DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 2, DAY 3, AFTERNOON

February 16, 2022

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

PROCEEDINGS

MS. JEFFRIES: Good afternoon and welcome back, everyone from the lunch break. I'm Commissioner Cindy Jeffries, I will facilitate the discussions this afternoon. And with that, we will move directly into the financial responsibility, issue paper number four. Greg, do you want to walk us through that?

MR. MARTIN: Of course, we'll just go through as we recall from our discussions in January, the Department has removed and reserved 668.15 and moved the relevant parts of it into the financial responsibility. Excuse me, the rules under subpart L. So let's go and pass all that. And [inaudible] those strikes, and we take it over to on page eight, we see we'll start with compliance audits and financial statements at the bottom of that page. So let's start there. It's 668.23. I'll wait for Vanessa to get there. There we go. Fantastic. Okay, so we're going to begin at 668.23, compliance audits and audited financial statements and pointing out here that you see under (a)(4), that in response to questions from negotiators about timing, we have revised, we have revised the language to clarify that audit reports must be submitted by the earlier of six months after the end of the institution's fiscal year, or 30 days after the later of the reports on compliance audits and audited financial statements. So you see that reflected there in the language in 4 and submission deadline, except as provided by the Single Audit Act, an institution must submit annually to the Secretary, its compliance audit and its audited financial statements by the date that is, the earlier of six months after the last date of the institution's fiscal year, or 30 days after the date. The date of the later auditor’s report with respect to the compliance audit and audited financial statements. So just want to make that clear and we'll move down, discuss all of these as one section because it's not very big. So let's move down to audited financial statements in (d). See here in subparagraph one, we have added a sentence requiring disclosure of audited financial statements to attest that there are no related party transactions. If that is the case, this will provide more clarity and greater assurance to the Department that the statements were comprehensive. We also propose additional edits to address challenges the Department may have in obtaining adequate and comparable information about institutions that are owned by foreign entities or individuals. This change requires the submission of the date of the organization, certificate of good standing and author and authorizing statute for the entity status, as well as other information the Secretary may require translated into English. So you could see the reference to third party related party transactions, rather at the bottom of a (d)(1) there. So just to where it says if there are no related party transactions, then a footnote must be added to disclose this fact. And then the other point you see in 2, romanette 2, for domestic, for domestic or foreign institution that is owned directly or indirectly by any foreign entity or individual holding at least 50 percent voting or equity interest in the institution, the institution must provide documentation of the entity status under the law of the jurisdiction under which the entity is organized to include, at a minimum, the date of organization, a current certificate of good standing and a copy of the authorizing statute for such entity status. Secretary may also require the submission of additional documents related to the entity's status under the foreign jurisdiction as needed to assess the entity's financial status. Documents must be translated into English, so that is everything for 23. We’ll open it up for discussion on those.

MS. JEFFRIES: Okay, I need to make a couple of notes here. David Socolow is at the table for the state higher ed executive officer officers and agencies and Adam Welle is back in for state attorneys general. So with that, Jamie, you have you have the floor. You're on mute.

MS. STUDLEY: I apologize, that's a holdover.

MS. JEFFRIES: Oh, okay. Emmanual, I see a note that you have a question taking us back to gainful employment, is it possible that you could submit that for the Department so that we can move forward with this rather than reopening discussion on gainful employment?

MR. GUILLORY: Sure. I think I moreso had a comment because I felt like we weren't completely done with that before lunch, but I can always share it later.

MS. JEFFRIES: I'd appreciate it so that we can try to get as much of this coverage so the negotiators can get their perspectives out to the Department on the issues, but just feel free to send it to me and I will send it immediately to the Department, okay? Thank you for that. Other discussion on 668.23 in financial responsibilities. Okay, I'm not seeing any hands. Greg, do you want a temperature check on these changes?

MR. MARTIN: Oh, sure.

MS. JEFFRIES: Okay. If I could please see your show of thumbs, that'd be great. Beverly, I can't see yours. There you are. Alright, I'm not seeing any thumbs down.

MR. MARTIN: Okay, given that, we'll move into a discussion of moving into subpart L and we're moving into section 668.171 General. And it's up there on the screen, thank you, Vanessa. And so we’re moving down to (b)(3). I want to point out here that we there were some comments about in (b)(3), where the institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with Title IV HEA program requirements in this institution is not deemed able to meet its financial or administrative obligations if and one of those was, it fails to make in, I should say, in romanette 3, it fails to make a payment in accordance with an existing, undisputed financial obligation. So there were some questions about that we want to address here just to say we believe this event already includes failure to pay state payroll taxes, as that was brought up at the previous session, and we appreciate the partnership of our state regulators. However, we do not think, we should imply the provision might be narrower than it is by mentioning only one such example in the regulation. I just wanted to point that out and also in romanette 4 we've slightly tweaked the language here to further clarify our meaning. But don't consider this to be a substantive change, so take a look at what we did in (iv), just itfails to satisfy payroll obligations in accordance with its published payroll schedule and moving over to (4), there's no change there, and we did have a suggestion to include past ownership as an as an executive or officer of an institution whose closure resulted in the school in the closed school discharge of at least 10 percent. While we appreciate the suggestion, we note that the outstanding liabilities already covered in the regulations if closed school liabilities have been repaid. However, we are not persuaded that the circumstance applies under financial responsibility. So it's a very short section there, (b), but in the interests of trying to go by paragraph and stick with that, I will open it up for discussion for that and then take a temperature check.

MS. JEFFRIES: Okay. Brad, go ahead, please.

MR. ADAMS: Just really quick and I mentioned this week one, but just for the record, I strongly encourage the Department to relook at the composite score. It is set up to encourage institutions to do financially dumb things that are hurting students and costing more in tuition. So to have financial responsibility with no composite score review is unfortunate, and we really need to take a look at that very soon. Thank you.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you, Brad. Other comments from the negotiators? Okay, I want to note that Kelli Perry is back at the table. Welcome back, Kelli. Barmak.

MR. NASSIRIAN: Yeah. My only comment is that in enumerating specific markers of failure, that you know, one could conjure up all kinds of other equally as troubling things, right? I mean, an institution would not be financially responsible if it were to take on massive debt that it doesn't have adequate resources to take on. I understand the construct, but it just worries me that you're enumerating a subset of specifics without being particularly comprehensive or setting up a broad, universal rule of which these would be illustrations.

MR. MARTIN: Thank you. If you have other suggested text, Barmak, you're welcome to submit it.

MS. JEFFRIES: Thanks, Barmak. Anyone else? Before we do the temperature check on 668.171(b)? Okay. Seeing none. Can we go ahead and see your thumbs on that 668.171(b)? My screen switched there. I'm not seeing Kelli. Okay, I'm not seeing any thumbs down. Oh, Johnson, you have your hand up.

MR. TYLER: Yeah, I'm sorry, I'm joining late, I just got off of an airplane, I apologize for [inaudible]. So I was, you know, I one concern I've have had and this has to do with transcript withholding is I've essentially seen this as a tool to keep people enrolled in schools, which I think obviously the schools need seats filled. But I had suggested earlier in our submissions that that be a sign of a lack of financial responsibility when that is being done to keep students at school. So I just wanted to, you know, bring that issue up again. I think it occurs here. The Consumer Protection Bureau criticized ITT in a suit for keeping students at the school by, you know, using their inability to move elsewhere with transcript withholding on relatively small debts. So I suggested that earlier on, and I just want to note that for the record here.

MS. JEFFRIES: Okay, thank you for that Johnson and please drive safely from the airport. So since Johnson joined and didn't have a chance to weigh in on the temperature check, let's rerun that one more time. And that's on 668.171(b) only. Okay, so we have one thumbs down. And Johnson, just confirm if that was for the reasons you just stated.

MR. TYLER: Yeah, absolutely.

MS. JEFFRIES: Okay. Alright, great. Then we can go ahead and move on. Appreciate it. So Greg, you want to take us into paragraph C?

MR. MARTIN: Sure. Let's- there we are, paragraph C, so we're moving into the mandatory triggering events. And just to set this up, an institution is not able to meet its financial or administrative obligations under paragraph B3 romanette 5 of this section if, and these are mandatory triggers and a couple of things to discuss here in response to concerns from negotiators about the administrative burden associated with the trigger here first, after looking under romanette (i)(A). After the end of the fiscal year in which the Secretary has most recently calculated the institution's composite score, if the institution's composite score was less than 1.5 or anything described this subsection, the institution is required to pay a debt and we're not going to read through all of that, but in response to concerns about the events from negotiators about the administrative burden associated with this trigger, we have narrowed it only to institutions with a failing or zone composite score or institutions that see an outcome of one of the events in subparagraph B related to state, federal or certain qui tam lawsuits. Also and then we'll move down to (B), if the institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 668.23 or in the year following a change in ownership, the entity following a change in ownership, the entity whose financial statements were submitted to meet the requirements in 600.20 (g) or (h) is sued for financial relief or in an action brought on or after July 1, 2023 by a federal estate authority through a qui tam lawsuit, or in which the federal government has intervened and the suit has been pending for 120 days. So here we are, further clarifying the language to reflect it includes the institution or any owner whose financial statements were relied upon to meet the financial responsibility requirements, including for a change of ownership. And we added a comma there, where at the bottom where it says or through the qui Tam lawsuit with the federal government has intervened, (comma) and the suit has been pending for 120 days, so just want to just want to point that out. And then moving down to romanette 2, withdraw of owners' equity, we have slightly tweaked the wording in this section, the leading the words from the institution which are unnecessary and adding general partnership to clarify the application of the exception. We also clarified this refers to the institution or its owner. So there you can see that reflected withdrawal of owner's equity for proprietary institution whose component, whose composite score rather, is less than 1.5. There is a withdrawal of owner's equity by any means, including by declaring a dividend, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated or the equivalent of wages and a sole proprietorship or general proprietorship or a required dividend or return of capital. And then we're going to move down to changes with respect to gainful employment, so that's romanette 3. We have proposed a new trigger that requires institutions to post a letter of credit if they have a failing GE program with Title IV volume or, I should say, failing programs with Title IV volume that totals at least 10 percent of the total Title IV volume since the failure of those programs and the subsequent loss of Title IV eligibility to the program could lead to a significant financial loss for the college. And next move down to (iv), which is teach-out plans. At the suggestion of negotiators, we have added an additional condition or we've added additional conditions in which the accreditors are required to obtain the teach-out plan in the regulations. We believe these are major events that warrant financial protection to students, so you can see that reflected in (iv) of the institution, romanette 4, the institution is required to submit teach out plan and/or agreement for a reason described in 34 CFR 602.24(c)(1) and (c)(2) romanette 2 through 5 if that if that covers the closing of the institution or any branches of the institution. And going to look at (v) romanette 5 state actions. The institution decided by a state licensing or authorizing agency for failing to meet state requirement to meet a state agency requirements, and the agency provides notice of a withdrawal or terminate the institution's licensure or authorization if the institution does not take steps necessary to comply with that requirement. And I will, I don't want to take I'm not going to take a temperature check here, but I want to stop here because we've gone over quite a few of these and I want to give people an opportunity to comment while they're still fresh in folk's minds. And then then we can move on to the remainder of the mandatory triggers.

MS. JEFFRIES: Okay, with that, we open it up for discussion. I believe we're on paragraph A of, well, A under paragraph C of the document up to, did you end at-

MR. MARTIN: I ended at romanette 5.

MS. JEFFRIES: Yeah, that's what I thought.

MR. MARTIN: State actions, so we'll take it through there and then we'll continue with it, but I just want to give people an opportunity to.

MS. JEFFRIES: Sure. No, I think that makes sense and there is actually some requests to break it down a little bit more like this for discussion. So I appreciate that. Dave, you are up first.

MR. MCCLINTOCK: Yeah, I have some just logistic kind of clarification questions as an auditor, how this would work. Greg, I can share those now if you want or wait until the negotiators share their questions. Either way works for me.

MR. MARTIN: You may bring those up and also please put them in the comments. I mean, put them in the chat.

MR. MCCLINTOCK: Okay. Yeah, so under romanette (i) about the recalculation of the composite score, just as an auditor, raise this questions. So I don't know, the composite score gets calculated based on audited financial statements that get submitted to the Department. So would a recalculation also require a new audit in order to be submitted or how would that function?

MR. MARTIN: I will take that back to our accounting people, David, so.

MR. MCCLINTOCK: Okay.

MR. MARTIN: If you put that in that, put that in the remarks and I'll make sure I get a response to that. I just want to make sure we run it by people who have been appropriately trained. [Interposing]

MR. FINLEY: I want to try and answer that one for Mr. McClintock. It does not trigger a new audited financial statement. It would be a calculation where that adjustment was applied to the prior most recently completed audited financial statement, is my understanding.

MR. MCCLINTOCK: Okay, and then if it's getting applied to that financial statement, we'll need clarification about how that would flow through everything, so are you just adjusting equity or the unrestricted net assets?

MR. FINLEY: See, when you go more than one question deep, then I have to take it back.

MR. MCCLINTOCK: I'll put it the chat. So obviously, the composite score incorporates the entire activity of a school for the year ending on that date. So a single event after, it's just saying to recalculate? Doesn't really provide instructions for how that would be done. And then the other, just clarification question I think that I have for now is further down under section B about the institution to recalculate composite score or in the year following a change in ownership and in particular for the year following a change in ownership. And the change of ownership the financial responsibility is measured based on the opening balance sheet ratios, and so the entity would not have a composite score to recalculate. So there will just need to be some clarifications so I can put both of those in the chat.

MS. JEFFRIES: Greg.

MR. MARTIN: Thank you. Thank you.

MS. JEFFRIES: Thank you. Alright, thanks, Dave. Just a couple of changes at the table. Samantha Veeder is back at the table for financial aid and Yael Shavit is now in for state attorneys general. And with that, Yael, you are up next.

MS. SHAVIT: Thank you. Apologies. I'm going to ask you to walk me through something slowly. Can you walk me through the significance of the change to the romanette (i)(B)?

MR. MARTIN: Which one? I, I-

MS. SHAVIT: It's the submission of financial statements with respect to the use of filing of a state enforcement action as a triggering event.

MR. MARTIN: Let's see if I can. You're talking about the institution or any entity whose financial statements were submitted that-

MS. SHAVIT: Yes.

