footprint in a state be subject to state laws in considering an appropriate threshold. We look to our existing regulations and 500 students as the threshold we use under our cash management regulations related to tier one arrangements. We welcome negotiator input on that threshold. So before opening up the floor to comments here, a couple of things I would like to address regarding questions that we received. The first is what problems we are trying to address allowing states the choice to enforce certain laws and how these are different from our original proposal on complaints and governance. The language you see before you is based on those concerns. We stated from the beginning that we are concerned that the structure of reciprocity agreements has shortcomings that fail to protect students and taxpayers, and that reduce state's oversight of institutions. This is also not the first time the Department has considered this exact problem. Most recently finalized certification procedure rules

reflect this as well. After hearing concerns and compelling reasoning from negotiators about how states are limited in enforcing those recently finalized rules, the Department is proposing to readdress the issue here. We are trying to balance the goals of ensuring that institutions have a reasonable path to offer distance education to students who do not reside within their borders, by ensuring that institutions are not subject to most burdensome requirements while ensuring states have the choice and ability to protect their students where they see appropriate. We are addressing ongoing concerns from some states who have been limited in their ability to apply their own laws and to protect their residents. We've been asked whether our language would disallow SARA's current policies preventing states from enforcing specific requirements. The short answer is no. Our proposal is not specific to SARA or disallowing any such agreement. Ultimately, it will be up to states to make the determination on whether they choose to enforce their specific laws. As mentioned by several negotiators, we expect many, if not most states to decline to avail themselves of this enforcement option. However, we do think it is important to allow states the ability to enforce their laws if they choose to do so, and we are aware of at least one state legislature that is

specifically considering legislation to better enable them to protect their students who are enrolled out of state. On state exemptions, we received one question on the problems we are trying to solve, or we see several questions rather on the problem we're trying to resolve. As mentioned in issue paper one, the Department is concerned that existing state authorization regulations, which allow states to exempt certain institutions from state approval and licensure if the institution is accredited by an accreditation agency, recognized by the Secretary, or if the institution has been in operation for more than 20 years, do not ensure sufficient state oversight of those institutions. State exemptions of certain categories of institutions from approval weaken the program integrity triad for institutions that want to participate in the Federal aid programs, making students and taxpayers vulnerable. The Department has seen examples of abuse, such as misrepresentation that should fall under state authority and enforcement, but currently do not. As a result, students must sue in order to obtain relief. So, with that, we'll go back and open the floor for discussion from the negotiators. Thank you.

MR. WAGNER: Erika, I see your hand.
Go ahead.

MS. LINDEN: Yes. Thank you for the

explanations of the position that the Department is currently espousing. I do want to make one comment. For those of us who are really visual learners, it was hard for me to follow and integrate everything that Greg just said as the rationale for where we are today. And I just want to say, if I ask a question for which you tried to already answer that I just beg your forbearance on that. I want to start with a couple of questions. On 600.9(a), excuse me. The existing regulations refer to exemption from state approval or licensing requirements. The proposed ones refer to state authorization or licensing requirements. Could you just comment about that change of terminology? And as you're doing that, just keeping in mind that there is great inconsistency across the triad for using terms like reciprocity or excuse me, authorization, recognition, certification approval, license to operate. And perhaps if you talk a little bit more about that or further define, that will be helpful for us to understand the intent on this exemption issue. So that's one.

MR. MARTIN: So, we're looking at 600.9 - 600.9(a)(3). Is that what you were talking about?

MS. LINDEN: Sorry, I'm a visual learner, so I have to look at my page.

MR. MARTIN: Okay.

MR. MUSSER: Vanessa, could you bring it up on the screen? Sorry, Greg.

MR. MARTIN: Bring up 600.9(a).

MS. LINDEN: 600.9.

MR. MARTIN: And the new- yeah, the new- yeah, there's the new, the new [inaudible 02: 02: 07]

MS. LINDEN: Yes, they're in the middle of the page. State authorization or licensure. And if you scroll down a little, you can see what that replaces is state approval or licensure. Where it was in (b).

MR. MARTIN: Okay. You're talking about where it says (b) here. Let's just go down and look at the institution. So that previously read the institution complies with the state-approved or licensing requirements, except to exempt the institution from state approval process. Right. So your specific question is why we put what we did up here and the new language in (a) (3)?

MS. LINDEN: Yes.

MR. MARTIN: I'm not sure I'm exactly getting the question. Is there something you don't like about the wording? I'm just trying to get to the gist of

what [inaudible]-

MS. LINDEN: I'm just trying to understand the rationale of your changing a word, there must be a reason that you were changing that word. And I wanted to understand that better. And I guess it goes part to the question I should have prefaced it with this. I know this was addressed in 2010 and I guess what's the evidence that there have been abuses since 2010 that are based on the schools that were approved or the language of approval or licensed, and now we're switching to authorized or licensed.

MR. MARTIN: Dave, did you have something you wanted to say about that?

MR. MUSSER: In my reading of this authorization, I think we were hewing closer to the statutory term. I don't think that we had a substantive reason beyond that. Approval might be read a little more narrowly. But the Department did not have in mind that we were altering the kinds of things the state could do here to authorize an institution. I look to my two colleagues here, but I don't believe that that was the intent with the wording change.

MR. MARTIN:

MS. LINDEN: Okay.

MR. MARTIN: And we moved the

exemptions to a separate section here so that's why we made the change here because we clarified the language surrounding exceptions and the expiration of those exceptions in a separate section.

MS. MORELLI: And I think Dave's right. The statutory provision says authorize and our regulations in terms of the definitions of higher education or institutions of higher education. They have to be authorized by the state. So, this is just making the conformity to match the regulations and align with the statutory language.

MS. LINDEN: Okay.

MR. MARTIN: But there's not a big difference there. I mean, it's in 600.4 or 600.5 and 600.6. We refer to state authorization for eligibility. So, it does conform more with that language.

MS. LINDEN: I guess in the state of Iowa for example, my institution is approved to operate in our state by our educational department. So that's why I may be sensitive to that use of authorization versus approve, because in our state it does have a distinction.

MS. MORELLI: And I think there is a distinction what you're getting to in terms of being authorized to operate a business in the state.

MS. LINDEN: No, this is to operate as a higher education institution.

MS. MORELLI: The Department, I think, doesn't see a distinction between the two.

MR. MARTIN: Yeah. We view those the same way.

MS. LINDEN: Okay. Thank you.

MR. WAGNER: Okay. I do want to say that Rob Anderson is in for John Ware, representing state officials, and he has his hand up. So, Rob, take it away.

MR. ANDERSON: Thanks so much. First of all, I want to start with some Dave Mason song in the 70s. There isn't no good guy. There isn't no bad guy. We just disagree. And I think there's some of that going on here. And some of these issues are big. They're tectonic plate shifting type of big. This isn't just discussions over a ward or two, you know, like the 500 that we need to change. But I think just some fundamental philosophical differences about this moving forward. And so, you know, first of all, Greg, I would love to get the comments you made at the outset of this. I think that would be helpful. It looked as if you had them written down, and I don't know if there's any way before tomorrow, we could take a look at that because, as

was stated earlier, I'm a little more visual. And just having that might spur some questions or they might eliminate others tomorrow. But anyway, if we could get that, that would be great. The language uses the terms applicable state laws in a couple of different instances. And what I was wondering is what does applicable mean here specifically to you? And who decides what is applicable? Is it the Education Department, a state, the organization administering the reciprocity agreement?

