DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 2, DAY 5, AFTERNOON

February 18, 2022

On the 18th 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

MR. WAGNER: Welcome back. Hope everyone had a good lunch. Before I turn it over to Greg, I just wanted to say I wanted to thank everyone for following the recommendations this morning and having very productive discussions and dialog. I do want to mention that Jamie is back for accrediting agencies, and David Peterson will be at the table representing financial aid administrators. So, I will turn it back over to Greg to resume 90/10.

MR. MARTIN: Thank you, Kevin. And welcome back, everybody. Hope you had a nice, nice lunch. And the wind here on the East Coast has died down considerably, which is very nice because I was worried about losing power, so that probably won't happen. So, no excuse to get out of this for the rest of day. So, we're moving on to, we're still in 668.28 A. But we are moving past, we don't have anything in three, that's a change, so we're moving over to four, application of funds. So, I'll wait for, I don't know whether it's Vanessa or Renee at this point to pull it up, but Renee I believe it's Renee, so thank you, Renee. And we are at 4 the application of funds. And here you'll see that we have some edits to clarify the presumption that funds to students must be included up front to the cost of tuition and cash payments made to the institution. And so, we'll read through that first. Excuse me. "The institution must presume that any federal funds it disperses or delivers to a student or determines was provided to a student by another federal source will be used to pay this student's tuition fees or institutional charges up to the amount of those federal funds, if a student makes a payment to the institution, except to the extent that the student's tuition fees or other charges are satisfied by" and then we'll go through those in a moment, those are the funds received first and then going down to romanette 1A. The changes here clarify that were the institutions able to identify federal funds used to repay a student's tuition and fees, they must include those in in this section. So again, we say, except to the extent that the student's tuition fees or other charges are satisfied by grant funds provided by non-federal public agencies provided those grant funds do not include federal or institutional funds, unless the federal portion of those grant funds can be determined and the portion of federal funds must be included as federal funds under this section. If the federal funds cannot be determined, no amount of the grant funds may be included under this section. And then, of course, the other sources of funds received first are private sources unrelated to the institution, its owners, or affiliates. And funds received under a contractual agreement arrangement with the institution for the purpose of providing federal job training to low-income individuals or funds provided by a student or a savings plan established on behalf of the student in accordance with the that rather that qualifies for special tax treatment under the Internal Revenue Code of 1986, or institutional scholarships that meet the requirements in paragraph A five romanette four of this section. So, I'll stop there, open it up to comments.

MR. WAGNER: Let's see. Amanda, I see your hand up.

MS. AMANDA MARTINEZ: Hi, was my name called?

MR. WAGNER: Yes, yes, Amanda.

MS. AMANDA MARTINEZ: Sorry, I just had a quick process question. I mean, it is related to 90/10 in our [audio] but I would just like to propose that we prioritize in the restructuring or of the agenda for next week that we prioritize putting 90/10 and gainful employment at the first two topics that we discuss next week. Other than that, I support this section of the application of funds.

MS. JEFFRIES: Thank you, Amanda, for that, we'll take that under consideration. Thank you.

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

MR. ADAMS: I second Amanda's choice, I made a similar proposal for this week. So, can I we did propose some language and we had some discussion on three Greg that I know there were no changes made by Department, so maybe that just means you're not interested in my proposals, but can I just ask a question or two on three romanette three going into four?

MR. MARTIN: You want to go back to three romanette three?

MR. ADAMS: Yes. If that's okay. I did submit several changes to that section that I'm sure are not included.

MR. MARTIN: So, let me give me a second here. Three romanette three funds paid by the student?

MR. ADAMS: Yeah, and it's really A through E. Are you good?

MR. MARTIN: Yeah, I'm fine. Go ahead. Sorry.

MR. ADAMS: I am waiting for you to-

MR. MARTIN: Oh, no, I'm there I was, I should have announced that I was there I I'm there.