MR. MARTIN: Okay. Alright. So you're talking about here where we have added clarified language to reflect it's the institutional owner whose financial statements were relied upon to meet the financial responsibility requirements, including the change in ownership. So just to review the institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 668.23 or in the year following a change in ownership, the entity whose financial statements were submitted to meet the requirements is being sued for financial relief in an action brought on or after July 21, 2023 by a federal state agency or authority, rather or through a qui tam lawsuit. This just does as a specific I mean, this would be to account for there is an action on the part of any state or federal authority or where there's a qui tam lawsuit that it would it would be a mandatory triggering event.

MS. SHAVIT: Sorry, you just the language that you added, I thought I'd heard you say that it was intended to be limiting language to address concerns about administrative burden, and so I was wondering how that actually functions.

MR. MARTIN: For this one here. I don't know if this was, I don't believe this was a burden issue. This was just to clarify that to reflect that it includes the institution or the owner whose financial statement was relied upon.

MS. SHAVIT: Understood. That's helpful.

MR. MARTIN: That's all we're doing here.

MS. SHAVIT: Thank you. No, no. I appreciate it. Thank you.

MS. JEFFRIES: Kelli, you are up next.

MS. PERRY: Thank you. Greg, I was hoping you could help me understand (i)(A). I just I've read it like six times and I'm really struggling. So I think what I'm reading is that for institutions whose composite scores were less than 1.5 and they're required to pay a debt as it relates to B or C. It's then recalculated and it's less than one, then it's a mandatory trigger?

MR. MARTIN: So [inaudible] after the end of the fiscal year for which the Secretary has most recently calculated an institution's composite score, if the institution's composite score was less than 1.5 or the institution described in subparagraph B or C of this section is required to pay any debt or incurs any liability from a settlement or final judgment determination arising from an administrative proceeding as described and as a result of the debts, liabilities or losses that have stemmed from these actions or events. The institution’s recalculated composite scores less than 1.0 as determined by the Secretary. So this would be if the way I, and Steve can step in here, if the if the institution's score was less than 1.5 and these proceedings, would as a result of these debts, they would go below it would go to less than 1.0., it triggers the event, but I'll let Steve comment on that.

MR. FINLEY: And that's my understanding, too, Kelli.

MS. PERRY: So, so it's only for institutions that already have, that are in the zone or family that would then push them below a one. That would be the trigger.

MR. FINLEY: Right.

MR. MARTIN: Correct.

MS. JEFFRIES: Steve, I noticed you had your hand up before Greg.

MR. FINLEY: I'm going to take- I just wanted to get in line. You know, I don't want to disrupt anyone ahead of me.

MS. JEFFRIES: Okay, great. Thank you. Brad, you're up next. There you are.

MR. ADAMS: I just am baffled here as the accountant on this committee, how this is going to work, it's similar to Dave's question, but I mean, at the end of the day, how are you going to go back in time and run something through your P&L to calculate the equity reserve and throw something on your balance sheet that occurred after the fact? You're not going to submit a new financial statement in the easy audit. I just think the Department throughout this thing is setting themselves up for a train wreck on submitting these items as they occur. And then who's responsible for calculating this? You're going to have CFOs certify, you know, the Department isn't going to have all the information of the new financial statements in the easy audit until the next year's audit is done. So I just I think administratively this is not going to work. And so but I did want to comment on 1A, I appreciate the language that was incorporated. I still think and throughout this document, I still think there's a materiality threshold. I'll submit that in the chat. But I think using a threshold that we've used throughout at around 5 percent of Title IV is a good mark to insert, probably in all of these comments. So I'll stop there and get back in line and come back with my B comment. But you're setting yourselves up for an interesting process in the Department over the next few years. Thanks.

MS. JEFFRIES: Thank you, Brad, for that. Barmak.

MR. NASSIRIAN: Yeah, I just put in the chat to question about C1 romanette 1A, Kelli's, the topic of Kelli's interest. I don't understand why this should be limited only to those institutions that happen to be in the zone. The institution could have a spectacular composite score if it drops below 1.0. That sounds to me like that's trouble. So that's one. The second question I had has to do with romanette 2, withdrawal of owner's equity. If I understand the cap A and cap B provisions, they work in tandem with each other and it sounds like if you allow the payment of equivalent to wages or required dividends or returns of capital to exempt the institution from the provision of A that you would allow those payments to drop an institution below 1.0. Am I correct? Just because you know, setting up required dividends is not that hard, right? You just draft the contract on the front end and then don't worry about your composite score because you can drop below 1.0 and it was required payments. So,you're off the hook.

MS. JEFFRIES: Okay. Thank you, Barmak, and thank you for putting this in the chat. Steve, you are up next.

MR. FINLEY: Okay, thank you. I was just going to I had gotten some additional information that responded to the question that Mr. McClintock was raising, which is part of the proposals in this package will result in a composite score being calculated based on the new owner when there's a change of ownership so that score would be recalculated under these provisions. And I understand the comments have already been made about the difficulty of taking a subsequent event and using it to recalculate a score, but mechanically, that's how this would fit together.

MS. JEFFRIES: Thanks, Steve. Go ahead, Dave.

MR. MCCLINTOCK: Well, I'll put it the chat, I think it's a little bit different. I would need to know the logistics for how do you recalculate if the school operated and submitted a year's worth of financial statements to recalculate the composite score. Schools that undergo a change of ownership might be a new company right that bought a school, so they don't they don't have a composite score necessarily from the prior year. The Department does say, okay, on the date of ownership you have to submit a first day balance sheet and there's two with the asset test and the tangible net worth test to determine the financial strength of that institution at that point in time, but there is not a composite score to recalculate, so I'll put it in the chat. That's the question for that.

MS. JEFFRIES: Thanks, Dave. Carolyn.

MS. FAST: I am- share Barmak's question about restricting romanette 1A to institutions with a composite score of less than 1.5. It seems to me that that that limitation doesn't make sense because we're talking about schools that because of this change would have a score of less than one. So to me, it seems like excluding schools, it started off in a good position and ended up in a failing position doesn't make sense if the goal of the regulation is to identify schools that are not financially viable, that the outcome is important, not where they started. I would strongly suggest that be changed to get rid of the 1.5 requirement.

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

MS. JEFFRIES: Thank you, Carolyn. Brad.

MR. ADAMS: Yes, I submitted in this and my previous comments, but and I guess what was B under romanette 1 on the entities that have a lawsuit filed? You know, I again. I think it should be struck. I have a significant problem with every time a lawsuit is filed that potentially being a mandatory trigger when the event and the judgment has not occurred yet and whether or not it is even material is not even defined in this section. So you're saying that if an institution gets sued for one hundred dollars and they have a composite score of less than 1.5, that that could be a mandatory trigger requiring a letter of credit? Is that what I'm reading here?

MR. MARTIN: Well, I would point out that in that section that we talked about a, and let me just find that again, us, student for financial relief bought on or after July 1, 2023 by a federal or state authority, which is generally concerning. We're not talking about, you know, garden-variety students for $100 here. We're talking about a federal, state authority bringing a suit against an institution or a qui tam lawsuit, the nature of which is also concerning to us because of how broad a qui tam lawsuit is. So I don't think that we are looking at it in terms of every small claims suit or something somebody might make. But I'll ask Steve to elaborate on that since he's here, he's our attorney.

MR. ADAMS: I'll just add to that question then I guess. As written, not Greg's opinion, as written, if you're sued, regardless of the amount that you're sued for, it's a mandatory triggering event.

MR. MARTIN: It's again, I say it's not Greg's opinion, it's how it's written. I mean, so it's by a federal state authority or through a qui tam lawsuit. So I think there are there are qualifiers there around that. It doesn't say by, it doesn't say in this instance any lawsuit. I suppose it would be possible for a federal or state authorities to sue an institution over something very minor. I don't think that would be the norm or that federal or state or any state AGs would or authorities would use their resources for something insignificant and minor. Though I don't want to speak for those entities, but I since this is a legal matter, I'll turn it over to Steve.

MR. FINLEY: I think we've got other people at the table that can speak to that.

MR. MARTIN: Okay, well, then we can let them let them speak as well, but I don't really have much else to say on that on that topic.

MR. ADAMS: But my recommendation is to just add a materiality threshold. So I'll add that to the chat.

MS. JEFFRIES: Thank you, Brad, Greg, and Steve. Yael, you are next.

MS. SHAVIT: Yeah, I, Greg, share your skepticism, I am not aware of a hundred-dollar lawsuit brought by a state AG's office or federal enforcement body. And more than that, I will note that the injunctive terms that go along with the types of lawsuits that we bring against for-profit schools have significant financial significance to those institutions as well. But it's just not, I mean, it's not based in reality, right? When you look at the history of state AG actions against proprietary schools, what you end up seeing are lawsuits that will drag out for a long time, despite the fact that the financial risk is present from the moment of the lawsuit and what typically happens is that after we are ultimately successful, the school will declare bankruptcy like the next day, right? And it's just not realistic to prevent the harms associated with those financial obligations to wait until the moment that there's a judgment in those lawsuits. It's just also not consistent with the care with which state enforcement bodies and federal enforcement authorities enter these types of lawsuits, right? I think that the moment that the actions are filed is the moment when the risk becomes evident and it's completely appropriate at that moment to look into the required institution to take actions to ensure its financial its financial obligations.

MS. JEFFRIES: Okay. Thank you, Yael. Kelli, you're next.

MS. PERRY: Thank you. Under the debt liabilities and losses, if we're making the assumption that B and C by themselves are mandatory triggers, I'm not sure why we need A. Because it's basically saying that liabilities that come from B and C. And if B and C are already a trigger, why do the debt and liabilities have anything to do with it? Another way to look at it in response to Brad's question about materiality is you could look at A as the materiality threshold for B because you're saying if you're going to recalculate the score and it's less than 1.0, that's the trigger. But then B alone can't be a mandatory trigger itself. I just feel like we're kind of in a circular reference here.

MR. MARTIN: I do want to point out that in A we have, if the institution's composite score is less than 1.5 described in this section is required to pay any debt, or incurs any liability from a settlement. So this is all-inclusive of any of any liability or settlement, whereas so that has to have been incurred. Whereas in in B, for instance, where we were just discussing, it is the trigger, as has been sued by or had an action brought by the federal state authority or qui tam lawsuit.

MS. PERRY: But I thought you said before that the debt and liabilities in A had, you narrowed it to be only from B and C? So B is already a trigger. Why do we need A?

MR. MARTIN: Well, again, it's because as the result of the debts or liabilities that have that have stemmed from these actions, so I view I view A as being a, speaking to the liabilities debts that have been that have resulted from a result of these actions. Whereas in B, the action itself is, is a trigger. Well, I don't know if, Steve, do you want to elaborate on that or?

MR. FINLEY: Yeah. I think Kelli's suggestion is that this is circular, and I think we need to take a look at it.

MR. MARTIN: Yeah, we'll certainly go back and take, Kelli, if you'd like to make, you know, put that in writing, that would be helpful for us to take a look at.

MS. JEFFRIES: Thank you, Kelli. Brad, you’re next.

MR. ADAMS: You know, I'd just like to point out in response to Yael's comment that, you know that every year in our audit, we have to do legal letters and we actually assess the likelihood and materiality of all lawsuits and book those as accruals on our balance sheet. And those are a part of our composite score every single year in our audits. And it's not like states have never lost a lawsuit before. So let's remember that. On gainful employment, you know. Wow, this was added. Where is the 10 percent coming from? And just a simple answer, Greg, is 10 percent, that's the first time I've actually seen a number in financial responsibility. What would a school normally do if they lost 10 percent of their revenues?

MR. MARTIN: I'm not sure I understand the question, Brad. What would a school do-?

MR. ADAMS: I was just asking where the 10 percent number came from.

MR. MARTIN: Oh, where the the-

MR. ADAMS: On romanette 3B.

MR. MARTIN: Let me just look at that again.

MR. ADAMS: Yeah, if that's the materiality threshold we want to use, then let's use it throughout this document.

MR. MARTIN: Yeah. Well.

MR. ADAMS: It is interesting that we now put a materiality threshold in one particular section.

MR. MARTIN: I I'll get some clarification on the 10 percent. I'm not 100 percent certain at this point what exactly we base the 10 percent on, but I will get that for you.

MR. ADAMS: Well, I'd like to propose that if that's the threshold, we use it throughout this mandatory triggering event section in every single comment. But I'll tell you, as a financially responsible CFO, if you lost 10 percent of your revenue, you'd cut 10 percent or more of your expenses to cover that loss. And so I would look at income here and not revenue, but again, 10 percent is fine for me to use throughout this document, I propose five.

MS. JEFFRIES: Okay. Jessica, you are up next.

MS. RANUCCI: Thanks. I just wanted to briefly respond to Kelli and what I see as the importance of A, B, and C under number 1. Again, if I'm understanding incorrectly, which may, you know, the Department should feel free to correct me is that we're talking about three different kinds of claims, all of which you know we see in my office. One is an individual claim or group claim by any private person out there against an institution. And for that in A I think that only is a financial trigger under pretty limited circumstances, which is a liability has been incurred, but the case has gone to judgment or to settlement, and that it would have a material impact on the composite score. I think that B and C address situations that are separate from that, which is either that a state or federal authority brings an enforcement proceeding or the Borrower Defense claims in C. And I guess I just want to support all of those as being important financial triggers. I think the first one is really clear that if the school has incurred the liability and that liability would have an impact on the composite score, then like there's a really clear connection there. But I do think that B and C are also very important. I think they're both direct, as Yael said, an indirect implication for a school's financial status if they're sued by state or federal regulator or have a high volume of Borrower Defense claims. And I think, you know, those are sometimes overlapping categories like we sometimes bring claims that the New York Attorney General will bring at the same time, but they're often distinct, and I think it makes sense that the Department should treat them differently.

MR. MARTIN: Thank you.

MS. JEFFRIES: Okay, thank you. Brad.

MR. ADAMS: Yeah, I've got another question here, so these mandatory events that occur after your fiscal year end, the composite score is as of the last day of your fiscal year and schools, whether you like it or not, across all industries and make sure they have enough in their equity accounts to cover the financial score at the end of the year. And so my question is if an event occurs subsequent to the fiscal year, are you then going to allow schools to do a contribution into equity to make sure they're still covering that score? I just am not following how this is going to work.