MR. MARTIN: In this context, I'll ask for correction from my people if we're wrong. But we mean the state, not the organization, would be this-whatever law, whatever rules the state deems applicable, they should not be inhibited from enforcing.

MR. ANDERSON: Okay.

MR. MARTIN: But I'll ask for Denise to confirm that?

MS. MORELLI: No, that's correct. We're talking about the state, what the state deems applicable for those institutions.

MR. ANDERSON: And as far as the 500 figures, I think I heard you mention that it was aligned with the cash management threshold. Is there any reason beyond a number that was used for this other thing?

MR. MARTIN: Well, I mean, whenever

we deal with, you know, imposing a number, it's got to come from any number to some extent a settled upon figure, right? In using numbers, we try to use a reasonable figure, and we look to other regulations that we have. As we pointed out, the 500 threshold comes from 668.164(f), which is two tier two arrangements.

[Inaudible] we got the number from.

MR. ANDERSON: Okay. So okay.

MR. MARTIN: But we deem it to be a reasonable number to have chosen as a threshold for this. I'm sorry, Denise.

MS. MORELLI: No, I was trying to jump in, but, so I think, Rob, we were looking at a presence in the state, right, and what would be reasonable? And we were scouring our regs to see if there was any other places where we define that. And we looked at the cash management regs and that deemed that to be a reasonable number. But I think, as Greg mentioned, we're open to other numbers with the rational basis, a reasonable basis behind them.

MR. ANDERSON: Yeah, and you know what I'm having trouble parsing, and then I'll be quiet for now. There's plenty to say later. It was stated in an earlier comment, try not to undermine the state's rights. This line between saying we don't want to

undermine a state's rights, but if it gets above that limit, then we're going to be, in my estimation, micromanage the process. We are going to undermine those states' rights and decisions that they have made along the way and being part of this reciprocity agreement. So, I'm just having trouble reconciling those two sides of it. And that's why I say I think we have some philosophical differences that are pretty significant when it comes to this. But I'll be quiet for now. But thank you.

MR. WAGNER: Denise, I see your hand up.

MS. MORELLI: Yeah. I'm sorry, yeah, I just unmuted myself again. But I think you got to understand, Rob, we're trying to weigh the balancing between the students and the taxpayer and the states, and I don't think anybody thinks that coming up with the threshold where the institutions have to get direct authorization actually undermines the state's authority. And we have to balance that with the students and the taxpayer and the integrity of the programs. So that's the Department's job here.

MR. WAGNER: Okay. Thank you, Denise. Let's see, I see Jillian's hand up.

MS. KLEIN: Thanks. I think I have

two questions. First, I just want to clarify what I think I heard, which is the applicable state laws and regulations means literally like every law that the state would think applies to higher ed in general. I just want to make sure I'm understanding.

MR. MARTIN: That's correct.

MS. KLEIN: Okay. So, if that's the case, I'm trying to understand the 500-student language. I think the way that I'm reading those two together means that larger institutions would just not be exempted from paperwork. Is that right? So everybody, all online institutions would be subject to state laws, but large institutions would have to do the paperwork but smaller institutions would not. So, can somebody explain to me how that's a consumer protection? I'm not being snarky. I'm actually just asking that question because I don't understand how the paperwork equals consumer protection.

MR. MARTIN: Well, I think Denise just addressed that point earlier. Where a school's presence in a state exceeds those numbers that we believe it's in the best interests of students and the integrity of the programs to have the program directly authorized by that state.

MS. KLEIN: Okay-

MR. MARTIN: David, you had something

you wanted to add?

MR. MUSSER: Yeah. Thanks, Greg. So I would argue it's not just paperwork. There are different individuals who are approving the institution when the state itself has to complete the approval process for institutions in this proposal that have a larger presence in the state. That is a substantive difference, and it essentially puts the onus on the actual state whose students are being taught by the institution to affirmatively approve the institution to operate there. So, I think that's the real desire with that change.

MS. KLEIN: And in states where there's not currently a process, I think maybe about half of states don't really have sort of a process for what you're creating here. I would be interested to hear sort of the Department's thoughts or openness on what a runway would be here. I mean what happens to those students and states where maybe the state doesn't have a process or they just are not able to complete their program? Can you speak a little bit about that?

MR. MARTIN: So, you're talking about where a state would be required the thresholds?

MS. KLEIN: Yep, and they don't have a process or their process is so long that schools will

not be able to comply by the timeline that these rules would go into effect. What happens to those students?

MR. MARTIN: Oh, go ahead. I was going to say we didn't have a runway provision here, but we would be willing to entertain what that might look like.

MS. MORELLI: Right. And now we would be willing to accept suggestions on the runway time, what is reasonable for those states. But just like other situations where rules have changed over the years. Jillian, the Department is conscious of students that are already in a program or students that are enrolling in it, like we've tried to always put runways in so that students that aren't harmed are currently enrolled. So, we would definitely look at a runway. We didn't think about putting it at the time, but we would be open to that and are open to suggestions. But we certainly don't want to harm students that are already in programs, and they'd just be out of luck. That's not the way the Department has operated, and we don't intend to operate that way here.

MR. WAGNER: Okay. Thank you. Let's see, Carolyn, I see your hand up.

MS. FAST: Oh, thanks. A couple of points. One is in connection with the number, what the

threshold for students should appropriately be. The Department has suggested 500. And we think that number might be a bit high because we actually were able to dig into the data a little bit to determine, like how many schools and sort of what percentage of schools actually have that kind of large footprint. And it's actually not a very high number of schools that have such a big footprint. We put some of this data in submission that was circulated a little bit earlier. And I think it's interesting to see that the chart that we had just circulated, looks at how many students are in exclusively distance education in another state, from the state from where the school is located but doesn't look at each state. So for example, schools that have more than 500 students online in other states according to the data that we looked at are only around 8% of all institutions. But that's actually more than the number of students that would be affected by this threshold, because that would be all states. They would look at 500 in each state, not 500 total, if that makes sense. I don't think I'm doing a great job articulating it. My point is that there's not a lot of schools that actually would meet this threshold in the world of schools. And then also I just wanted to just quickly add on to what the Department was saying, but also to respond a little bit to Jillian's

question about what is the big deal, like, why do we care about schools filing paperwork and states? And part of the issue that I don't think has been talked about has to do with state resources for enforcement. So if you have an authorization requirement, there's also usually a fee requirement. And so, if you're requiring a school that has let's say 20,000 online students in that state, then the oversight of that school should fall onto that state. But you also want them to have to be able to have the resources for the oversight. So, to have that happen, you need direct authorization. That's one other reason why we think this makes sense.

MR. WAGNER: Okay, I see a couple hands up. Thank you for the comment. I just want to make a quick announcement that public comment will begin at 3:30 Eastern. So, for those making public comments, please make sure the name that you log in is the same name that you use when you registered. And please log on 15 minutes prior to 3:30 and you'll be put in a virtual waiting room. Alright. Let's see. I see John Ware is back in for state officials, and you have the floor.