MR. ADAMS: So here there's a couple of things and I'll just describe what occurs here that looks like, by the way, this is written that are no longer allowed for the 10. I'll give you an example of like our nursing [audio] part of their program must get BLS certifications. That includes CPR and whatever else is in the BLS certification, right? And we do offer at the same time we're teaching those students that BLS course, the opportunity for others in the in Knoxville or really any location to come in and get recertified because an annual certification requirement to be a licensed nurse in Tennessee. So, I just want to confirm that you are saying that's no longer allowed from a 10 perspective that we can't if they come in and pay us 50 bucks to get trained and get their annual BLS certification, that's no longer allowed? If I'm reading that correctly.

MR. MARTIN: Well, I'm trying to think put it into perspective for exactly what you're asking with respect to- so what type of program is this again? [Interposing].

MR. ADAMS: [Inaudible] within one of our existing courses, right, our students are taking it so I'm not asking about the students. That's clear, that's okay. It is just part of their just general tuition, anyways, my question is at the same time, we're offering that course to the public and for those people they come in and pay us 50 bucks to get their annual certifications so they don't have to go somewhere else to get it. And I'm just clarifying that the intent of the Department is if you're not a student and you attend a certification that's being taught to students by our faculty, you're saying that it's no longer eligible? That's a change from what it's used to.

MR. MARTIN: Yes well, you're talking about in three where it says funds paid by a student on or behalf on or on behalf of a student by a party related to the institution or its owners or affiliates for undergraduate training program that is not eligible under 668.8 and does not include any courses or coursework offered in an eligible institution. So, if it were if it did include this course that course, it wouldn't be allowed. That's correct.

MR. ADAMS: And I obviously proposed that to be changed, I have before. Now, the other piece the same example, but at the approved location, so we do that same certification at a hospital. So, on behalf of Covenant Hospital here in Knoxville, we'll send a faculty member for a small fee to teach their nurses on their location a BL- get them BLS certified, right. So that also used to be okay before 90/10 from what I remember, and now that's no longer allowed as well.

MR. MARTIN: That's correct. You're talking about in A B provided by the institution at one of its approved locations, the institution may not count revenue from a non-eligible education or training program where it merely provides the facilities.

MR. ADAMS: And can the Department just explain why they're making that change for me?

MR. MARTIN: Yeah, well, we have made this change because of our position that this must be an education, an actual program offered by an actual program offered by the institution, a non-eligible program offered by the institution that is separate from its eligible, its eligible programs and that the institution offers. It's not just providing a location for acting as a proctor for or overseeing a course of self-study, that it be an actual an actual course of study.

MR. ADAMS: I just would like to say that that's frustrating because that's what we do is we train people and educate people and providing this service to nurses is now being excluded. I'm worried that now where are they going to go get it, right? So, I mean, I guess we could still do it and just not run it through the 10 but-

MR. MARTIN: That's correct. I want to point out that we're not precluding, we're not precluding you from [inaudible].

MR. ADAMS: Correct, Greg. Just no longer is, I guess incentivization is gone other than the fact it's the right thing to do for the community. Well, I'll put in my comments proposing to change that back. But so next question on D, and I guess it was D and E. Just everything that was struck from old C down through E. You know, I'd like to see the Department add those provisions back in. So, if an institution is providing training on the state license, it's kind of going along what I just said, but. I'm just struggling. Same thing with accounting in class, I mean, we have a Becker Accounting class as part of our Master of Accounting program. And folks that want to be trained on how to pass that test are no longer able to do that. And that's the state licensing required, to practice as a CPA you must be licensed in your state. And so, you're now saying that we can't include that as part of the 10. I mean, I guess I'm just struggling with why the Department thinks that an instruction to these people that need this stuff should not benefit the institution from a 90/10 perspective, it's troubling.

MR. MARTIN: I don't know what else I can say more than whatever they have that we feel that it should be, this should be limited to actual training programs that the that the institution provides. Oh, I don't know. Steve, do you want to add anything to that?

MR. FINLEY: Not really, I think. I think Brad's concerns have been expressed and we can take it back for further discussion.

MR. ADAMS: I'll let I'll let Johnson go. Thank you.

MR. WAGNER: [Audio] Johnson, you're next.