MS. JEFFRIES: Okay. Thanks, Brad. Any other comments going up through romanette 5? If not, Greg had indicated he was not stopping for a temperature check. He's just trying to break this down in smaller chunks for discussion. So Greg, you want to pick back up?

MR. MARTIN: Yes, we'll pick up with romanette 6 publicly traded entities. You know, there we have it, that's good. So we've clarified the language here in this section to refer to both institutions and their owners. We also added a reference to foreign exchanges to account for institutions listed on the foreign exchanges that may face similar actions, and you see that reflected publicly, publicly listed entities and institution that is directly or indirectly owned at least 50 percent by an entity that is listed on a domestic or foreign exchange if subject to one or more of the following events. So just making that clarification there. And the next one we have changes to if we moved down to (ix), the loss of eligibility. In nine, loss of eligibility is romanette nine. The institution has lost eligibility to participate in another federal educational assistance program due to administrative action against the school and this is at the suggestion of negotiators during the last session, we have added this mandatory trigger for cases where an institution's eligibility for another federal education program, such as VA programs, is terminated. When we further clarified this trigger to reflect it and sorry about that, wrong thing, so let's That was in (ix) and then down to (x), institute contributions and distributions. An institution's financial statements required to be submitted under 668.23 reflect a contribution in the last quarter of the fiscal year, and the institution then made a distribution during the first two quarters of the next fiscal year. And the removal of such contribution up to the amount of the distribution results in the recalculated composite score of less than 1.0 as determined by the Secretary. We have further clarified in this trigger to reflect that to include rather contributions that are in an institution's financial statement. And then moving down to romanette 11. This is creditor events, we have added an additional trigger to address major creditor actions such as a default or another condition as a result of an action taken by the Department and the termination, withdrawal, litigation, or suspension of a financing arrangement with the institution. So that's under creditor events. I'll read that, as a result of an action taken by the Department, the institution, or any entity included in the financial statements submitted under 668.23 is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing agreement or any creditor terminates withdrawals, limits, or suspends any line of credit, loan agreement, or other financial statement. And then we're moving down to (2), the bottom of the page. Here, we have proposed language to clarify the timing and application of this requirement, which exists in current regulations that financial responsibility discretionary triggers become mandatory if two or more hit. So in this, in two, we'll see here that in the fiscal year following the year in which the Secretary has most recently calculated the institution's composite score, if the institution becomes subject to two or more unresolved discretionary triggering events as defined in paragraph (d) of this section, which we'll get to shortly. These events become mandatory triggering events 60 days following the second triggering event if both triggering events remain unresolved. All further discretionary triggering events during the fiscal year become mandatory triggering events even if both of the original triggering events are resolved. And that takes us through the end of mandatory triggering events under C. So opening up for discussion on the ones from six through the end through 11 and also two, and then we'll take a temperature check.

MS. JEFFRIES: Okay, great. Thank you, Greg. Jamie, you're up.

MS. STUDLEY: Thank you. I'm returning to this fascinating subject of two discretionary triggers becoming mandatory, and it feels almost like this provision has become more complicated and harder to understand. If you could explain what “resolved” means and if that's something the Secretary always gets to on a consistent and quick basis, or whether the time could run, they're not resolved and they become mandatory even if they are harmless or irrelevant. So recognizing Barmak's suggestion that we not think of the infinite out outlier possibilities. I'm picturing an institution where Katrina or a typhoon has affected enrollment, but no indication that it's financial and/or a quote a planned, intentional, wise closure of a number of programs, both of which are discretionary triggers. But forcing the Secretary to have to go through all that list or the institution, in fine shape, is suddenly in mandatory trigger land seems unreasonable. So is there a problem about discretionary triggers that the Department has seen that it's trying to solve with this? Or is there a chance for unintended consequences or mischief that could be handled in a simpler way to address the need that you actually have. I'm just not understanding why two harmless or innocent things need to be made mandatory triggers. But if the Department needs that authority, maybe we can do it in a more tailored way.

MR. MARTIN: Yeah, I mean, as written here. Yes, you're correct that the two discretionary events become, you know, makes it mandatory even if they're resolved. And what we're looking at here is, you know, our concern that if even if triggers are discretionary, if they're coming up, that's an indication that there could be an issue at the institution. I do take your point that they could be relatively minor. You know, you pointed out relatively minor in scope and you know that could trigger the mandatory event, your concerns over that. So we'll definitely take that back. If you have any suggested language to clarify this or to make it, which I think would preclude that situation from happening, would be happy to take a look at it.

MS. STUDLEY: If I could just follow up. If the Department could explain what the risk is that it sees, I'd be happy to work with you on language. If it's a discretionary trigger, the Department always has the ability to say, ah, it's discretionary, we looked, it's troubling, you're triggered. So the same amount of time to decide whether it's resolved or not, it can spend to say, ah, Katrina wasn't your fault, but we are looking at the expenses that were generated. We have to look at financial responsibility, so we are triggering whatever the next steps are. The Department has the ability to say there's a problem. So I don't understand why it needs this provision this way. Happy to work with you offline.

MR. MARTIN: Okay, sure, we'd be happy to take that back.

MS. JEFFRIES: Thank you, Jamie. Brad.

MR. ADAMS: Alright. It's the contribution distribution. It looks like it's 16, romanette 16, but I can't, my eyes right on that, it's right after loss of eligibility, right after number nine.

MR. MARTIN: Oh, that's romanette 10, that's romanette 10, Brad. There's so strikeouts and everything, it becomes like the Is and Js and Ls, yeah, they all appear to be the same.

MR. ADAMS: Thank you. I'm just trying to figure out if this metric here, if because it's A and B together and I'm trying to understand, is it a [inaudible] just use a round number. If you contribute a million dollars in the last quarter of the fiscal year and then you take out three million later to pay your taxes, is it just the million that subject to this? I'm trying to figure out why the contribution is even listed if really the goal is just to say any removal of equity that brings you below 1.0 is the issue. So help me on the contribution side of that statement what that means.

MR. MARTIN: Well, the trigger is intended to account for a lot of situations we've seen where institutions make these contributions in the last quarter, simply to shore up their financial position and then immediately go in and remove that amount of money, and that's why the removal of such contribution up to the amount of the distribution results in the composite score being one point or less or being of less than 1.0 because we're looking at where they put the money in and just went and took the money out. So I mean, that's what it's meant to account for. And this is a practice we see you know quite frequently, they'd be making a contribution simply for the purpose of meeting the meeting the composite score requirement. That's why it's in here for the last quarter and then so, you know, so made that distribution and then made it so financial statements reflect the contributions made in the last quarter of the year, and the institution then made a distribution during the first two quarters of next year. So clearly it's tied together those things, right? And that's to try to control for a very real problem we see with gaming of the statements.

MR. ADAMS: I'm good if it's tied together, so I think you answered my question. Creditor events, the next one down, I guess that's 11. I'm struggling with this one and why it's mandatory. I mean, banks can pull a line of credit for really anything. I mean, a line of credit is, especially one that's unfunded is really nothing. If you don't fund a line of credit, if you don't withdraw money in a line of credit, a lot of creditors, they just pull from you because they're losing money if you just got an open line of credit with no actual debt pulled out of that line of credit. So why would we be concerned that if a bank takes an unfunded line of credit away from a school, why would be concerned is a mandatory event that required a letter of credit? Is that right?

MR. MARTIN: The event, again here we have the I think it's important to point out in in romanette 11 (A) this is as the result of an action taken by the Department. So where the Department, for instance you know, would take some action relative to the schools, such as perhaps placing the institution on HCM1 or HCM2. And as a result of that, they're subject to a default condition on the line of credit or that that line of credit is pulled. That could certainly affect the financial institution.

MR. ADAMS: What does it say or between (A) and (B) then? I take that as B stands alone. Am I reading that wrong?

MR. MARTIN: No, (A) is as a result of the Department that that is that as a result of Department action an institution or any entity included in the financial statement or subject to a default and B is separate from that. Any creditor terminates, oh you're asking, does it all stem back to as a result of the-

MR. ADAMS: Right.

MR. MARTIN: -the Department's taking action against the institution?

MR. ADAMS: Right. The question, is (A) and (B) tied together or is (B) standalone? It reads like it stands alone and terminating a line of credit should not be an issue. That happens every day.

MR. MARTIN: I will. I'll take that for clarification. Steve, do you know the answer to the definition of that or should we get clarification?

MR. FINLEY: Yeah, we'll take that back for clarification, Brad. The instances I'm aware of have been predicated on actions the Department has taken that's caused banks to shut down access to funds, and they have triggered very precipitous actions by some institutions.

MR. ADAMS: I just recommend taking out the “or” and put in an “and”. I think that would be appropriate.

MS. JEFFRIES: Okay, thank you. Kelli, you're up.

MS. PERRY: Okay. A couple of things. One, I agree with what Jamie was talking about as it relates to the triggering event, even if resolved will trigger a mandatory. So I would be more than happy to work on language if I can understand, like Jamie indicated, what you're trying to accomplish here. In the contributions and distribution section, and I brought this up last time. With all the conversations that happen that are happening, it sounds like this relates more to proprietary institutions than it would private nonprofits. But a couple of questions. One, you know, it talks about the institution's financial statements submitted reflect a contribution in the last quarter of the fiscal year. I guess the first question would be how are you going to determine that it's in the last quarter of the fiscal year? Because the financials don't break down information on a quarterly basis. And two, as it specifically relates to private nonprofits, the terminology of contributions and distributions could be extrapolated to mean contributions from donors and distributions of what, I guess, so I just feel there needs to be some more clarity around this if it's specifically meant to cover contributions of equity and then the debt distribution of out. And then the third thing is, I know I passed a section, but the insert of the gainful employment trigger. I just want to say that depending upon where that lands, this could be of concern if there's not a, you know, appeal for making sure that the data that it's being evaluated on is correct.

MR. MARTIN: Thank you. We'll take back your concerns on, on the contributions and see if we can provide some clarifying language there.

MS. JEFFRIES: Thank you, Kelli. I want to note, Adam Welle is coming back to the table for state attorneys general. With that, Barmak, you are up next.

MR. NASSIRIAN: So several comments. First one on romanette 6 publicly listed entities. I see what you're attempting to do here, but what if the institution itself is listed? I realize that there are holding companies that may be publicly traded, but there are also institutions that are publicly traded. So you may want to modify that. Regardless of what you do there, under Cap A SEC actions, it's a nice sentiment, but you're closing the barn door after the horse has bolted by the time that kind of axe comes down. So you may want to be more expansive in terms of adverse SEC actions that could trigger something. The exchange action is okay. The SEC reports are okay. What is missing, which actually is quite relevant to past history, is significant and precipitous drops in market cap. Now, if we had the composite score under consideration, that might be answerable there. But since that is not there and now, we're in the unfortunate position of enumerating bad outcomes, a significant and precipitous drop in market cap is probably a better indication of trouble than all of this stuff that you've listed here. So that's one. I've already referred to this on loss of eligibility, romanette 9, institutions. The Department of Education is the only agency where the entire institution is either in or out. The VA allows programs in or out, so loss of eligibility should be more fine- because this will be meaningless as is drafted. It should be if the if one of the institution's programs has lost eligibility to participate. If one or more have lost eligibility programs have lost eligibility, that just makes it more meaningful. And finally, to creditor events, first of all, I actually agree with Brad that, you know, termination of credit in itself is not a sign of trouble, right? But my problem is with cap A as a result of an action taken by the Department. Well, you know what, if they defaulted without your action. That's okay? It seems to me like you only drop you don't want that as a conditional there. It shouldn't be as a result of anything you do. It should be in general, if an entity defaults or, you know, violates the terms of a line of credit or a covenant, that should be a trigger. And one last comment. Once again, because we don't have the composite score itself under consideration, this, too, is closing the barn door typically, when the horse has bolted because it's really at the point where debt is taken on, where unmanageable debt is taken on, not when they begin to default on that, that a decent creditor would you know say hang on a second, you know, we had a covenant that you shouldn't be leveraged beyond a certain level. I don't know what we can do about that, but if we're not going to open up the composite score, at the very least, you may want to have some coverage ratios [interposing] statement here. Thank you.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you, Brady. Brad, you're next.

MR. ADAMS: I was going to let Beverly go in front of me. She's been trying to raise her hand on the video and I think she was before me if that's okay.

MS. JEFFRIES: Beverly, do you not have the raised hand function on your screen?

DR. HOGAN: I didn't see, I just raised my hand. I didn't. I overlooked it. No problem, though, you going first.

MS. JEFFRIES: Okay, well, the only thing is we don't want to overlook you. You know?

DR. HOGAN: No problem. No problem.

MS. JEFFRIES: Our eyes are trained to look for those little hands up in the corner. And I might miss you. So please feel free to interject.

DR. HOGAN: I apologize. That's why I said it's not a problem and-

MS. JEFFRIES: No worries.

DR. HOGAN: I just wanted to say I agree with comments made by Jamie and Kelli, as well as Barmak, but I want to speak briefly, ask a question briefly, about this accrediting agency actions. I don't think anyone has raised that. What's the intent here? Is this something that the Department would do before a final decision by the accrediting agency? Because generally speaking, having a show-cause probation or warning sanctions don't, the institutions are not, institutions can correct that. They're given an opportunity to respond and within a two-year, three-year period sometime. And I wanted to just, I'm not sure about the intent there, but it may not be a problem, but it could be problematic.

MS. JEFFRIES: Okay, thank you.

MR. MARTIN: I will take that back and get it [inaudible].

MS. JEFFRIES: Okay Brad, you're up.

MR. ADAMS: On the two discretionary becoming a mandatory I believe that whole section needs to be struck. I just, I know we haven't got to discretionary triggers and we'll hash through those here in just a minute. But the fact that many of them are still undefined, you can then require a discretionary trigger? I just think that is a letter of credit tied to some of the ways these discretionary triggers are written just would be completely wrong. And I'm also curious, how did 60 days come about? Like, what is that? I'm in number two there on the two triggers discretionary becoming mandatory. Where does is 60 days come from?

MR. MARTIN: It's, you know, a reasonable period of time following the triggering events. I don't think it's key to a specific reference, but I will check. It's a reasonable amount of time.

MR. ADAMS: So it's, if I'm reading this right, so you have one and then 60 days later, you have a second? That's what triggers it, but if it occurred within 60 days, it doesn't? Am I reading that- just try to help me out.