MR. WARE: Thanks. Yeah, I have a lot of questions about how you count the 500, but I don't think it's going to matter with all the changes being proposed, I don't see how reciprocity is really even

going to be a thing anymore, because we would have the states essentially either rewrite the current reciprocity agreement or come up with an entirely new reciprocity agreement to incorporate all these changes. In addition, most states would have to go back and re-pass laws. I know in Ohio, our law that was passed was specifically based on the state authorization current reciprocity agreement. And, you know, referenced the compacts in their control and how things currently run through the compacts. So, we'd have to go back and revise that, and a lot of other states would be. And again, writing the reciprocity agreement in the first place was a two, three, four-year process, multiple states, and the Council of State Governments was involved. So, I mean, with all the current changes that are being proposed including changes to the governance structure and the requirement that states be allowed to enforce their own laws, which, again, that doesn't really sound like reciprocity. I don't know what the value would be for institutions to participate, number one, and really for states as well, because getting back to what Jillian said, if I'm going to be required to enforce my laws against other out of state institutions, I'm going to want those institutions to fill out my paperwork because I need to get the information from them in order to be

able to enforce my laws. So, I don't know why I would waive paperwork requirements if I'm actually going to enforce laws against the schools I would need them to fill out my application to have the paperwork requirements. So, I understand what the Department's trying to do here, but I think this would change the reciprocity agreement so substantially that I don't think institutions and/or states are going to want to participate under what's being proposed currently?

MR. WAGNER: Thank you. Erika, I see your hand up.

MS. LINDEN: I'd be a plus one to John Ware. Thank you for articulating that. I do have a real pragmatic question. I'm trying to think through what this actually looks like in implementation, if we were to get that far. But how would an out-of-state institution know if a state has chosen to enforce or not enforce their state laws?

MR. MARTIN: Well, I don't think we envisioned a formal process with that. I mean, any time a state chose to do that, that's what this entails. We're not requiring states to do anything here. We're just enabling them to enforce the laws they have. And we're talking about laws that deems to be applicable, meaning the state has not changed its law specifically a

group of institutions. So, I'm not sure what you mean. Like, you know, if the school chooses envisioning a formal process where the state indicates that.- and I mean, one thing I need- I think somewhere else I'm having some difficulty here that we're not mandating that states do anything here with respect to enforcing their laws. It's where the state chooses to enforce their laws, they will have the authority to do so.

MS. LINDEN: But I also think I heard you say it's something you read that you don't expect that a lot of the states would necessarily choose to do that.

MR. MARTIN: Correct. Correct.

MS. LINDEN: And again, my question is if I have five students enrolled in Ohio, how do I know whether I have 505 students in Ohio How would I know whether or not Ohio was choosing to require me to have the tuition refund amount set aside? I don't remember what the terms of that is.

MR. MARTIN: Dave, did you want to make a point here?

MS. FAST: Yeah. Oh, sorry. Can I- is it okay for me-

MR. MARTIN: Dave had his hand up. Go ahead.

MS. FAST: Oh, please, please, go ahead.

MR. MUSSER: Go ahead, Carolyn, before I go.

MS. FAST: No. I'm so sorry. I didn't mean to cut you off. Go ahead, if you wanted to address that.

MR. MUSSER: So, I guess I wanted to say one quick thing. I see some comments coming in the chat that, well, they're asking two different things, but I actually think some of this might be related. One of the questions was, why does the Department use the word applicable before state laws, since aren't all state laws applicable? And other comments were asking questions around what were we doing with this language if it seems we are requiring states to authorize all of these programs? So, I just wanted to be clear that the intent behind the word applicable is that the state has actually decided to make the law applicable in its legal language to an institution or a group of institutions. So, for example, if a state says in its laws that have been passed by the state that the institutions in this reciprocity agreement are not subject to laws one, two and three, those laws, one, two, and three are not applicable to the institution, whereas they are

applicable to a number of other institutions. So, states still have the ability to outline in their laws which institutions are exempt from these requirements. What the Department is doing elsewhere is saying that the joining a reciprocity agreement and saying we're not going to enforce these laws that are on the books is not permitted. I just want to make that as a key point. So, the states have to make affirmative decisions about how they're going to participate in these agreements.

MR. WAGNER: Okay. Thanks, Dave.

MR. MARTIN: And going back to the issue of state surprising entities of their laws, I mean, I can see that yes, there is a legitimate concern of how schools would be apprised of which laws states deemed applicable. However, I would point out that's a state process, not a federal process. Through these regulations, we would be enabling states to enforce those applicable laws. The Department does not force those laws, the states do. So that would be a matter of state concern, how it telegraphed institutions with students in their state.

MR. WAGNER: Okay, I see Robyn's hand up.

MS. SMITH: Thanks. I wanted to just respond to Erika's question. I think the question isn't

whether states are enforcing their laws. Every single business that does any business in any state needs to research and find out which state laws they're applicable to. If they have to comply with licensing laws, then they need to comply with those laws. There may be other types of laws that are applicable. But schools already do this that have brick and mortar campuses. They have to figure out which laws they have to comply with, and then they comply with them. It would be the same for online institutions. If you're doing business anywhere in any state, you need to find out what laws you have to comply with that specifically apply to your business and comply with those laws. So I'm hoping that's answering your question.

MS. LINDEN: It doesn't because we're not just talking about brick-and-mortar institution. Before reciprocity became available for our school, a medical institution, I had \$100,000 in my budget to work through the process of getting approved in those states. And so, it's not a matter of we could do that, it's a matter of is that where the best place to spend \$100,000? And again, that's knowing that there were a bunch of states we didn't have to do anything in. And so, if we're talking about balancing, I think we just need to balance where that money's coming from. Where did Des

Moines University get the money to put in my budget so that I could pay a fee to the state of Wisconsin and go through a multi-month approval process in order to have some students do our master's degree in a mass Hospital administration program? Is that the best way for us to have spent \$8,000 in that state, and \$15,000 in this state, and \$12,000 in another state, and \$3,000 in another state? That's the balancing act. That money comes from tuition. It comes from our diverting funds away from things like student aid. So, I just want it to be really clear that this is not an institutional burden. in the sense of, oh, you know, so sad for me. I have to spend a lot of time doing paperwork. It has practical implications for what resources schools have to use for students and in their best interest.

MS. SMITH: Okay. And I'd like to respond. First of all, I think, you know, the Department is saying that schools that enroll a certain number of students can be- can get reciprocity and be exempted from having to go through every state's authorization process. So, I just want to be clear, I think that's what the Department is saying, that schools that fall under that threshold, which now is 500, that they would be exempt if they joined. They could join a state reciprocity agreement. And if they do so, they can rely on the

approvals of the home state. So, I think that's really important. And number two, I understand it's a burden to institutions, but it's also really important to remember we are talking about students and taxpayers. And we're not necessarily talking about public institutions or for-profits. We're talking about for-profit institutions that have a long history of being extremely risky investments to students, whether they're online or not online. That's the problem. And states, that want to protect their students should be able to do so and not hamstrung by an agreement that won't let them do that. And that's where we're at. So, I understand this is a burden on institutions, but lots of businesses manages to do business in multiple states. And brick and mortar institutions have done it for a very long time. So, there shouldn't be a reason that online institutions can't do the same thing.