MR. MARTIN: We can read through it again, so it's if the institution becomes subject to two or more unresolved discretionary triggering events as defined in paragraph D of this section, those events become mandatory triggering events 60 days following the second triggering event if both triggering events remain unresolved, so that just means a 60 days following the second triggering event they would become, it gives time for the resolution.

MR. ADAMS: So the first one could be 360 days unresolved then if I'm correct on that? The trigger-

MR. MARTIN: It's the second triggering. It's the second [inaudible] those events become mandatory events 60 days following the second. So the first triggering, the second triggering event, if both, so you have two of those discretionary triggering events, and then we have the first one occurs and then the second triggering event occurs and then they become mandatory 60 days following the second triggering event if both triggering events remain unresolved.

MR. ADAMS: So how do you un-resolve high annual dropout rates?

MR. MARTIN: I'm not certain as to how one would do that, that occurred. That's correct.

MR. ADAMS: So that's forever if it's occurring. Well, I just think it needs to be struck. Thank you.

MS. JEFFRIES: Thank you, Brad. David, the adviser, Dave McClintock, you have something to add?

MR. MCCLINTOCK: I just have a question I think that might have been raised as a consideration. I want to make sure I understand. Barmak was saying if a school borrows a large amount of money, that it's going to be considered a trigger. And just, I mean schools, all kinds of schools, borrow money, and I guess at some level, if you're borrowing money, the lender has determined that you're likely to be financially responsible to do it. There's already some issues with the composite score related to refinancing debt when it happens, and it seems like it could fall into that same issue here. So just maybe I misunderstood. I don't know.

MR. MARTIN: I'm sorry, is there a reference to a particular to a particular paragraph here, David?

MR. MCCLINTOCK: It was it was a statement by Barmak. To consider if they borrow, if there's a large new loan, that it would be potentially a trigger. But that would be a significant amount of triggers, I would think. Sorry, I was just sitting here thinking about that.

MR. MARTIN: Thank you.

MS. JEFFRIES: Okay. Thank you. Barmak.

MR. NASSIRIAN: Just wanted to quickly respond that prudential oversight does not mean you wait until people default on existing debt before you decide as a regulator to step in to say, hey, what's going on here? Prudential oversight also means that you keep an eye on the regulated entities to ensure that they don't get overleveraged. That is not a, there’s no language. I was just suggesting that setting the triggers, if you're setting up a tripwire that far out, you're not going to catch anybody. What you're going to catch is another ITT, another Corinthian, you holding the bag. So some- now the proper way to deal with it would be in construction of a reasonable composite score. But that's beyond our reach. So I was merely suggesting that that's that if you're going to begin enumerating terrible things that should trigger a Departmental review, overleveraging would be one of them before people default, not after.

MR. MCCLINTOCK: And I understand the intent to catch it earlier.

MS. JEFFRIES: Okay, thank you. Alright, I'm not seeing any other hands on this section, so let's go ahead and take our temperature check on 668.171 on the entire paragraph C of that document. Jamie, I can't see your hand, your thumb. Amanda, can I see your thumb, please? Okay, I see one thumbs down. Thank you. Brad, anything you want to add?

MR. ADAMS: No, nothing extra. I'm sorry, was Anne's sideways? I thought it was down, but I was definitely down.

MS. JEFFRIES: Anne was sideways, yeah.

MR. ADAMS: I missed that. Sorry.

MS. JEFFRIES: Thank you, though, for checking. I appreciate that. It's sometimes hard to see. It's like those little romanettes, right? Alright, so Greg, you want to take us into the next paragraph, please?

MR. MARTIN: Sure, I can do that, and I'm beginning to see romanettes in my sleep, so I understand where all of you are coming from. Alright, we are at discretionary triggering events. The Secretary may determine that the institution is not able to meet its financial or administrative obligations under B3 romanette 6 of this section, if any of the following events is likely to have material adverse effect on the financial condition of the institution. The first one here deals with accrediting agency actions, and I don't know if it was Beverly that brought this up or somebody brought it up previously. The accrediting action agency actions, which are under the discretionary triggering event, so better to address that now than under the mandatory provision. So we do have that here in in (d)(1). Our proposed language changes here seek to provide more clarity about the accrediting agency actions that may trigger financial protection so we can look at those at those changes, accrediting agency actions. The institutions. Accrediting agency has placed the institution on probation or issued a show-cause order or placed the institution on an accrediting and accreditation status that poses an equivalent or greater risk to its accreditation. So we made some clarifications there with respect to accreditation, the accrediting agency actions, and remind everybody again that we are now under the discretionary triggers. Under two, creditor events, this item was previously violation of a loan agreement. We've retitled this item for clarity and accuracy. We have also reworked the trigger for additional clarity as to what we intend without changing the substance of the trigger. This reflects events in which an institution or its owner is subject to a default or other condition in a financial arrangement, which permits the creditor to attain certain conditions to attach rather certain conditions to the institution. And moving down to (3) fluctuations in Title IV volume, we want to point out here again that this is a significant fluctuation between consecutive award years or a period of award years in which the amount of Direct Loan or Pell Grant funds or a combination of those funds by the institution that cannot be accounted for by changes in the program. So we just want to clarify here that we are concerned not only with declines, but with rapid increases as well because of concerns about the capacity of the institution. So we have elected to maintain fluctuations as opposed to just declines. Let's move to (5). Made some changes here, this is interim reporting, and we have added some language here to this trigger at the suggestion of some of the negotiators between sessions one and two. So interim reporting here for institution required to provide additional financial reporting to the Department due to a failure to meet the financial responsibility standards of subpart L or due to a change in ownership. There are negative cash flows, failure of other liquidation ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or indicators of material change in the financial condition of the institution. And if we move down to, I think we have nine, state citations. At the suggestion of negotiators, we have added a discretionary trigger here to encompass significant state actions that may not rise to the level, including the mandatory triggers. This will allow the Department to assess the importance of each. So you see under nine, state actions, the institution is cited by a state licensing or authorizing agency for failing to meet state agency requirements. And that is it for the discretionary triggers, so I will open it up for discussion.

MS. JEFFRIES: Okay, thank you, Greg. Before we open that up, I need to make a clarification due to some questions in the chat. We are following the posted agenda as far as the order of the documents. I understand there is some mismatching of numbers, but after financial responsibility for the agenda, we will be going to certification procedures and then from there and we'll move to change of ownership and or control. So I hope that clarifies everything. I apologize for the numbers not matching up, but we will follow the posted agenda. Thanks. Jamie, you are up first on this one.

MS. STUDLEY: Okay. Brad's appearing on the screen ahead of me, I'll defer if you like.

MS. JEFFRIES: He's not on my screen ahead of you, so if you still want to defer.

MS. STUDLEY: Okay, yeah, no, that's fine. I'll accept the invitation to speak to the accreditation provision that some of my colleagues have flagged. We have a concern that hasn't been placed, and then I'll speak to the broader issue so I don't forget the first one. The wording “placed” or “places” doesn't have a time issue. So while I don't think the Department meant a 10-year-old accreditation status that has since been resolved and come into full compliance, it's odd and should perhaps be contained. I think it's probably just grammatical, but just we don't want a historic placement. It shouldn't be a discretionary trigger; that would be a waste of the Department's time. More important, it does seem reasonable for the Department to look at the reasons for or the possible effects of an accrediting agency action in determining whether there's a material adverse effect on the financial condition of the institution. Even though a sanction is not fine, and that's what these are, I apologize that we use different terminology, but these are all at the sanction level, something serious is going on. And it is reasonable for the Department to look into whether it suggests either news of financial fragility or concerns or trends that should be worrisome to the Department that may not have been apparent to them yet, or that the effect of being in that status may by itself or in combination with other discretionary triggers or information be problematic. So this seems like a serious enough action by accreditors that it's appropriate to be on the discretionary list. And it's also appropriate that it's discretionary because there could be some other reasons for an accrediting action of this kind that do not affect, materially, the financial position of the institution, and the Department would have to make that distinction. If Beverly or Kelli have other, I think those are the two, have other questions about that, I'd be happy to try and be helpful.

MS. JEFFRIES: Thank you so much for that, Jamie. I show Kelli as next and then Brad.

MS. PERRY: Thank you. Just the number 10, the short-term borrowing. It's basically the same comment that I had raised before where it talks about the institutions required. I'm sorry, the line of credit or borrowing in the last quarter of the fiscal year and then replace the loan. Again, the financial statements are not quarterly financial statements, so I think you just need to think about how that would be measured.

MR. MARTIN: I will take that back to our accounting people and get clarification on that.

MS. JEFFRIES: Okay, thank you. Okay, Brad, you are up.

MR. ADAMS: Well, just as soon as she brought up 10, I'll just piggyback on it. I mean, this is penalizing a school for repaying a line of credit. It's not tying it to a composite score here number 10. So it's not because of end of year. So you're saying that you can't repay the loan in the first two quarters of year, well you're paying interest on it.

I mean that you're giving banks free money if you're not allowing them to repay a line of credit. But back to week one, you know, if there's a theme for this issue paper, it really, this section of discretionary really is maximum discretion to the Department with no guidance to institutions. I struggle immensely with this proposal. So, Greg, help me out here. What is a high annual dropout rate?

MR. MARTIN: Again, these are discretionary triggers the Department looks at to see whether or not these are indicative of problems at the institution, It does need, a Department a certain amount of discretion and as you point out, as is pointed out with the short term borrowing as well, but they are all here to address situations we see in institutions where the Department needs discretion to determine whether or not the event rises to the level of something that we think imperils the institution's financial position that impairment accrues to students. So, we can obviously have disagreements about the level of discretion that the Department ought to have here, but every one of these discretionary triggers addresses areas, where there are problems that ultimately result in serious consequences for an institution. And it's not the Department's intention to give itself undue amounts of discretion. But we also are held accountable for situations where institutions precipitously close, the effect that has on students. So we are looking at ways to identify problems in advance, and this is part of that. I mean, I'm certainly open to any suggestions people have if to the language here. But I would reiterate, as the Department does believe it needs to have these discretionary triggers and the obvious discretion that results from them.

MR. ADAMS: Okay and what about significant fluctuation? I mean, are we 90 percent or 10 percent like, I need a little help here. I just don't get it. I mean-

MR. MARTIN: I don't think it would be, you know, I'm not sure how instructive it would be to put in 20 percent or 30 percent fluctuation it. It is again a discretionary trigger to allow us to look at an institution that has huge fluctuations in its volume, which may be indicative of a problem at the institution, it may not be. Maybe the institutions just has expanded and has bigger programs or very, very popular programs that have led to many more students coming into the institution, or the institution has downsized to concentrate on a few programs. That could result in lower volume as well. So it's not necessarily indicative of a problem. However, it could be indicative of a problem, and that's why it's here under a discretionary trigger.

MR. ADAMS: Two discretionary equals one mandatory. We just went over that. So if I had a pharmacy school, that's a significant increase in Title IV funding. So again, I'm not following this and then pending Borrower Defense claims. And not actual outcomes.

MR. MARTIN: Well, I want to point out that a change in Title IV volume wouldn't in and of itself be the discretionary trigger. The Department would have to determine that it is a discretionary trigger. So you know I do want to point that out. And I I get the point that there is discretion involved here, and there will be a divergence of opinion on how much of that discretion the Department ought to or should have. We believe that we need this level of discretion to look at possible indicators of there being trouble at the institution. And certainly, we've heard the concerns about the two discretionary triggers triggering the mandatory trigger, and I will definitely take back those concerns.

MR. ADAMS: And then last one on interim report material change, at least the materials there, but it's wide open to be anything, any other indicator that's material. So if you can't even define it on whether or not it's going to make it mandatory, I really struggle with it. And I've asked you on week one and I've asked you again, and I submitted text proposing. But again, we've got to define some of these things. Thank you.

MS. JEFFRIES: Thank you, Brad. We have Amanda, Carolyn, and Beverly showing with their hands up, and then at that point, perhaps we'll be able to take the temperature check and then a quick few minute’s break and pick right back up. Amanda.

MS. AMANDA MARTINEZ: Yeah, sure. Actually, I think we can hopefully my proposal, I know it came in late, but hopefully the Education Department could review and potentially solve the specificity needed in high annual dropout rates. We think the discretionary research has recently shown that higher, you know, or actually not higher dropout rates, but if there's low completion rates of students that that's tied to, that's correlated to, or it's highly correlated to an institution's financial instability, so in our proposal, while it came in late, hopefully it suggests more specificity here. So whether the Education Department wants to look at it, we do suggest a change here for low completion rates since that is backed by research as showing an indicator of, it's directly related to this financial responsibility. And we ask that if you do look at low completion rates, that that would be disaggregated by Pell recipient status, by major racial and ethnic subgroups to show the different risk factors there in different completion rates. And then also, we would, you know, on the specificity of a percentage, we also do suggest. And it could be helpful here in looking at the bottom 10 percent of those who perform and providing the worst completion rates, so looking at those 10 percent of institutions who end up providing really low completion rates as a way to be more specific in this part. And then, so that's the reasoning there. I think completion rate is extremely important. We want to strive for one, avoiding any type of financial instability to access for students to ensuring that they are completing that they are at institutions that have the ability to support them in their education and are not financially unstable. And then the second suggestion I'll make and I can make this in the chat is related to number three, the triggering or event number three of fluctuations in Title IV. I also know that the research that I-

MR. WAGNER: You have 30 seconds remaining.

MS. AMANDA MARTINEZ: Oh okay. I'll just put that in a chat.

MS. JEFFRIES: Thank you, Amanda. Appreciate it. Carolyn, you're up next.

MS. FAST: Hey, I wanted to first say that I'm supportive of Amanda's suggestion and joined in her proposal related to the low annual completion rate language. We also would be, you know, supportive of keeping it at high annual dropout rates. But we think that either way, whether it's looking at it from the perspective of low annual completion rates or high annual dropout rates, it would be useful to break it out, disaggregate the data as we had suggested, so that all of those subgroups, including students receiving Pell Grants, are considered. And then the second part of our proposal was on the interim reporting discretionary trigger, which is five here. We appreciate the Department's change from the last proposal, adding the other indicators of material change, which I think is very important. But what one concern we had was we wanted to ensure that it's clear that the Department doesn't have to wait until after a school has already failed to have the trigger be useful. So it seems the way it's written currently is that when an institution is required to provide additional financial reporting to the Department due to a failure to meet responsibility standards or due to a change or ownership. So it's very narrow. That's after they've already failed or if they had a change of ownership, but this really would be useful and is necessary to make it a little broader than that. So we suggested adding “or in response to a request from the Department for additional financial reporting,” to make it clear that the Department can get additional reporting and act on it.

MS. JEFFRIES: Thank you. Thank you very much, Carolyn. Beverly.

DR. HOGAN: Yes. Alright. Let me apologize for getting ahead. I had difficulty reading from the screen and I was looking at my papers and got a little bit ahead of the accrediting agencies actions. I do agree with what Jamie said in part. Many of our HBCUs, are in the SACSCOC area. And there are sanctions offer warning sanctions and show-cause probation, show cause, and the institutions are given ample time to look at and make their status, make corrections and report back before they lose their accreditation. And I guess my concern is whether how the Education Department of Education plans to utilize this. What's your intent? How will you be working in concert with the accrediting agencies before the withdrawal or revocation of institution's participation and Title IV programs are affected?

MR. MARTIN: Yeah. Again, this and you can certainly be forgiven for jumping ahead, I think all of us have at one point or another have tried to jump ahead. But yeah, this is a discretionary trigger, I want to point out that even were this to become a mandatory trigger, we're not talking about the Department necessarily entering into an action to terminate an institution as a result of it. These discretionary triggers are looking at, you know, areas of areas that might indicate there's a problem and I think it's legitimate to discuss the extent to which the Department's discretion should be exercised, but I think it would have to pretty much be accepted that all of these are possible indications of a problem. And I understand with accrediting agencies that a show-cause can be a number of things and perhaps not be something severe, and the school still has plenty of recourse and that type of thing. But it would be something where the

Department would look at it to see what the circumstance is, and we haven't defined exactly how we'll go through that process in this regulation. I think you get to the point where you just have so many regulations that would be impossible to look at, but it is something that gives us the opportunity to look at these situations and determine whether or not we feel they pose a threat to the institution's financial stability or continued existence. So we do have a very strong accreditation unit in our Department that works with accreditors and is very good at getting to what's going on, you know, with respect to accrediting actions, and we'd certainly utilize that. This is certainly not a no desire on the part of other part of the Department, just to simply say, oh, show-cause order therefore the school has got severe problems. That's not what this is meant to do. But again, it's a possible indication.

DR. HOGAN: But any clarity that you could bring to the language would be very helpful.

MR. MARTIN: We'll take it back and see what we can if there's something [interposing] Yes, we tried to clarify this time around, but if certainly Beverly if you have any suggestions, you know, please put those in the in the chat or get those to the facilitators and we will consider those. Thank you.

DR. HOGAN: Thank you.

MS. JEFFRIES: Thank you. So, Greg, you have walked through the entirety of paragraph D, correct?

MR. MARTIN: Yes. So we could take a temperature check on that.

MS. JEFFRIES: Alright. So let's see your thumbs on 66.17 paragraph D. Okay, I see one thumbs down. Brad, do you have anything additional you want to add? Okay, thanks. The public, in case you couldn't see, was shaking his head. So I appreciate that. So we want to take a quick five-minute break to stretch and do that and then come back and pick right back up with paragraph (e).

MR. MARTIN: Sounds good.

MS. JEFFRIES: Alright, great. So I have 2:43. Let's call it 2:50. Be back and we'll go from there. Okay. Okay, welcome back. I know it was short, but hope it was refreshing break for you. Just a quick note before we move into paragraph (e), Debbie Cochrane is back at the table for state higher education executive officers in state agencies. So with that, Greg, you want to take us into paragraph (e)?

MR. MARTIN: Right, we're moving into paragraph (e). So this is recalculating the composite score, and we do note here that throughout this section, we have adjusted the language to address both institutions and their owners. And so you'll see that occurring throughout here. And just as a review about this, the recalculating composite score the Secretary recalculates the institution's most recent composite score by recognizing the actual amount of the liability or cumulative liabilities incurred by an institution under paragraph C one romanette (i)(A) of the section as an expense or accounting for the actual withdrawal or cumulative withdrawals of the owner's equity under C1 romanette 2 of this section as a reduction of equity and accounts for that expense or withdrawal, and then it so those are discussed here below in one and two. So just again, yes, we revised that language to all the language to reference the institution and the owner. And also that's in one, two, and we've also done that in three. So those are the only changes we've made under (e), recalculate the composite score. So open the floor up for any discussion on that before we move on.

MS. JEFFRIES: Okay, great. Thank you. Negotiators, any comments on that? Okay, I'm not seeing any. Oh, there you go, Brad.

MR. ADAMS: Yes. On three, I'm assuming it's proprietary only because it's referencing withdrawal of equity as the qualifier there, but again, I'm still struggling. We went back and forth on this in last session. If you're an S-Corp and you're paying your IRS tax obligation, that's an equity distribution, and I do think it needs to be caveated here. I believe I submitted that comment. But can someone explain to me why we don't want to pay the IRS our bills because it has to come through equity in order to do that for an escort.

MR. MARTIN: We're not suggesting that, you know, an institution not pay its tax liability, but here again, you know, if we read the withdrawal of equity for the recalculation, this just deals with the withdrawal of equity that's been put in for the sole purpose of meeting of meeting the financial composite score. So this is the withdrawal of equity in the entity's financial statements were submitted for the prior fiscal year to meet the requirements of 23. Or in the following year, changes in ownership. The entity whose financial statements were submitted to meet the requirements of 600.20 will be adjusted by that amount. I understand that, you know, it can be withdrawn to pay for taxes, but again, our concern here is with quite frankly, the gaming situation that we discussed earlier in the mandatory triggers. But we will take back that that concern,

MR. ADAMS: Yeah, again, a composite score is a point in time calculation and a tax obligation, you're paying estimated taxes in the year you're in. So you could have a 9/30-year end and pay an estimated tax obligation for the year you're in in November. And that's after that fiscal year end and that happens all the time. So I think that needs to be clarified. And I'm trying to figure out one and three, why that asset for point two on the equity ratio is not included. Because that's a big component of that ratio.

MR. MARTIN: I'm sorry, what did you what did you want to see done, Brad?

MR. ADAMS: Well, it's there for the equity ratio, decreasing modified equity by that amount. Says it twice there. Trying to think about the asset side of that thing is it's a big maybe Dave can help me out here. I'm struggling with why assets are not there, so I'll defer to Dave. He's an accountant.

MR. MARTIN: If there is a situation that you want to write up with you know the problem is we can certainly take a look at it. As I said before, I'm not an accountant either, so I would want to check that with our people who are.

MR. MCCLINTOCK: We could submit a consideration just they had an obligation if they would have paid it prior to year end, it could have reduced the assets as part of the calculation. Also, we can submit-

MR. MARTIN: Okay.

MR. MCCLINTOCK: [Interposing] something.

MR. ADAMS: Thank you.

MS. JEFFRIES: Thank you. Seeing no other hands raised at this point. Let's go ahead and take the temperature check on 668.171 paragraph (e). If I could see your thumbs. Kelli, I can't decipher yours. Thank you. Alright. I've seen no thumbs down. I believe it's correct. Thank you. Okay, Greg, you want to take us into paragraph (g) or I'm sorry-

MR. MARTIN: (f).

MS. JEFFRIES: (f).

MR. MARTIN: Yeah, trying to skip ahead, right? That's okay.

MS. JEFFRIES: I'm trying to remember my alphabet.

MR. MARTIN: After a while, you forget the ones, twos, and threes, Js, Ls. One thing flows into another. Yeah. So we're looking at F here under reporting requirements. And we have made several changes throughout this section to accurately reflect that these requirements apply to both institutions and their owners, and we have made several other clarifications as well, including requiring that the updates to state, federal, and qui tam lawsuits be provided to the Department, adding reporting requirements for short term borrowing, adding a reporting requirement for institutions that are publicly listed on a foreign exchange, adding a reporting requirement for certain creditor events and adding a requirement for the loss of eligibility for non Title IV federal educational assistance programs, and also adding reporting requirements to align with the requirement to meet financial obligations in 668.171(b)(3). And here again, we've revised language to refer to both the institution and its owner. And we've also revised language to require updates to lawsuit information. So see here in in (f) (1) romanette 2 for a lawsuit under paragraph C one romanette 1B of this section not later than 10 days is a reporting requirements again, not later than 10 days after the institution or entity is served with the complaint. And an updated notice must be provided 10 days after the suit has been pending for 120 days. In moving down to one romanette 4. We have added a reporting requirement for the short-term borrowing discretionary trigger that we added, so if we look at romanette 4 for a contribution and distribution under paragraph (c)(1), romanette 10 and the short term borrowing provision in paragraph D6, not later than 10 days following each transaction. And moving on to five. We have revised this language to refer both to institution and its owner in the interest of brevity. We have struck out the language that repeats what was in the trigger and instead added a reference to that section. So you can see that language has been stricken. And we now say for the provisions related to a publicly traded entity under paragraph C one romanette 6 of this section no later than 10 days after the date the event described under paragraph C one romanette 6, occurs. Then moving down to romanette 6, we've up, just updating the cross sections here. For the actions you can see, so. Under romanette 7, we have added a reporting requirement for the mandatory trigger related to the accreditor or events. So for accreditor events described in C romanette 11, not later than 10 days after the date on which the institution is notified by its accreditor. And under (viii), romanette 8, we've updated the header for the accreditor and events discretionary trigger and updated the timing for the reporting requirement, as well as added needed updates. So there that's under (viii) for the events, described in paragraph (d)(2) of this section not later than 10 days after the event occurs without update, not later than 10 days after the accreditor waives the violation, or the accreditor imposes sanctions or penalties, including sanctions or penalties imposed in exchange or as a result of granting the waiver. In romanette 10, we have added this reporting requirement to refer to federal educational assistance funds since the 90/10 rule will no longer be limited to Title IV funds, and you can just see Title IV revenue replaced with Federal educational assistance funds. And for yeah, okay, so I want to go down to (xii), we have added this reporting requirement to address the requirements to meet financial obligations under 668.171(b), so for a failure to meet any of the standards in paragraph B of this section not later than ten days after the institution ceases to meet the standards. And moving on to (I). Here we mistakenly failed to remove this language in the first session as intended. It would otherwise allow institutional owners to withdraw equity for the purpose of meeting tax liabilities, which we did not intend to exclude from the trigger. And that is everything for reporting under (f). So I'll open that up for comments.

MS. JEFFRIES: Okay. Thank you, Vanessa. Thank you, Vanessa. Appreciate it. Open it up to the negotiators for comments or questions. Brad.

MR. ADAMS: So removing of A under I romanette 1 I guess, they did a tax piece that you just mentioned. It can you say again, why is that being removed? Is it saying you don't want to know that? Help me. Or did you say it was mistakenly removed or? Sorry, I'm not following that.

MR. MARTIN: No, here we mistakenly failed to remove this language from the first session. This is we have mistakenly failed to remove this language in the first session as intended, it would otherwise allow institutional owners to withdraw the equity for the purpose of meeting tax liabilities, which we did not intend to exclude from the trigger. [Interposing] Right. We're just stating here that we're not indicating that an institution could do that.

MR. ADAMS: So again, we don't have to notify or we do? I'm sorry. This is- it reads so funny to me. Does the Department want to know that we're paying our taxes? That's what I'm trying to figure it out. Greg, I'm sorry. It just doesn't-

MR. MARTIN: No, no, not in this case that's been removed. This requirements been removed because we didn't intend for it to be a something that would excuse an institution from the trigger.

MR. ADAMS: Okay, thank you.

MR. FINLEY: So let me try to clarify that as well. Let me clarify Greg's clarification. The notice still has to be provided to the Department, but the institution can no longer present information showing that the withdrawal that triggered the notice was because the funds were used to pay taxes.

MR. ADAMS: I'm more confused.

MR. FINLEY: I know I understand, it's-.

MR. ADAMS: So does the Department want to know that we paid taxes, do we have to notify them? That's what I'm trying to determine here.

MR. FINLEY: It's the withdrawal of the funds that triggers the notice. That's the reference.

MR. MARTIN: Which is not mitigated by the need to pay taxes.

MR. ADAMS: I'm trying to think of another way to say it, I'm still not clear, I'm sorry. Do we have to notify the Department if we withdraw money as an S-Corp through equity to pay our taxes?

MR. FINLEY: If the withdrawal is caught within this timing structure of being money taken out after equity was put in within the timeframes and the regulation, you have to provide notice even if that withdrawal was used to pay taxes.

MR. ADAMS: And remind me of the notice timeframe again? It's buried in (2)? What's the timeframe? I'm sorry.

MR. FINLEY: Yeah.

MR. MARTIN: Let me go back and look.

MR. ADAMS: I'm really just trying to understand the rule.

MR. NASSIRIAN: Ten days.

MR. ADAMS: Thank you.

MR. MARTIN: Ten days.

MR. ADAMS: So within ten days of the fiscal year and we have to notify you. Anything outside of that, we don't.

MR. MARTIN: No, the triggering requirement goes from into the first, what's it Steve the first quarter of the next?

MR. FINLEY: It's the equity the equity put into the institution within the last quarter that's withdrawn within the following two quarters after the change in the fiscal year.

MR. MARTIN: And when that happens, when that happens, you have 10 days to notify us.

MR. ADAMS: Even if it's to pay taxes?

MR. FINLEY: Correct?

MR. MARTIN: Yes, even if it's pay taxes, that's why that was taken out.

MR. ADAMS: Okay. I don't understand why that's in there. It's the same comment, I guess I had earlier. Thank you.

MS. JEFFRIES: Thank you, Brad. Kelli, you’re next and thank you very much for your ten-day visual, and Barmak for your audio piece of that. Appreciate it. Kelli, go ahead.

MS. PERRY: Yeah, I suppose I could've just come off of mute. Anyways, for in (f)(3), I would just like the Department to consider the language that I sent over for the next round. I know I was late, but my other job kind of got in the way. I apologize.

MS. JEFFRIES: Okay. Thank you. Thank you, Kelli. Barmak.

MR. NASSIRIAN: Yeah, I'm still struggling with Brad's concern about the taxes. I think the Department is interested in whether the institution is losing money, is withdrawing funds, whether to buy a yacht, or to pay taxes is really not relevant. At the end of the day, the Department's interest is in the soundness of the institution of the entity. So, you know, acting as if it's just a payment of taxes that's causing a concern is sort of like privileging one particularly noteworthy and laudable thing, as if the Department is stopping the payment of taxes. It's just the issue is are you withdrawing funds to the point that the institution begins to become destabilized?