MR. WAGNER: Hey, real quick. Just want to make a little announcement. We have two hands up. I see Barmak, and I see Rob Anderson back in for John Ware. I know public comment is coming at 3:30. So these will be the last two comments before the public comment. Doesn't mean there won't be comments because we'll pick up again tomorrow. But I just wanted to let everybody know that for now. So, Barmak, take it away.

MR. NASSIRIAN: Yes, it's more of an observation about Erika's comment. The reason your institution doesn't have physical presence in all 50 states, I assume, is that you have judged it uneconomical to lease buildings and go through the processes, including finding out what the applicable minimum wage in each state may be in order to set up shop in all of them. There is a kind of an undertone in this whole conversation. Just because the internet enables institutions to now hop around the entire country, that regulatory costs are just inherently unreasonable and unnecessary expenses. And I don't know where that assumption comes from, particularly given the history of what we know about the internet. Folks, it is easier to rip people off on the internet than it is to do so in person. Online students need more protection, not less protection. They need better regulations. Not weaker regulations. So somehow the assumption that the state may have specific authorization requirements that you may find uneconomical in some cases, that somehow that keeping an institution out of a state in which offering certain courses in compliance with state rules is uneconomical, is inherently unfair and unjust, and that is simply not true. Regulatory compliance is a reasonable component of the expense of running any kind

of an enterprise in a well-regulated state. And, you know, in some cases, it's worth spending \$8,000 and you will spend it. And in other cases, you shouldn't spend it. That's a judgment each institution can make for itself. And somehow the notion that if you didn't spend that \$8,000 bucks, all of that money would of course, inherently either reduce tuition or improve something else for students, is just not supported by any kind of a reasonable assessment of how operations work. So, look, state authorization is a requirement. Compliance is a requirement. And institutions should make their own judgments. Just because they can operate in an unregulated setting doesn't mean we should deregulate everything and have a free for all.

MR. WAGNER: Thank you, Barmak.

We're down to about three minutes. So, Rob.

MR. ANDERSON: Yeah, I'm still up.

Yeah.

MR. WAGNER: Okay, Rob, just didn't know if your hand went up or down. Go ahead, Rob.

MR. ANDERSON: Yeah, I'll make this quick. First of all, I feel like I make this observation every month, and it's just one of those differences in those philosophical shifts that would need to take place is, states can carry out and enforce their laws, but not

within a reciprocity agreement like this. If you don't want to abide by what the agreement is, you just kind of remove yourself and you don't choose to participate in this reciprocity agreement, maybe there's another one you do, since this isn't just focused on SARA. So, just to make that observation, but also within this context, something that I'm curious about is with all that's going on the DEI front, I think more states are going to get really involved in dictating maybe within their own education laws, what can and can't be taught, what is seen as stifling speech or going outside of bounds. What if you have one particular state that wants to enforce their laws about what they consider to be divisive concepts, and it's the exact opposite of the other hosting state in a student's class, and how do you enforce that? Or how would you see this playing out? Should that home state say no, that absolutely can't be taught, it falls outside of what we consider is allowable within our education specific law.

MR. WAGNER: Thanks, Rob. Scott, we have about less than a minute. Can you make your comment a minute or do you want to hold it for tomorrow?

MR. DOLAN: I'll hold it for tomorrow. Thank you.

MR. WAGNER: Okay. Thank you, Scott.

Appreciate it. Okay. We're just coming up on 3:30, which is the public comment. And Brady. Who do we have up first?

MR. ROBERTS: Alright, I'll admit our first speaker, who is Bob Carey, who's the director of the National Defense Committee, and he's in the room.

MR. WAGNER: Hi, Bob, welcome. Can you hear me?

MR. CAREY: I can, can you hear me?

MR. WAGNER: Yes. Welcome to public comment. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining and your three minutes begins when you start speaking.

MR. CAREY: Okay. Am I going to be- I'm waiting, though, to start up, right?

MR. WAGNER: You could whenever you're ready to start, you can go.

MR. CAREY: Oh, okay. Great. Great. Well, thank you very much for the opportunity to speak today. I appreciate joining your negotiated rulemaking committee. Got a couple things I need to talk about. One. Look, I'm a retired Navy Captain. National Defense Committee works on military and veteran legal and civil rights. And we think that one of the most important elements is the freedom to use earned educational

benefits as we see fit. You know, that's the thing about the GI Bill. It's not like a scholar. It's not like my ROTC scholarship when I was in ROTC. It's an earned educational benefit. I had to sign on for six more years in order to be able to get that. And to then have the Department and the Department of Veterans Affairs exercise what fundamentally looks like condescending paternalism towards us and say, you can use your educational benefits here. You cannot use your educational benefits here. And this is how you have to use your educational benefits, is just infantilizing the military and veteran students. Most specifically on this one, you're discussing now about online and virtual education. First, I'm deeply concerned that at the same time the Department negotiated rulemaking committee is discussing this, the Department of Veterans Affairs is doing the exact same thing, but in a different way. So, to the extent that the Department is talking about standardizing this, how is that not going to be unstandard or, I guess that's a word, nonstandard from what the Department of Veterans Affairs is doing? You're just introducing more confusion. The other element is as Ms. Morelli discussed and as others discussed as well, we seem to be penalizing the 95, 98% that abide for the two to five percent that are really as bad as you say they

are, and there's essentially a false claim on the part of these schools and on the part of the students, where's the qui tam lawsuit? Where's the False Claims Act lawsuit? Where's the prosecution? There was just an announcement today of RICO Act charges being brought against someone for Medicare fraud with the Veterans Health Administration.

MS. JEFFRIES: 30 seconds.

MR. CAREY: Thank you. Why aren't you doing the same thing here rather than going after the students and the schools that are doing the right thing? I went to the Naval War College in a virtual method. Looking at your regulation, I don't believe that my going to the Naval War College would have met the requirements that the Department is putting together. It sounds to me like you guys need to go back to the drawing board on this. Thank you very much.

MR. ROBERTS: Thank you, Bob. Brady, who we have up next?

MR. ROBERTS: Alright, I just submitted Mary Beth Bigley, who's here representing the National Organization of Nurse Practitioner Facilities or Faculties. Apologies. And I believe she is connected in the room.

MR. WAGNER: Hi, Mary Beth. Can you

hear us?

DR. BIGLEY: I can hear you.

MR. WAGNER: Okay. You'll have three minutes to speak. You'll be given notice when you have 30 seconds remaining, and your three minutes begins when you begin speaking. You have the floor.

DR. BIGLEY: Good afternoon. My name is Dr. Mary Beth Bigley and I am the CEO of the National Organization of Nurse Practitioner Faculties, NONPF. We represent over 95% of nurse practitioner programs. On behalf of NONPF, I am asking this committee to conduct a review of current standards set forth by accreditation bodies to ensure that full adoption of industry standards. Additionally, I request consideration for stronger language in CFR 602 to ensure that industry standards are adopted by nursing accreditation agencies. NONPF is devoted to promoting high-quality nurse practitioner education. A nurse practitioner is a registered nurse with advanced education as a licensed autonomous practitioner. A nurse practitioner diagnoses, prescribes, and manages acute and chronic conditions. In fact, a recent CMS study reported that 40% of Medicare patients are treated by nurse practitioners. NONPF convened a national task force to review and update a document titled Standards for Quality

Nurse Practitioner Education. This nationally esteemed expert task force was comprised of 19 national organizations. Last updated and endorsed by the task Force in 2022, these academic standards are to ensure that education preparations align with increasing complexity of our healthcare system. It is expected that nurse practitioner programs comply with these standards as part of accreditation and assure that we have a ready-practiced graduate. However, nursing education accreditation bodies have self-selected only a few of these industry standards. Most recently, the Commission for Collegiate Nursing Education, who accredits most of the nurse practitioner program, has made a decision for the first time to join this trend and not fully adopt this industry standard. NONPF holds the position by not adopting these industry standards. All nursing accreditation agencies are in violation of CFR 602, which specifically states standards must be sufficiently rigorous, recommends that widely recommended industry standards are met, and that programs maintain requirements that at least are conformed to accepted academic standards. The impact of inaction by this committee will result in some nurse practitioner programs not adopting these nationally endorsed quality standards, which may impact patient safety and worsen patient

outcomes. Therefore, NONPF asks the committee to conduct a review of nursing accreditation agencies to ensure they fully adopt standards

MS. JEFFRIES: 30 seconds.

DR. BIGLEY: -such as the standards for quality nurse Practitioner education and also to strengthen the language for CFR part 602 to ensure industry standards developed by the experts are adopted or the agency. Thank you for the opportunity to provide comment.

MR. WAGNER: Thank you, Dr. Bigley. Alright Brady, who do we have up next?

MR. ROBERTS: Alright, I just admitted Jeremy Bauer-Wolf, who's here representing New America. I believe he's in the room.

MR. WAGNER: Alright, Jeremy, can you hear us?

MR. BAUER-WOLF: I can.

MR. WAGNER: Alright, welcome. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining, and your three minutes begins when you begin speaking. You have the floor.

MR. BAUER-WOLF: Great. Thank you very much. My name is Jeremy Bauer-Wolf. I'm the investigations manager with New America's higher

education team. We focus our work on creating a higher education system that is accessible, affordable, equitable, and accountable for helping students lead fulfilling and economically secure lives. We're glad to see this committee working to improve higher education regulations. We urge you to continue moving toward rules that prevent poorly performing programs from wasting students' time and money. Over the past three weeks, one recurring theme from some negotiators has been to question what problems stronger accreditation regulations intend to solve. Unfortunately, there are many recent examples of institutional failures that have harmed students and cost taxpayers hundreds of millions of dollars, which could have been prevented by stricter accreditor oversight. Improved regulations and better accreditor management could have prevented or at least minimized failures at institutions like Ashford, Corinthian, and the University of Phoenix. And again, these are just a few of examples of many. We encourage the committee to preserve rules on minimum quality standards that accreditors can set, better oversight of substantive changes, and stricter requirements around teach out agreements. We also welcome stricter oversight of institutions that pose a greater risk of failure. Additionally, we urge the committee to maintain proposals

that would require more independent members of accrediting agency boards. This will help ensure agency boards are not oversaturated with industry representatives. In addition to stronger accreditation rules, we're glad to see improvements to cash management, return of Title IV funds, distance education, and state authorization. On cash management, we're concerned that focusing solely on refunding students for unspent cash value funds will create a loophole for meal vouchers, which could still represent a significant loss for students. So, we urge the Department to consider including the cash value of meal vouchers in this proposal, as well as cash equivalent funds. In the state authorization proposals, the requirement that an institution must obtain permission directly from any state where it enrolls over 500 students is an improvement. However, we urge the Department to consider whether a lower number of students may be appropriate. Initial analysis by our team suggests a lower threshold of 100 students would be more fitting and would still only capture a minority of students that enroll students in multiple states. Thank you to the committee for your time and your consideration.

MR. WAGNER: Thank you, Jeremy.

Alright, Brady, who do we have next?

MR. ROBERTS: Alright. I just admitted Betsy Talbot, who's here representing herself.

MR. WAGNER: Okay.

MS. TALBOT: Am I supposed to start talking?

MR. WAGNER: Betsy, can you hear?

MS. TALBOT: Yes, I can. I didn't know, sorry, I was clicking on the computer audio.

MR. WAGNER: That's okay. Welcome. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining, and your three minutes begins when you begin speaking. You have the floor. Take it away.

MS. TALBOT: Alright, so I'm supposed to start speaking?

MR. WAGNER: Yeah.

MS. TALBOT: Okay. Sorry. Thank you for your time today. My name is Betsy Talbot, and I've worked full-time as a state regulator for approximately nine years. Today, I'm speaking on behalf of my experiences and not on behalf of my employer. Within the triad, states are expected to be responsible for the legal and regulatory framework that maintains educational integrity and consumer protection for students. It's well recognized that each state has its own framework for

this work, but it has been my experience that the lens of this work is seen through politics of consumer protections. Politics directly impact the depth and breadth of protections afforded to students and the resources made available to regulators to facilitate this work. Politics, the threat of litigation, financial resources, and data sharing laws impact my ability as a regulator to speak forthrightly about my experiences and having the tools to detect many of the consumer protections discussed during this rulemaking process. It has not been my experience that states act intentionally and directly to safeguard Title IV financial aid or have any consistency in minimum consumer protections. The lack of consistency of consumer protections or state authorization application processes was the driver of the current state authorization reciprocity structure. Under this current structure, schools have benefited from increased access to new student enrollments, lower regulatory costs and fees, and fewer administrative barriers. Students have also benefited from increased access to schools of their choice, but that access has come at a cost of fewer resources being available and directed towards the oversight of colleges and the detection of nefarious activities. It has reduced the potential remedies for students due to those nefarious

activities, and it has created a shift of who's driving the conversation of consumer protections for distance education. The current structures of the National Reciprocity Agreement do not afford the same checks and balances as a public, legislative or rulemaking process, and has also dramatically changed the representation of who is a state actor and there is no voice for students and consumer protection allies. I encourage the Department to consider impacts on this rulemaking process. That one creates increased expectations of state authorization to perform safeguarding of Title IV aid on behalf of the Department, creates an incentive for states to reduce state authorization requirements and consumer protections, to be eligible for participation in a reciprocity agreement, or create any structure where states are expected to perform consumer protection functions when those financial resources necessary will not be the priority of that state. [30 seconds] Thank you for your time today, and I really appreciate the chance to speak.

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

MR. ROBERTS: Alright. Next, we are hearing from Alastair Adam, who is the co-CEO of Flatworld.

MR. ADAM: Okay. Can you hear me?

Okay.

MR. WAGNER: I can hear you.

Welcome. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining, and your three minutes will begin when you start speaking. So, take it away. You have the floor.