MS. JEFFRIES: Okay. I think the I think the Department needs some time to digest and react to that if that's okay.

MR. MARTIN: I will say, I mean, you know, again, this goes back to our concerns over an institution contributing equity and then withdrawing it right away because we have seen instances where that is done clearly to help an institution meet deposit score requirements and then that money is withdrawn, so it's not indicative of anything other than that, and of course, yes, an institution could withdraw money for any number of purposes and taxes are one of those, but it doesn't change the fact that the event occurred and that it could indicate an institution's desire to try to manipulate the composite score.

MS. JEFFRIES: Thank you, Greg. Brad.

MR. ADAMS: You know, just to respond to that, I completely understand the manipulation of the composite score piece and I understand why that's of concern. I do struggle with the way equity works and the fact that you know certain months of the year may be more income. Certain months of the year you may have a loss and how that all flows through equity and then you've got to pay taxes. And I disagree with Barmak's comment. There is a difference if you're taking out equity to buy a yacht versus paying the IRS, and S-Corps have significant amount of distributions to pay taxes. That is where the federal taxes are paid, so they're not paid to the bottom line of the school. They're paid through the owner's personal income statement. And that's the way an S-Corp works. And so I think that's got to be figured out. Maybe that's the difference. Maybe you put an exclusion for S-Corps and you leave C-Corps as is, but.

MS. JEFFRIES: Okay. I see no further hands. Let's go ahead and take a temperature check on 668.176 paragraph (f) reporting requirements. Sam, I can't see your thumb. There you go. Thank you. Okay, I'm seeing Ernest, Carol- okay, I'm seeing one thumb down unless someone sees anything else. Kelli, is there anything else you want to add?

MS. PERRY: No, I would just like them to look at that proposed language so that we can discuss it.

MS. JEFFRIES: Okay, thank you.

MR. MARTIN: We'll do that.

MS. JEFFRIES: Alright, Greg, let's move on to (g) now. Okay, I think I got my alphabet straightened out.

MR. MARTIN: I think we're I think we're good to go. Yeah, (g), we're at public institutions. And looking at specifically here, (g) one romanette 1B, we've updated language to mirror what we require for foreign institutions and align it with the requirements in new 668.176 public institutions. So here you can see Secretary considers a domestic public institution to be financially responsible if the institution notifies the Secretary, is a designated public institution by the state, local, municipal government entity, tribal authority, or other government entity and has legal authority to make, that has legal authority to make that determination and provides a letter from the official or the state or government entity confirming that the institution is a public institution and is backed by the full faith and credit of the state, local or municipal government entity, tribal authority or other government entity. Moving on to and that is everything actually for H. So that's very brief.

MS. JEFFRIES: It would be yeah, that would be (g) everything.

MR. MARTIN: You know what? Let me just take, I'm sorry for (g) rather. So let me just take (g) and we'll do (h) and do (g) and (h) together. And that way we'll be at the end of the, we'll be at the end of 173. So let's move on to where we also have made some changes to (h). And we note that we have made these edits to further clarify how the Department may agree to treat other opinions, including if the editor believes that the concern has been alleviated. So. And you can see that those changes reflected there, even if an institution satisfies all the general standards of financial responsibility under paragraph B of this section, the Secretary does not consider the institution to be financially responsible if the institution’s audited financial statements opinion expressed by the auditor that was adverse, qualified, or disclaimed or includes or includes a disclosure about the institution's ability to continue operating. Or its ability to continue as a going concern unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition, or that the diminished liquidity, ability to continue operations, or ability to continue as a going concern has been alleviated. The Secretary may conclude that diminished liquidity ability to continue operations or ability to continue as a going concern has not been alleviated, even if the auditor states those concerns have been alleviated. So those are the changes for both (g) and (h). I'll open it up for discussion.

MS. JEFFRIES: Okay, thank you, Greg. Alright. Open. Open it up to the negotiators. Barmak.

MR. NASSIRIAN: To go back to (g). You know, we are attempting to write regulations that may stay in place for decades, and we should be smart enough to kind of anticipate where the next wave of waste, fraud, and abuse may pop up. We have historically had the assurance that the public sector has been beyond reproach when it comes to outright fraud. I humbly suggest, and this is not intended or targeting anybody participating in this on behalf of public institutions, it is just the concern I have with sort of leading indicators of problems down the road with some publics. So it seems to me that failing to address what is a public institution beyond the sort of a historical remnant may prove quite problematic. It seems to me that we are already and I won't name names, but we have already seen examples of public institutions attempting to stand up proto-publics, hiding behind the fact that the parent entity is a brand name while offering nothing but fairly abusive, predatory products. So I would really urge the Department to go back and think this through. This may be our last bite of the apple before 20 years. We need to focus on what being a public institution really means in terms of governance, in terms of conformity with state sunshine laws. It is insufficient to allow this just the board of directors of one public institution to dub another entity public by fiat So, and I submitted some language to that effect, but I really want to urge the Department to go. I don't need any response here, but I want to tell you if you don't do something with this here. Be prepared to see a rip off global campus attached to every marquee name in public higher education in this country. Publics are under duress. They're being privatized. They're being disinvested from, and consequently they're out there looking for funding. And sadly, a few of them have discovered that the only way they can balance the books is by running a predatory side business from the proceeds of which they then subsidize their traditional students. So it's a real problem. I hope the Department takes it seriously.

MS. JEFFRIES: Thank you, Barmak. Debbie.

MS. COCHRANE: Thank you. My comment was actually on the same clause with a specific suggestion to add a requirement that the institution be subject to the same financial oversight and public records laws as in the state or local government, where the institution is based. So I'll put the language in the chat.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you. Okay, I'm not seeing any other hands. So let's go ahead and go with the temperature check on paragraphs (g) and (h). You want those separate Greg, or both together?

MR. MARTIN: Combined is fine.

MS. JEFFRIES: Okay. Alright.

MS. STUDLEY: Could you put them back up on the screen?

MS. JEFFRIES: Well, then I have difficulty seeing the actual thumbs if we do that.

MS. STUDLEY: Can we see it for a second before we do the temperature check?

MR. MARTIN: Sure. Go ahead, Vanessa. Throw it back up. You can. I don't think you can search (g) and (h) at the same time, but you can scroll right to (g) and scroll down to (h). Normally, I don't like to put them together, but in the interest of time and getting to the next, to the next-

MS. STUDLEY: Yeah, sorry to hold you up.

MR. MARTIN: Oh, that's okay.

MS. STUDLEY: Thank you, at least for me.

MS. JEFFRIES: Okay, thank you, Jamie. Vanessa, if you could take that down, please. Thanks. If we could see the thumbs, I'd appreciate it. I am not seeing any thumbs down. Thank you. We have approximately nine minutes before public comment. So Greg, do you want to move right into the next section and at least get it started?

MR. MARTIN: Yes, this is pretty brief. We are going into 174, which is past performance. And Vanessa has that up, thank you, Vanessa. And we're looking at not many changes here. We've simply corrected a cross reference here in (a), I'm sorry, no, not in (a), we corrected a cross reference in (b)(2)romanette I, so that's what we did in (b) and then moving down to (c) ownership interest for simplicity. We have eliminated this this definition and cross-referenced it and cross referenced to 600.31. And that is in ownership interest, (c), and that is and so the way that reads, I should go over that again just for clarity. You have ownership interests and ownership interest is instead of all that text defined in 600.30 and 600.31 B, and that is it for 74, for 174.

MS. JEFFRIES: Thank you. So we can open it up for discussion. Any comments or questions? Okay, I'm not seeing any. Let's go ahead and do a temperature check on 668.174 past performance. Alright. No thumbs down. Thank you. Greg, back to you. Something happen to Greg?

MR. FINLEY: Greg, you’re muted, I believe.

MR. MARTIN: I'm very sorry.

MS. JEFFRIES: There you are.

MR. MARTIN: My mistake. So look, I think in the time we have left, we've got looks to be like seven minutes, six minutes. We can try to address 175 here. There aren't many changes and then we'll be ready for 176, which will definitely have to take up tomorrow. So in 175, go to 175 (c). We've made some minor edits here to address misalignment that negotiators had noted between this language and the updated language in the audits and the audit opinions of section of the rule. We've also made another update to include going concern consistent with the edits that we that we made above. And in this paper and in the other papers where we refer to surety, we have now changed that language to use the broader term financial protection. So you see that referenced here in (c) participating institutions, that is not famously responsible either, because it does not satisfy one or more of the standards of financial responsibility and 668.171 (b), (c), or (d), or because of an audit, opinion or disclosure about the institution's liquidity, ability to continue operations or ability to continue as a going concern. And then below that, you see that we have changed surety to financial protection. And that, I believe, is, we want to go over to I'm sorry. We want to come over to, in (d), which is the zone alternative. I'm sorry, no (e), (f). And if we go over into (f) under (f)(2), (f)(2) And this is provide the Secretary with irrevocable letter of credit. We are still considering whether this is a manageable standard, but our concern that the Department will struggle to confirm what amount would ensure a certain sound harmless, and we welcome any feedback as to whether another amount makes sense. And we note that the Department retains the ability to require a larger letter of credit than 10 percent if we deem that is necessary. So that was just a reference to the 10 percent letter of credit requirements, and that is it for 175. So we only have a few minutes left, but maybe we can take a comment or two before public comments.

MS. JEFFRIES: Brad, I'm sorry. Brad, go ahead.

MR. ADAMS: Yeah, I put it in the chat, but I would like to add the words “take reasonable steps” to both (c) and (F)(2). And so you'll have that language in the chat. Thank you.

MS. JEFFRIES: Thank you. Ernest.

MR. EZEUGO: Yeah. Yeah, I just want to make a quick note before public comment. You know, obviously the past couple of days of this session negotiated rulemaking have been extremely technical, particularly some of the discussions around financial responsibility. I want to zoom out for just a moment. First, the committee, the center students and kind of remind the committee that places institutions like Corinthian and ITT Tech that have closed and lasting harm to hundreds of thousands of people. A new report by the Project on Predatory Student Lending came out today that actually highlights some of the misdeeds that happened to ITT in particular that I think are pertinent to the committee, and I would be happy to share those in the chat. But for me, just kind of refreshes the need for these conversations or discussions, but also strong regulation. So I just want to applaud the direction of both this regulation and financial responsibility and gainful employment are kind of moving in, which of course, is that of protecting students. Just want to say that before public comment. Thank you.

MS. JEFFRIES: Thank you. Kelli.

MS. PERRY: So my comment is general to financial responsibility. This seems like the right Section to talk about it real quickly, and it's, I don't have proposed language, but I'd like the Department to consider a couple of things. Based on the fact that we're not opening the composite score calculation and the fact that we know that there's potential issues with it and the fact that there's no appeal process to it. I would, there's private or private nonprofits in the financial statements. There's a new footnote disclosure which is meant to show available resources. And that footnote disclosure will show the resources that the institution has on hand in order to continue operations and such. So as I think about schools in the [inaudible] alternative if they ended up there, potentially by mistake because they calc- because of an error in calculation or because the calculation isn't really showing that they're going to close, that may be that liquidity disclosure or available resources disclosure could be used by the Department to look at whether or not that institution is financially responsible. It's an audited footnote by auditors, and it does give some insight into where the institution is financially as far as, you know, being able to pay its bills and whether or not it's going to be able to continue operations. Just a thought.

MS. JEFFRIES: Thank you, Kelli. Seeing no additional hands, let's go ahead and move into the temperature check on 668.175 alternative standards and requirements, and then we will move directly to public comment. Barmak, do you have a quick comment? You're on mute.

MR. NASSIRIAN: I don't know that we can address this, I submitted it, I'll put this in the chat, but I would like to have a conversation about this. I submitted a memo, for the record that questions the Department's statutory authority to configure the sureties it demands by tying it to Title IV volume as opposed to total institutional liabilities. I think that's a big deal. I don't know that we can really sidestep the issue. I'd like to hear from the Department some kind of a response.

MR. MARTIN: Can't do that today, but I'll see if we can address that tomorrow.

MS. JEFFRIES: Carolyn.

MS. FAST: Yes, I think that I just wanted to add on to Barmak's comment, I think that his comment is relevant to this section, which talks about the 10 percent figure for Title IV and I support his suggestion not just in the context of whether or not the Department has a statutory requirement to do things differently, which is one question, but also even if that were not the case, that just to suggest that it would be a good idea for a letter of credit to consider the total liabilities that the school could owe, as opposed to just looking at the previous year's Title IV.

MS. JEFFRIES: Alright. Thank you for that. I think now that we are past the time for public comment, we will, I think, Greg, if you're okay, we'll defer this temperature check till first thing in the morning.

MR. MARTIN: That's fine.

MS. JEFFRIES: Okay. Alright. Thank you. Brady, can you tell me who's up first for public comment?

MR. ROBERTS: Yes, ma'am. I just admitted Laura Rau, who is here representing themselves.

MS. JEFFRIES: Okay, thank you. Hi, Laura, can you hear me?

MS. RAU: Yes, I can.

MS. JEFFRIES: Wonderful. You have three minutes to speak and that time will start whenever you're ready.

MS. RAU: I thank you very much. I'm ready.

MS. JEFFRIES: Okay, go ahead.

MS. RAU: It's nice to meet you, thank you very much for listening to me today. My name is Laura Rau. I have an MBA from the University of Phoenix. It was the second MBA program I started. I started with Chapman College right out of my undergrad bachelor's with econ. I wanted to speak about the University of Phoenix very flexible program I attended at night and studied on weekends. The MBA allowed me to get the controller job I was speaking for, I was searching for to get the salary I needed. I had one small child at home. My husband and I both attended their MBA program and it allowed us to make the career changes that we wanted. As a result, I worked 30 years in finance as a leader, controller, and CFO executive positions, and now I help people start businesses. The having attended two MBA programs, I feel it gives me kind of a unique point of view. The education that I received at University of Phoenix was more real life, pragmatic and flexible, and it allowed for me to manage my family. It was tough, but I made it. So I believe a quality education is one that helps people be more successful, effective at work. And for that, the University of Phoenix MBA program did it for me. If you have any questions, I'd be happy to answer them. I would just like to thank you for listening.