MR. ADAM: Great. Thank you. I'm going to take us back to February 5th and cash management and focus on one subtle but very important concession, which considerably but hopefully inadvertently strengthens the hand of bookstore monopolies. It relates to providing a way for students who are eligible for Title IV funds to obtain or purchase those materials by the seventh day of the payment period. Stepping back, monopolists don't have a good track record of doing right by consumers. Students included. Inclusive access deals grant bookstores effective monopolies on books and materials at each school. Preferential Title IV disbursement rules strengthen those monopolies. The consolidation of bookstore companies and online distributors is then accelerating anti-competitive behavior and the blocking of more affordable alternatives, and we see that every day. Mr. Martin was asked if an institution provides a student with the

option to opt in, have we met this requirement? And both Mr. Martin and Mr. Musser affirmed, yes, but allowing schools to grant the bookstore this preferential treatment for disbursement of funds is the only way for a student to receive their money in time to purchase books before the start of class is a nightmare for student affordability. To reiterate the importance of this concession, investors in bookstore stocks trumpeted this specific concession made during those negotiations as making Barnes and Noble exponentially more valuable. Many students simply can't afford to cover the out-of-pocket costs of their materials without these disbursements. And therefore, any student who finds materials more cheaply elsewhere faces an invidious choice; pay the inflated bookstore price now or wait for delayed disbursements after classes have started when institutions get around to releasing funds. In many cases, these inflated prices are tucked away, compounding in loans that the students will be paying off for decades to come. Luckily, there's a relatively simple drafting solution to this problem. Add the wording that funds must be provided by the seventh day for purchase from a supplier of the student's choosing. Bookstores tout the first day access provided by [inaudible] auto opt-in deals, as though it's the only solution for timely access

to materials. But in a digital world, it shouldn't. It doesn't need to require paying 30 to 40% bookstore markups as the price for students to get on-time access to their materials. The broader issue I want to address, though, beyond removing this particular loophole lies at the heart of all of these discussions, there's an inherent conflict of interest when a school makes more money, the more that students spend on textbooks and learning materials that schools rely on these funds is not in doubt. And if these incentives [30 seconds] weren't instrumental in tilting the table in favor of bookstores and driving up student spending, I'm certain the companies wouldn't pay them. That doesn't make them right. It certainly doesn't make them good for students. The simplest solution of all is to outlaw these volume-based rebates and revenue share deals altogether. Remove the conflict, level the playing field, align institutions with students in trying to reduce the cost of materials. They distort behavior, so eliminate the bookstore monopolies on Title IV fund distribution. Eliminate the financial linkage. Close this critical loophole. Thanks very much.

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

MR. ROBERTS: Alright. I just

admitted Brooke Elliot, who's here on behalf of the University of Illinois. And I believe Brooke is in the room.

MS. ELLIOT: I am, thank you.

MR. WAGNER: Welcome, Brooke. You'll have three minutes to speak. You'll be given notice when you have 30 seconds remaining and your three minutes begins when you start speaking. You have the floor. Take it away.

MS. ELLIOT: Thank you. My name is Brooke Elliot, and I'm the executive associate dean of academic programs in the College of Business at the University of Illinois. Our campus community has significant concerns about several of the proposed changes outlined. Specifically, the proposed changes concerning state authorization reciprocity would have far reaching negative consequences for distance education and the broader landscape of higher education. By removing the uniformity of oversight across member states, these changes threaten to disrupt the efficient functioning of educational institutions and compromise the quality of education provided to students. University of Illinois distance education programs currently serve over 8,000 learners across all 50 states and from around the world. Distance education provides a pivotal role in expanding

access to education for underserved and marginalized communities. Restricting the ability of institutions to offer these programs across state lines would severely limit educational opportunities, exacerbating existing disparities in access and attainment. One of the primary concerns with the proposed changes is the potential for increased administrative burden and regulatory complexity. Moreover, the proposed changes undermine the principles of collaboration and cooperation that underpin the reciprocity agreement framework. Thus, the Department risks fragmenting the higher education landscape and eroding the trust and cooperation among member states. We also have concerns regarding the proposed changes to the treatment of Title IV funds. While it is essential to ensure accountability and fiscal responsibility and the administration of Federal financial aid programs, the proposed modifications will inadvertently create barriers for students seeking to access higher education. We disagree that taking attendance and distance education programs would simplify application of the last day of attendance rule, which already holds online learners to higher engagement standards than those enrolled in our on-campus courses. Mandating our faculty to maintain additional attendance records for every student is not simplifying. Moreover,

it is unclear how attendance tracking would be achieved in asynchronous online courses. Moreover, equitable application of the Department's 14-day drop requirement poses challenges. For one, it is not uncommon for online students to stop out for two weeks and still successfully finish courses. Just as on-campus students may face unforeseen circumstances necessitating a temporary break from coursework, online students should not be penalized for facing similar challenges. In fact, many learners pursuing online education choose this modality precisely because of the flexibility that the modality provides. At the University of Illinois, our online program student populations are more diverse in background, race, ethnicity, and experiences because we've removed many of the traditional barriers of pursuing high quality education. This diversity [30 seconds] rich learning environment is one of the key markers of the quality educational experience in our programs. In essence, the proposed changes overlook the complexity of online education and fail to recognize the diverse needs and circumstances of learners that we are striving to serve. We strongly urge the Department to reconsider these proposed changes. Thank you.

MR. WAGNER: Thank you, Brooke.

Brady, who do we have up next?

MR. ROBERTS: Alright. I just admitted Robert Boyd, who's here on behalf of Independent Colleges and Universities of Florida. I believe Bob is in the room.

MR. BOYD: Yes. Thank you.

MR. WAGNER: Alright. Welcome, welcome.

MR. BOYD: Good afternoon, everybody. I would like to speak about the proposed rule on the state authorization exemption regarding accreditation status. Again, I'm Bob Boyd. I'm president and CEO of ICUF, the Independent Colleges and Universities of Florida. We're 31 institutions, 175,000 students, all nonprofit, all SACSCOC, regionally accredited, four-year chartered in Florida. So, what I wanted to say was this proposed rule does not help achieve your goal of protecting students. In fact, it does the opposite. We think it jeopardizes Title IV funding financial aid for the most vulnerable students in the ICUF sector. So, the rule on state authorization, eliminating the accreditation exception, that would be our position. And here's why. The ICUF schools are exempt from licensure in Florida from the CIE, which is the Commission for Independent Education. This is a for-profit higher ed board because of our SACSCOC regional accreditation and

because we are EAS-eligible, which is our access grant. This was done in a huge fight in the 80s over 40 years ago. It saved us fees and relieved us from burdensome, unnecessary regulation. But the most important thing to remember here is even though we're exempt from licensure, we still have to report to the state and to the public. Let me just give you an example. Fiscal plant safety, credit transfer ability, refund policies to prospective students, job placement services, professional licensure requirements. We have to follow requirements for advertising. We have to report crime statistics. And this is key. Student complaints reporting and procedures. Then on top of that, over the years we've got to do foreign gift reporting. We have to report on our bathroom policy. You can imagine the things we have to report in Florida. But we essentially give a fair consumer report to the state of Florida annually and we've got to do that every single year and update the data. So, our position is, there's no need to change the state authorization because it's completely separate from the state regulation in Florida protecting student consumers. And all this proposed language does is it forces us into the CIE. Our fees would go up over \$10,000 a year per institution. It would create new, duplicative regulations, for example, like site visits,

which SACs already does. And the CIE, in my conversations with them, have told me they don't have the staff-

MS. JEFFRIES: 30 seconds, Bob.

MR. BOYD: Okay, -nor the ability nor the desire to add all the students. Finally, I would say Florida may not pass this legislation. I don't think they would. That would jeopardize the Title IV funds for all of our active students. And so we would ask you not to change the state authorization language, which again, is separate from state regulatory action protecting students. We appreciate it. Thank you.