MS. JEFFRIES: We thank you for that, Laura, we appreciate your time and comments. Brady, who do we have next?

MR. ROBERTS: I am admitting Mr. Jeff Weiss, who's here representing himself.

MS. JEFFRIES: Okay, thank you. Good afternoon, Jeff, how are you?

MR. WEISS: I am doing well, thank you.

MS. JEFFRIES: Wonderful. You have three minutes to present your comment before the committee and your time will start when you begin to speak. Thank you.

MR. WEISS: Perfect. Thank you for the opportunity to speak with you all today. My name is Jeff Weiss. I'd like to share my experience attending college as a working adult. I've tried both brick and mortar and online schooling options, but I can say that I needed what some would call a nontraditional school program in order to complete my college degree and ultimately further my career. When I entered the workforce in 1996, I knew that I would eventually need a degree to further my career. I got to the point where I finally had the financial freedom to pursue a degree, but I cannot quit my job to go to school full-time or attend classes in person. My work hours were very erratic and there weren't many college options for me. Luckily, I knew of the University of Phoenix from a friend and the options that they had for people with busy schedules like mine. I was able to enroll their complete one course every five weeks and earn my degree on my own time. I had the opportunity to work with people from all over the world and experience a richly diverse learning group, which was very important to me. I believe that this gave me a great advantage in my career as a human resources professional. I know that you're discussing how to measure a good return on investment for those pursuing a degree, and I hope you consider what that means for working adults. If it weren't for the University of Phoenix programs, I don't know that I'd have a degree today or how it would have affected my ultimate career choices. Not only did I get to work and gain experience while completing my degree, but I also learned the business skills needed to advance my career after graduating. My experience at Phoenix means a great deal to me, and I would call it a career focused and quality program. Please consider my story and take care that you do not limit the options for adult students who pursue career focused programs. Thank you.

MS. JEFFRIES: Thank you, Jeff. Appreciate it. Brady, who do we have next?

MR. ROBERTS: Cindy, I just admitted Dawn Tremaglio, who's here representing themselves.

MS. JEFFRIES: Hi, Dawn, can you hear me? Dawn?

MR. ROBERTS: They turned away from their computer, haven't enabled their audio, do you want me to message them and let in the next speaker?

MS. JEFFRIES: Yes, please.

MR. ROBERTS: Alright. I have just admitted Robert White, who is the corporate medical director of Medical.

MS. JEFFRIES: Is she on camera? Mr. White. Mr. White, can you hear me? Here he comes. There he is. Okay. Alright, Mr. White, you have three minutes, thank you for joining us, three minutes to speak today and that time that time begins when you're ready to start speaking. Thank you.

MR. WHITE: Can you all hear me okay?

MS. JEFFRIES: Yes, we can, appreciate it.

MR. WHITE: My name is Robert White. I'm a physician assistant as well as a retired Army flight surgeon from Knoxville, Tennessee. In 2017, I was given the opportunity to apply for the physician assistant program at South College in Knoxville. And I was accepted into South College's inaugural class 2009. While I was in the program, I was elected as the class president and I worked very closely with South College PA staff. And I also had the dean of the program as my personal mentor. Over my military career, I've had four conflict deployments that ranged from Somalia in 1993 to Taji, Iraq in 2011 2012, where I helped lead a traumatic center and was the assistant brigade flight surgeon and the battalion surgeon after twenty-three years of combined military service. I finished my military career and retired as a captain flight surgeon in the 63rd aviation brigade. In my civilian career, I've worked in emergency medicine, family medicine, pediatrics, occupational medicine, geriatric psychiatry, and I'm also currently the corporate medical director for a nationwide heavy civil construction company headquartered in Knoxville, Tennessee. I'm also the owner of a CEO, a CEO of a rural health care practice that cares for individuals and families that cannot afford health care insurance. I've been on the board of the member of Tennessee Academy of Physician Assistants, still very active in the Government Affairs Committee. Last year I was appointed, appointed by Governor Lee to the Board of Physician Assistants, and I've been appointed to the Controlled Substance Monitoring Database Committee as well for Tennessee. As you can see, I worked very hard to be of service to my country, my state, my profession, and to my community, in saying that South College is giving me the education and training to practice medicine at the top of my abilities in the scope of my practice, as well as encouraging me to be an advocate for the physician assistant profession and to help me to understand how to be a lifelong learner and a generous contributor to my community. I can say without a doubt that South College has forever changed my life and allowed myself and my family to have opportunities that I would have never been able to have without being accepted into the South College PA Program. I want to thank you all for your time and thank you for hearing my testimony.

MS. JEFFRIES: Thank you, Robert, we appreciate it. Dawn, if you want to go ahead and unmute yourself.

MS. TREMAGLIO: Okay.

MS. JEFFRIES: Okay, hi, welcome Dawn. You have three minutes to address the committee with your comments and your time will begin when you're ready to speak.

MS. TREMAGLIO: Okay, thank you. Hi, everyone. My name is Dawn Tremaglio. Thank you for allowing me the time to speak publicly to the Department of Education, who was setting the rulemaking process to ensure transparency across all higher education. I'm here to share my story. I understand that you're deciding on how to determine if a degree program is a good investment, and I believe that there are many factors contributing to this. In my case, flexibility was key. I'm a two-time graduate from the University of Phoenix with an associate's degree and a bachelor's degree. When I first enrolled, I did not care about the tax status of the university. I simply knew that I wanted a complete education on my own schedule, and University of Phoenix allowed me to do that. As a full-time I.T. consultant for nationwide insurance, I needed a flexible program. And I was thrilled when my company even helped me pay for my college education. However, it took me many years to complete my degree program because I had to fit the work into my professional work schedule, and I was also working through some health issues at the time in my personal life. I was grateful that the flexible and quality program at Phoenix enabled me to eventually graduate with my bachelor's degree, which would not have been possible at a public university. Today, I ask that you please consider how you measure the degree programs and whether that be through new gainful employment rules or otherwise, and I ask that you do not proceed with bias. It's unfair to target specific schools or institutions because of their tax status when they offer quality and flexibility to accommodate schedules for students. Please use your broad authority to apply the rules and regulations to all institutions with the same fervor and standards. And please continue to work to protect and prioritize education for working adults such as me. Thank you for your time today. I appreciate it.

MS. JEFFRIES: Okay thank you, Dawn. Brady, who is next?

MR. ROBERTS: Cindy, I am now admitting Lisa Giordano, who is here representing the Association of Young Americans.

MS. JEFFRIES: Lisa, can you hear me?

MS. GIORDANO: Can you hear me alright?

MS. JEFFRIES: Yes, we can. You have three minutes to address the committee and that will begin whenever you're ready to start speaking.

MS. GIORDANO: Great. Thank you. Hi, all. Thank you for having me here today. My name is Lisa Giordano. I'm the executive director of the Association of Young Americans, also known as AYA. We are a nonprofit, nonpartisan membership organization representing over 23,000 young people across all 50 states. We advocate on behalf of our membership at the federal level on the issues most important to them. Among the most critical is student debt and higher education reform. So again, thanks for having me here today. I am honored and grateful for the opportunity to speak on behalf of AYA's members, about 70 percent of which are student debt holders and some of which have attended for-profit institutions, higher education institutions. Many members have shared with me their largely adverse experiences with these for-profit institutions, and I'd like to share some of those with you all now and also to speak on the importance of the gainful employment rule and the importance of reinstating this rule to protect students and borrowers. So the story that stuck out to me more than any other among our members is from a member located in Boulder, Colorado, who currently has over $400,000 in student loans to his name. He was defrauded by a for-profit law school that lost its accreditation from the American Bar Association. So we all know the value of a law degree and how much debt people go into to pursue a career in law expected to be high earners after graduation. This member was obviously operating under the same assumption, only to be left with hundreds of thousands of dollars in debt for a degree that didn't work. No institution should get to the point of losing its accreditation. The Department of Education should have accountability measures and standards in place to make sure institutions are delivering to their students, especially these high-cost institutions promising high earning degrees. So reinstating the gainful employment rule is critical and ensuring these situations don't present themselves. The Department can successfully protect students from taking on debts they're unlikely to be able to repay and ensure that career programs are able to better prepare students for gainful employment following graduation. Another story from another member that attended a for-profit institution. This member is in Sunnyvale, California. After the first few years of paying her debt off, she owed more than she did at the beginning due to low wages in her new job and high interest on her loans. A direct quote, "It made me feel like college was the dumbest decision I've ever made." I think we can all agree that no one should feel that way. Upon dishing out thousands, sometimes hundreds of thousands to pay for a college degree that should be one of the best investments we make yet-

MR. WAGNER: You have 30 seconds remaining.

MS. GIORDANO: Oh, I'm sorry. I'm going to just skip to the end. Young people have borne the brunt of the student debt crisis, and we have had our voices largely silenced and hardship unrecognized as we struggle with our debt loads and dysfunctional degrees. For-profit students have had it the worst. We know that students at for-profit schools are less likely to graduate, more likely to borrow, are deeper in debt and less able to pay off their debt. So again, reinstating the gainful employment rule is a critical opportunity the Department has to successfully protect students from taking on debts if they're unlikely to be able to repay and ensure that we're able to find gainful employment after graduation. Thank you very much for having me.

MS. JEFFRIES: Thank you, Lisa. Brady, who is next?

MR. ROBERTS: Cindy, I'm admitting Kari Kennedy, who's the institute director of the Institute of Beauty and Wellness.

MS. JEFFRIES: Hi, Kari, can you hear me? You are you need to unmute yourself, please. Thank you. Hi. Great. Kari, you have three minutes to address the committee today and that three minutes will start whenever you're ready to begin speaking.

MS. KENNEDY: Alright, thank you. Good afternoon, my name is Kari Kennedy, and I'm the director of the Institute of Beauty and Wellness, located in Milwaukee, Wisconsin. I'm also representing our sister school, Aveda Institute Madison. Our school provides education in the fields of cosmetology, barbering, ethesiology, massage therapy, and manicuring. Cosmetology schools are a unique subset of Title IV participating schools, and unfortunately, cosmetology schools do not have meaningful representation in these negotiations. This is reflected in the conversation during the first session. For this reason, I feel compelled to provide public comment and provide some context to our schools and our programs. First, I would like to invite each of you to come and visit our schools and learn about our programs, our students, and our graduates. There is truly no substitute for learning about our schools and programs than firsthand. Most of our students are women and nearly half are Pell eligible. Our graduation rate at our Milwaukee campus was 79 percent and at 83 percent at our Madison campus. Our median loan debt for both campuses is approximately $6,333 dollars. Our graduates' monthly payments are approximately $63 dollars a month. I share your concern about high student debt and debilitating loan payments, but it'd be hard to argue that payments of $63 dollars a month are debilitating. Our median earn for both campuses are is $34,885 dollars. Despite these successful outcomes, the regulations you're writing would force schools like mine to close programs. It is well recognized that cosmetology industry has a high prevalence of under-reported and unreported income, which results in inaccurate earnings data from cosmetology graduates. As drafted, the gainful employment rule fails to adequately account for earnings of cosmetology school graduates. I would propose three simple solutions. Consider utilizing the alternative earnings data source for programs in certain CIP codes. Create a mechanism within earning calculation that allows plus up on reported earnings to adequately capture underreporting. The Department of Education is armed with the 2014 GE survey and could provide an appropriate algorithm, and reinstate the appeals process to allow institutions the opportunity to correctly or correct inaccurate earnings. In drafting this rule, I would ask you to think about our students, particularly our students at my school [30 seconds remaining]. Alexia, who is from our

2008 SCL graduate, who has returned to take a cosmetology program in 2021 so she can work alongside her licensed barber that is her husband. Their passion is to provide education in the community, or Brady, who graduated in January, who helped to start a new service at our salon specialty, sorry, specializing in supporting beauty needs for transitioning guests. These students are the core of our mission, and I hope that you'll recognize their faces and their stories when you discuss gainful employment. Thank you for your time.

MS. JEFFRIES: Thank you, Kari. Three minutes goes fast, I know you.

MS. KENNEDY: Alright, thanks, guys.

MS. JEFFRIES: Brady, who is next?

MR. ROBERTS: Cindy, I just admitted John Roberts, who is a veteran representing themselves. It looks like they're in the meeting. They just got to enable audio.

MS. JEFFRIES: Waiting on his audio to connect. Looks like there's some difficulty there ready Brady. While you try to help him, do you want to admit someone else?

MR. ROBERTS: Sure, I'll admit Neal Heller, who is here representing the Hollywood Institute and Cortiva Institute.

MS. JEFFRIES: Good afternoon, Neal, how are you?

MR. HELLER: Good, how are you?

MS. JEFFRIES: Wonderful. You have three minutes to address the committee today with your comments and that three minutes will start whenever you're ready to start talking.

MR. HELLER: Okay, let's go. Okay. Good afternoon, everybody. My name is Neal Heller. I'm the government relations chair and a member of the board of directors for the American Association of Cosmetology Schools, representing over 600 beauty schools across the country. I'm also a school owner. As a former negotiator in the last round of negotiated rulemaking, it's especially disappointing that the Department of Education failed to understand the importance and relevance to these proceedings to have a representative from our sector of higher education. Our schools offer degree granting programs for state licensure and cosmetology and other beauty, health, and wellness related career fields. We do not offer a degree granting programs. We are not them. The rules this panel are discussing are particularly relevant to our schools and, more importantly, our students. The gainful employment rule is directly related to the misconception that our graduates incur high debt with little career opportunity. This couldn't be further from the truth. Over 90 percent of those working in the multibillion-dollar beauty industry are graduates of our schools. Graduation and placement rates far exceed those of community colleges that offer the same programs. Our grads have less than $10,000 of student loan debt, roughly $1,000 per year in repayment. We are not the reason for today's student debt crisis. That responsibility belongs with traditional colleges and universities. An in-depth, extensive analysis by The Wall Street Journal clearly demonstrates this. Underreported or unreported income is a real issue for our schools as it pertains to gainful employment. To say anything else is simply a false narrative. A U.S. District Court clearly stating in a lawsuit brought by our association that the earnings data used by the Department in the 2014 version of gainful employment was flawed. The judge called the appeals process arbitrary and capricious, and ordered the Department to fix it. The Department in its own words in 2014 acknowledged that there was specifically an earnings problem in the cosmetology industry. Apparently, this problem's answer to the District Court is to continue down the same path the 2014 rule and go even further by eliminating the appeals process altogether. We can't wait to hear Judge contractions reaction to this incredible position. Although the 90/10 rule has been resolved on a bipartisan basis in Congress, this panel wants to supersede Congress's agreement by further defining federal aid, although every single state has its own hours requirement for licensure. This panel is discussing a cap on federal aid for cosmetology students, which would result in disenfranchising tens of thousands of students from pursuing their chosen career path. [You have 30 seconds remaining]. I would love to go deeper into these and the other subjects being discussed over the course of these sessions. However, I have been limited to a paltry three minutes to address these critical areas of concern. If the expertise needed to be part of these discussions have been allowed in the first place an effective outcome and consensus might have prevailed. Or perhaps that was the plan all along. Thank you.

MS. JEFFRIES: Thank you very much, Neal.

MR. HELLER: Alright, thank you.

MS. JEFFRIES: Brady, who's next?

MR. ROBERTS: We have John in the chat right now. John, if you just want to come off of mute. I think we're ready to go.

MS. JEFFRIES: Thank you. Hi, John. Hi, how are you?

MS. JEFFRIES: Good. You have three minutes to address the committee this afternoon, and that starts whenever you're ready to start talking.

MR. JOHN ROBERTS: Thank you for having me. Good afternoon. My name is John Roberts and I am an Army veteran. I was trained to fly helicopters in the army, and when I retired, I wanted to earn my certification to fly airplanes. Liberty University was the only school that offered a program covered by the G.I. Bill, specifically geared towards transitioning students from flying helicopters to airplanes. The program seemed perfect for me, but it turned out to be too good to be true. Liberty recruiters promised me the program to lure me to their school, but when I registered for courses, the flight program was no longer available. I first learned about Liberty's rotary wing transition program in 2020. Liberty seemed to be marketing it specifically toward military personnel. At that time, the landing page, the welcome page featured photos of Blackhawk helicopter and Army helicopter pilots surrounding it. I didn't enroll then, but in late 2021, Liberty directed its flight training affiliates to reach out to formally interested students like myself. I was contacted about applying for that training program. I received frequent texts and calls and always firmly stated that I would not attend unless I was enrolled in the flight training program. I applied and was accepted to that program. However, when I was trying to complete the registration online, I encountered an issue. I registered for my three semester hour credit aviation course, as well as seven credits of online coursework in other topics such as Bible study in order to fulfill Liberty's degree requirements. When I went through the financial check-in for that registration process, I was charged for all 10 credits. Everything seemed to be up and up, but when I clicked to confirm everything, the next page showed that I was only registered for seven credits and no flight training. After unsuccessfully seeking help, I withdrew from the other courses because I had no interest in taking general education courses at Liberty. I already have a bachelor's degree. I went to Liberty specifically for this transitional flight training program because of my age. I only have a few years before in order to work in a commercial aviation industry the only thing I'll be able to do is teach. [30 seconds remaining]. Thank you, and Liberty was wasting my time. In addition, I incurred expenses in reliance on my acceptance to Liberty's flight training program, including buying an iPad, materials to complete an initial check ride, and reserving hotels for my flight training, which would take place a few hours away from home. I feel that Liberty marketed its program to veterans with a promise of a tailor-made program before pulling a bait and switch. I'm here today to ask the Department of Education to continue to regulate schools like Liberty that are recruiting veterans and failing to fulfill their promises. Schools should not be allowed to entice us to enroll with the promise of a program and then fail to offer that program while keeping us enrolled and charging [inaudible].

MR. WAGNER: Your three minutes is completed.

MR. JOHN ROBERTS: Thank you. Thank you for having me.

MS. JEFFRIES: Thank you very much, John. Brady, we have time for one more.

MR. ROBERTS: I'm admitting our final speaker, Sandra Bruce, who's here representing Milady where they are the vice president and general manager.

MS. JEFFRIES: Okay. Is she, there she comes. Hi, Sandra, can you hear me?

MS. BRUCE: Hello, Cindy, hi, how are you?

MS. JEFFRIES: I am wonderful, and yourself?

MS. BRUCE: Good. Thank you.

MS. JEFFRIES: Okay. Sandra, you will have three minutes to address the committee this afternoon and that three minutes will start whenever you begin to speak.

MS. BRUCE: Okay, very good, and is that happening now or what time?

MS. JEFFRIES: Okay, right now. Yeah, you're ready to go.

MS. BRUCE: Very good. Thank you. Thank you for allowing me the opportunity to speak today. I am Sandra Bruce, senior vice president at Cengage Group and general manager of its Milady business. I've been with Cengage for more than 26 years. Cengage is the largest U.S. based education publisher with 100 years' experience serving learners from kindergarten through higher education. Milady is a beauty education provider with 95 years of creating content for learners pursuing occupations in the beauty industry as a participant in the higher education landscape. We are keenly interested in promoting strong student results and strong student outcomes. Our mission is to drive career success by inspiring the pursuit of knowledge through innovative solutions. Since 1927, we have worked to meet the needs of learners, educators, and employers by developing coursework that maintains pace with industry changes. We pride ourselves on providing students cutting edge resources. Today, there are more than 185,000 learners a year using Milady textbooks or digital course ware. Those learners are educated in high schools, in votechs, community colleges, correctional facilities, career colleges and for-profit beauty schools. Students pursuing careers in beauty occupations have a rigorous curriculum, including anatomy and physiology, chemistry, electricity, financial literacy, as well as practical training for procedures related to their field of specialty. They learn professionalism and communication skills as the foundation for a successful career. Most students pursuing a career in the health and beauty industry, in fact, nearly two-thirds of students do so at for-profit beauty school. The vast majority of these beauty schools are small businesses, with an average of 25-50 students a year. They are accredited, state-authorized and approved by the Department of Education to offer Title IV. The average student in a beauty related program is a creative, and not typically a traditional learner. 38 percent of the students are under 25 years old, 73 percent are under 35 years old. These students are seeking a focused education that will lead them to the marketplace with lifelong skills in a career they love. Student outcomes for graduation, licensure, and job placement are not only state mandated as beauty schools must be licensed to operate in their state. They are also mandated by accrediting bodies for the school to qualify to offer Title IV funding to prospective students. [30 seconds remaining]. Occupations in beauty, such as cosmetologist, barber, nail technician and esthetician are licensed occupations regulated by each state. My concern shared by beauty schools and beauty professionals, is that a rewrite of the gainful employment rule will fail to properly account for unreported tip and self-employment earnings and as a result will force programs with low graduate debt and low graduate default rates to close. The earnings measure also does not account for part-time workers or for the earnings increases that accrue over a career as a licensed professional builds a client base. For this reason, I emphasize my request that any gainful employment rule properly account for the earnings issues that are present in this industry. I also request that regulations are applied equitably-

MR. WAGNER: Your time is completed.

MS. JEFFRIES: Sandra, thank you very much for joining this afternoon. Okay with that, that concludes today's session, it is 4:03 p.m. Tomorrow's agenda will be aggressive, hopefully that you wrap up financial responsibility, move directly into certification procedures and depending on how all that goes. Maybe even open the tip of the iceberg on the change of ownership control. So with that, have a great

Department of Education, Office of Postsecondary Education

Zoom Chat Transcript

Institutional and Programmatic Eligibility Committee

Session 2, Day 3, Afternoon, February 16, 2022

From Sam Veeder (she/her/hers) to Everyone:

I am back at the table for FA Administrators

From Anne Kress (P) Comm College to Everyone:

I am back at the table for Two Year Colleges.

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

I will be returning to the table for Private, Non-Profits after Emmanual asks a final question he has regarding Gainful Employment

From David Socolow (A) State agencies to Everyone:

I am at the table for State agencies

From Adam Welle, MN AGO to Everyone:

I am back at the table for state AGs

From Jamienne Studley (P) Accrediting Agencies to Everyone:

I also have comments about issues in Paper #3 and noted the comment from the facilitators that if we have time tomorrow after other subjects we could return to Paper #3.

From Jamienne Studley (P) Accrediting Agencies to Everyone:

Sorry: on Friday!

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

funny that massive debt helps your composite score

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

can we go by paragraph as we go through comments on this section. This is a lot to cover all mandatory triggers at once

From Adam Welle, MN AGO to Everyone:

Yael is going to come to the table for discussion of this issue for state AGs.

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

Why doesn't (c)(1)(i)(A) apply to all institutions (including those with composite scores higher than 1.5) when their score drops below 1.0?

From Dave McClintock (Advisor) Auditor to Everyone:

section 668.171 section about Debts, liabilities and losses, please provide clarification regarding, "the institution's recalculated composite score is less than 1.0". 1) does recalculation need to be based on updated audited financials; 2) what are the specifics of the 'recalculation'?

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

is the recalculation of the score as of the date of the event or the impact on the prior year financial statements?

From Johnson Tyler, Brooklyn Legal Services to Everyone:

120 day pending provision is a safety valve that addresses Brad's concern. If its a small issue it can be worked out quickly.

From Dave McClintock (Advisor) Auditor to Everyone:

further down in 668.171 (ii)(B), "or in the year following a change in ownership, the recalculated composite score for the entity...." An institution that goes through a change of ownership does not have a composite score until they complete their first fiscal period (might be a full year but it might not). Their Financial Responsibility is measured based on First Day or Opening Balance Sheet using the Acid Test and Tangible Net Worth. Can clarification be provided?

From David Socolow (A) State agencies to Everyone:

+1 to Yael

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

I would ask the department to look at 668.171 (c)(1)(i) and whether (A), (B) and (C) are circular. It seems to me that if (B) and (C) are mandatory triggers then the debts referenced in (A) don't matter because the trigger has already occured in (B) and (C).

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

where did we stop on mandatory triggers. I do not want to get ahead

From Cindy FMCS Facilitator to Everyone:

He stopped after (v)

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

The mandatory triggers tied to the composite score are presumably only intended to factor potential liabilities into institutions' composite score, and to render them not financially responsible when the score drops below 1.0. But it seems like 667.171(c)(1)(ii)(A) allows a loophole where payment of required dividends or "wages" could cause the school to drop below 1.0 and remain financial responsible.

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

i formatlly proposed using the department's recommended 10% revenue threshold as the materiality threshold for all mandatory events.

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

Brad is right, it doesn't matter what the prior contribution was, the more universal rule should focus on distributions that drop the score below 1.0, regardless of whether a prior contribution was made or not. The way this drafted, it actually limits the trigger.

From Anne Kress (P) Comm College to Everyone:

+ 1 Barmak

From Anne Kress (P) Comm College to Everyone:

The focus should be on “below 1.0”—think this also goes to Jamie’s point on overly complicating the trigger.

From Yael Shavit to Everyone:

Adam is coming back in for State AGs

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

Beverly is trying to ask a question by raising her hand on the video. she can go before me as she has been trying for a while

From Anne Kress (P) Comm College to Everyone:

+1 on Beverly’s accreditation point—language seems to run counter to actual accreditation process v/v accreditor actions

From David Socolow (A) State agencies to Everyone:

State higher education authorizing/licensing/regulatory agencies applaud the Department's proposed addition of the discretionary trigger in 668.171(d)(9), related to institutions being cited for failure to meet State requirements.

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

I think it’s important to remember that all of these discretionary triggers are cabined by the language in the intro to (d): “if any of the following events is likely to have a material adverse effect on the financial condition of the institution.”

From Beverly Hogan Primary/MSI to Everyone:

I agree with comments made by Jamie. I would still raise the question regarding intent. I realize the Department actions can trigger actions by accrediting agencies. Accrediting agencies allow a period of time for institutions to comply. I might be having problems with the rie hand. i have pressed but not sure it is showing as raised hand.

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

+1 Jessica's comment in the chat. It's my view that this level of discretion, with the intro in (d) as a guiding principle, is important for protecting students where traditional mandatory triggers may not catch issues before they occur.

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

+ 1 to Jessica's comment above. I believe this was said in the first week, but I think it's important that the Department have tools to use its discretion to detect unstable institutions early and prevent calamitous closures and harms to students. These criteria are signs of problems and I'm generally supportive of these provisions.

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

+ 1 Amanda and Carolyn re: low completion rates and disaggregation of associated data

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

sorry. i froze and was offline for a minute or two

From Amanda Martinez (P-Civil Rights) to Everyone:

Suggestion for ED in (d)(3) to change "Title IV" to "federal education assistance funds." It makes sense for the regulations to require proper stewardship over all Federal funding sources instead of just Title IV.

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

I am coming back to the table for state agencies.

From Beverly Hogan Primary/MSI to Everyone:

Is it possible to enlarge the text?

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

i did not vote no, but i will in week 3 if we are unable to add in allowable equity distributions to cover tax obligations

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

With regard to the reporting section f(3) I would ask the department to consider the proposed language that I sent regarding the ability to appeal composite score calculations

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

i am sideways, but again want to figure out how S-corps pay their federal and state tax obligations given they flow through the owners personal balance sheets

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

+1 barmak

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

it is the power 5 grab. two sec schools are going down this path.

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

+1 to Barmak and Debbie's comments on public institutions

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

Suggestion for (g)(1)(I): add requirement for institution to be subject to the same financial oversight and open public records laws as the state or local government, in the state or local government jurisdiction where the institution is formed.

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

in c and f2 i would like to propose to add in words takes reasonable steps see proposal below: (c) …For purposes of a failure under § 668.171(b), the institution must also take reasonable steps to remedy the issue(s) that gave rise to the failure f2 (ii)...(ii) Take reasonable steps to remedy the issue(s) that gave rise to its failure under § 668.171(b);

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

+1 to Ernest's comment.

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

I submitted a legal memo from NSLDN on the question of statutory authority to index the amount of any surety or legal protection to the previous year's Title IV volume as opposed to total institutional liabilities. I'd like to have ED address the question tomorrow.

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

https://predatorystudentlending.org/news/press-releases/new-report-details-massive-scale-of-fraud-and-abuse-at-notorious-for-profit-college-itt-tech-press-release/

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

+1 to Ernest. These are important rules to protect students. I also wanted to highlight today’s news from the Department about $415 million new borrower defense relief: https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students

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

+1 to Ernest's comment that stated "all students"

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

Thanks, Brad. Importantly, though, students attending or considering attending the programs these regs focus on.