MR. WAGNER: Thanks, Bob. Appreciate your comment. Who do we have next, Brady?

MR. ROBERTS: Alright. I just admitted David Tretter, who's here on behalf of the Federation of Independent Illinois Colleges and Universities. And David's in the room.

MR. WAGNER: Can you hear me, Dave?

MR. TRETTER: I can.

MR. WAGNER: Alright. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining, and your three minutes begins when you start speaking. You have the floor.

MR. TRETTER: Great. Thank you for

the opportunity. Dave Tretter with the Federation of Independent Colleges, an advocacy organization here in Illinois, I represent 56 nonprofit colleges and universities throughout the state educating over 200,000 students annually, larger than our public universities here. Illinois nonprofits here are the leading producers of teachers, engineers, medical doctors, disease researchers here in Illinois. And we're proud of our over 150-year record of higher education. I appear today to express my grave concerns on behalf of the Illinois Nonprofit Colleges and Universities in relation to proposed changes on program integrity and institutional quality that would eliminate some current regulations that exempt institutions from in-state approval or licensure, in addition, some other proposals that we view as harmful. It's unclear, at least in the information I've been provided over the last couple of weeks what ailment we're trying to cure here. But I can tell you that you may have heard this from my colleagues across the country, will create what I think is legislative chaos in the States, not only in Illinois but many other states and seem to target, in my opinion, our finest and longest serving institutions in the country I think some of the best track record of good, high-quality higher education leading to jobs, etcetera, that I think we're

all interested in. Let me end with the provisions laid out. I think at a minimum there's some questions about Federal authority over the states here. And I think you're hearing it today; I suspect some pushback on what I would view as an overreach of Federal authority. And I sincerely hope that that is relooked at, reconsidered, and that efforts are made to reach out to the states, including Illinois, so that we can work with you to find a better solution. That's all I got. Thank you for the time today.

MR. WAGNER: Thank you for your comment, David. Appreciate it. Brady, who do we have next?

MR. ROBERTS: Alright. We are hearing from Hope Williams now, who's here representing the North Carolina Independent Colleges and Universities.

MS. WILLIAMS: Good afternoon.

MR. WAGNER: Hi. Can you hear me?

MS. WILLIAMS: Yes. Can you hear me?

MR. WAGNER: I can hear you.

Welcome. You have three minutes to speak. You'll be given notice when you have 30 seconds remaining and your three minutes begins when you start speaking. You have the floor.

MS. WILLIAMS: Alright, thank you.

Good afternoon. I am Hope Williams, President of North Carolina Independent Colleges and Universities, the statewide office of North Carolina's private higher education sector. And I'm here today to address the issue of state authorization in relation to eligibility for our students to receive Title IV funds. When the Higher Education Act was passed by Congress in 1965, North Carolina's 36 private liberal arts and research colleges and universities had long been authorized by the state. Many had been conferring undergraduate, graduate, and professional degrees for more than 100 years. This relationship with the state and the preexisting state authorization was why, when the North Carolina General Assembly consolidated public universities under one governing board in 1971, the legislature also exempted our private, nonprofit colleges and universities from licensure by the public system's then newly established Board of Governors. A state's process for authorization of colleges and universities, and a separate state licensure requirements or exemption from licensure granted by state law have been recognized since the inception of the Higher Education Act. Only in 2010 did the U.S. Department start questioning that state's authority. At that point, our office researched state statutes and other official state documents to prove the

state authorization of each of our colleges and universities. There is a sense of Deja vu today, although nothing has changed since those discussions in 2010, in terms of the authorization of our institutions by the state or the state remedies that students have for issues they cannot resolve at the institutional level. Regardless of the number of years colleges have operated in a state, or how the state recognizes the college by name or in another manner, in state law or in other state documents, it is deeply concerning that administrative regulation would be poised to try to discount, even supersede state law on state authorization passed by the state's elected officials. Such a change after almost 60 years would cause tremendous upheaval for thousands of students attending our independent colleges and universities and receiving Federal Financial Aid, aid which is absolutely critical to the ability of these students to attend and graduate from college. Almost half of North Carolina students attending our 36 independent colleges and universities received Pell Grants, a percentage that is higher than our [30 seconds] many other university systems. Each of these North Carolina Pell Grant recipients, under the auspices of the governor and the North Carolina General Assembly, also received state need-based financial aid. The fact that

the General Assembly provides the state support to students attending our colleges and universities is further confirmation of our state authorization. The final point I will make today is to ask you to reflect carefully about the mixed message you will be sending on state authorization if you implement what is being proposed. The Department would be telling states that recognizes a state's legal right and authority by virtue of the state's funding of two and four-year.

MR. WAGNER: Alright Brady, who do we have as our last scheduled speaker?

MR. ROBERTS: Our final speaker is Thomas Foley, who is here representing the Association of Independent Colleges and Universities of Pennsylvania. He is in the room. He just needs to come off mute. It looks like he can hear us, but someone needs to unmute him. I see someone working in the background.

MR. FOLEY: Can you hear us okay?

MR. ROBERTS: We can. I think what you might need to do is mute it. Because I think you're logged in under two devices if you just want to mute it on one of them. So otherwise, we'll get feedback. But we can hear you and see you.

MR. FOLEY: Alright. That's super. My name is Tom. Thank you. My name is Tom Foley, I'm

president of The Association of Independent Colleges.

MR. ROBERTS: Wait, you muted yourself.

MR. FOLEY: Nine independent nonprofit colleges, serving over 275,000 students. I'm here to speak against the Department's proposal to eliminate regs that exempt institutions from state approval or licensure requirements for in-state schools; 1) the institution is established by name as an educational institution, by a state, through a charter, statute, constitutional provision or other action; and 2) state law provides an exemption to institutions based on an institution's accreditation or based on the institution being in operation for at least 20 years. Most of the existing independent, nonprofit colleges and universities in Pennsylvania are authorized via a charter from the General Assembly of the Commonwealth. Twenty-three of these institutions were chartered before 1850, 29 more before 1900. All of these institutions have educated students and served their communities for over 100 years, and have persisted through a Great Depression, two World Wars, a Great Recession, and at least one worldwide epidemic. This proposed regulation suggests that these same institutions should not suddenly be viewed as neither legitimate nor trustworthy. This

proposal to ignore the authority of states to approve institutions of higher education through, "charter statute, constitutional provision or other action," is redundant with existing safeguards unnecessary for institutions with over 100 years of experience and very likely harmful to students in our state if implemented. All independent, nonprofit higher ed institutions in Pennsylvania have to demonstrate their effectiveness to regional accreditors on a regular basis. They're subject to periodic program reviews of their financial aid policies by the Office of Federal Financial Aid, and then must follow numerous consumer protection laws enacted by the Commonwealth of Pennsylvania and the Federal government. It is unclear to us what additional education or student protection goals the proposed regs by the Department identifies and meets. In 2012, legislation was passed in Pennsylvania that allowed these colleges to implement new degree courses or programs without direct approval from the Pennsylvania Department if the college or university had regional accreditation and the institution had been in operation for at least 10 years. The legislature acted because of a three to four-year backlog in the state's department's process for reviewing these applications. This backlog prevented colleges from quickly responding to community [30

seconds] needs for trained workers, especially in the areas of STEM, healthcare, and teaching. Unfortunately, that Pennsylvania Department continues to be both underfunded and understaffed. There's little likelihood that that situation would change absent accompanying Federal funding resources to enable it. Individual states are closest to the action. They understand the importance of quick pivots to satisfy educational [inaudible]-

MS. JEFFRIES: Your time is up.

MR. FOLEY: and they should retain the authority to utilize specific limited exemptions for higher ed authorization to meet the needs of employers and communities.

MR. WAGNER: Thank you for your comment.

MR. WAGNER: And with that, excuse me, that brings an end to the public comment portion of the day. And that also means that we're at the end of the day one, session three. It's completed. I want to thank everyone for their participation and their hard work and see everyone tomorrow.

Zoom Chat Transcript


Program Integrity and Institutional Quality- Session 3, Day 1, Afternoon, March 4, 2024

***Chat was copied as presented, as a result minor typos or grammatical errors may be present.**


From P - Robyn Smith, Legal Aid Orgs. to Everyone:

+1 to Barmak's concerns.

From P, DC, HBCUs, TCUs, MSIs to Everyone:

Reacted to "+1 to Barmak's conce..." with 

From A. Ashlynn Haycock-Lohmann (vets) to Everyone:

Reacted to "+1 to Barmak's conce..." with 


From Joe Weglarz NACUBO to Everyone:

+2 to Barmak's concerns, key word is cost.


From P - JoEllen Price, Financial Aid Administrators to Everyone:

Is there any way to develop an approval process for these programs similar to CTP using the Participation Agreement as a means for ensuring the program meets ED requirements?


From A - Magin Sanchez, Civil Rights/Consumer to Everyone:

Reacted to "+1 to Barmak's conce..." with 

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "Is there any way to ..." with 

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "+1 to Barmak's conce..." with 

From P, Jillian Klein, Proprietary Institutions to Everyone:

Are we going to talk about the virtual location language or no?

From P-Jamie Studley, Institutional Accreditors to Everyone:

same question as Jillian

From Dave Musser, ED FSA to Everyone:

Let's return to that when Greg is finished

From P, Jillian Klein, Proprietary Institutions to Everyone:

Reacted to "Let's return to that..." with 👍

From A, Emmett Blaney, Students/Borrowers to Everyone:

Reacted to "+1 to Barmak's conce..." with 👍

From P-Jamie Studley, Institutional Accreditors to Everyone:

thanks. It was a quick transition, didn't hit the buzzer fast enough

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "Let's return to that..." with 👍

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Why are we jumping ahead to State Authorization? The agenda distributed on Friday night indicates next topic.

From P, Jillian Klein, Proprietary Institutions to Everyone:

David Cohen is coming to the table for a comment

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

the rationale provided here about concerns regarding third-party providers and closure provides more context than what was included in January sessions.

From P - Robyn Smith, Legal Aid Orgs. to Everyone:

They did talk about this in January, as I commented on that.

From P - Robyn Smith, Legal Aid Orgs. to Everyone:

Rationale re closed school/discharge issues, sorry wasn't clear.

From Cindy Jeffries - FMCS Facilitator to Everyone:

Replying to "Why are we jumping a..."

Erika, State Authorization is next as we will have time this afternoon to start it. The TRIO subcommittee is not able to attend today for their report out so they will remain in their slotted

time for tomorrow am and then we will return to statue authorization.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

understood. didn't see the direct relation to third party providers at the time

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

thanks for the follow up Dave!

From P-Jamie Studley, Institutional Accreditors to Everyone:

The word "location" may be misleading here, wonder if there is some way to indicate that the use of the term doesn't trigger other references/reqts re location. "Unit"?

From A. Ashlynn Haycock-Lohmann (vets) to Everyone:

I should have been added to the caucus room and was not?

From P-Jamie Studley, Institutional Accreditors to Everyone:

Following on the virtual location discussion with Dave, for ED consideration later: My understanding is that closed school discharges only if the entire location closes, not a program, 34 CFR 685.214, so the question is: would a university with online programs in different schools of study, e.g., an MBA and a masters in nursing online, do both go into the same "virtual location"? - and if so, and the MBA fails/closes, how would ED use CSD? Or, will an IHE be forced to have a virtual location for each online program?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

thank you!

From P. Jo Blondin, Community Colleges to Everyone:

I haven't had time to look at the proposals, but I am curious about the date of exemption being set at 1965. A lot of community colleges were chartered after that date.

From P-Jamie Studley, Institutional Accreditors to Everyone:

are we going to go section by section at some point, or is all of it on the table at once?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

would be helpful to pull up the language

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

thanks!


From P- John Ware, State Regulator to Everyone:

Rob Anderson is coming in for states to make some comments

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

agreed on the written rationale. as this provided more context for how we got to proposed redlines from January until now. something that I raised in February and as part of data request

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "agreed on the writ..." with 

From P-Jamie Studley, Institutional Accreditors to Everyone:

is the word applicable even needed --wouldn't a state only pursue a law if it believes a law is applicable?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

it's an incredibly fair question

From P - JoEllen Price, Financial Aid Administrators to Everyone:

What happens on July 1, 2030? How many schools are impacted and will there be a backlog of renewals causing delays in 2030?


From P, Jillian Klein, Proprietary Institutions to Everyone:

I don't believe I said "what is the big deal?" I asked how this language makes a difference when the rest of the language indicates that all schools (even those operating under reciprocity agreements) would be subject to all state oversight rules.


From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "What happens on July..." with 

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "I don't believe I sa..." with 

From P, Laura Rasar King, Specialized Accreditors to Everyone:

Reacted to "I don't believe I sa..." with 

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

couldn't states do this by opting out of reciprocity?

From P- John Ware, State Regulator to Everyone:

Rob Anderson is going to come in for States

From P, Jillian Klein, Proprietary Institutions to Everyone:

I think to your question Erika, schools would need to individually monitor state laws in all states on an ongoing basis.

From (A) Dom Chase - Business Officers to Everyone:

Requiring institutions to conform with all of a State's laws – other than initial approval and application processes – based on the location of students rather than any other institutional presence or activity, fundamentally undercuts the purpose of a reciprocity system.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "Requiring institutio..." with 👍

From P-Jamie Studley, Institutional Accreditors to Everyone:

Dave's answer did help me to understand why the word 'applicable' is there -- because a state can by law decide that certain laws will or will not be applicable to schools within reciprocity.

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Reacted to "Requiring institutio..." with 👍

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Scott Dolan

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

And Barmak - I'm a compliance officer - I'm all about regulations and following rules. But I will also argue whether rules are reasonable.

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "And Barmak - I'm a..." with 👍

From P, Jillian Klein, Proprietary Institutions to Everyone:

I am not sure if Rob directed that DEI example question at ED, but I would like to hear an answer to how they envision schools would handle (tomorrow is fine).

From P, Jason Lorgan, Public 4-years to Everyone:

Reacted to "I am not sure if Rob..." with 👍

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "I am not sure if Rob..." with 👍

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "I am not sure if R..." with 👍

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "I am not sure if Rob..." with 👍

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

thanks all