MR. TYLER: I just want to point out for Brad that I remember taking the bar prep course, you got to pay that out of your own pocket. There's no Title IV funding for that, and it's- there are preparation courses people take to pass licensing that they got to pay [inaudible].

MR. MARTIN: I want to clarify here these are these are what we're talking about here are non-eligible courses.

So, these would be these are these would be these would be programs where the institution offers them but not Title IV, they're not Title IV eligible programs.

MR. ADAMS: Right and Johnson, your example is perfect, I don't I don't have a Master's in Law Degree here. So, I don't, I don't want to speak for that. But if we did and we had that preposition course available to students, what we're saying is anyone else that wanted to take that through our institution and paid us cash, it's nonfederal or Title IV eligible, we can't count that anymore. That was the point. So, thoughts on that being counted if they pay us cash, Johnson?

MR. TYLER: My point, though, Brad, I'm sorry, I'm not following the whole thing, but my point is there are whole industries that do this that are not receiving any Title IV funding whatsoever. I mean, the bar prep courses are just businesses that are come pay cash on your own. So, you know, they don't mix and match.

MR. ADAMS: They can, we do, we have a CPA prep course that's part of our master's program, so you can do that. It's an eligible course. Okay, well, I will resubmit my comments, I will agree to disagree on excluding them from the 10.

MR. MARTIN: Thank you.

MR. ADAMS: On four, if we're good? Anyone else have anything on three?

MR. WAGNER: Before you start, just quick, I just want to mention Yael is stepping in for the state AGs.

MR. MARTIN: I do want to offer since Brad brought it up, raise three, I do want to make certain that nobody else has any comments relevant to that before we move on.

MR. WAGNER: Okay, so we're back onto four?

MR. MARTIN: Yes.

MR. WAGNER: Okay. Any comments on four? Brad.

MR. ADAMS: Yes, so this this goes back to our earlier discussion on how we as the institution must be able to calculate the portion of federal funds separate from the portion of the other grant funds in romanette one. So, I know we had a lengthy debate about it this morning in section one because it also was referenced there. So again, I think that last sentence that's been added is also what's the most troubling part, really. I mean, the whole thing is troubling having to track it, but then you say if you can't determine it, it can't be included. So that that last sentence, in addition to everything we talked about this morning, is you've got to track the exact percentage between federal and state. You're now saying, if you can't do it, you can't count it at all. Am I reading that correctly?

MR. MARTIN: Yes, that is a correct reading.

MR. ADAMS: So, in a, so I just want the committee to realize that all the debate we talked about is how difficult it would be to separate those two. Now we're saying if you can't do it, which means they admit [ph] that it's likely that that can happen, you just can't count it whatsoever, and it's coming from the State. I just, sorry, that's, you're now telling states that their state grants aren't eligible for institutions if they can't differentiate the difference between the [inaudible] is what you're saying here.

MR. MARTIN: Well, as I said before, we will take it back, I think we can do some, investigate how readily available the breakdown between federal and state monies are and you know, as I said, we'll, we'll consider we'll consider your suggestions.

MR. WAGNER: Go ahead, Steve.

MR. FINLEY: Yeah. I just wanted to ask a question as a follow-up to some of the comments that were made earlier, which is, and it was addressing Brad's comment about the many grant programs that they might have to deal with. Is this one of these cases where there might be five large grant programs and two hundred small ones? Or you know can you kind of describe what the comp is, you know how the field shakes out there when you're looking at these programs?

MR. ADAMS: Sorry, Steve, was that a question to me?

MR. FINLEY: A question to everyone, but you would at least raise the issue that there were lots of them and it sounded like a lot of those might have been very small and posed a lot of administrative burden for the size of them.

MR. ADAMS: Well, I yes, and there are a lot of them and they are administratively burdensome. But it's important to me if the rule says that, you know, we were trying to differentiate between federal and state and to have state money get excluded from the calculation is where I'm having issue with it. And yes, but you, to answer your question is there are some larger programs, but there are a whole lot of programs across the country. And you know, I'm limited to my six states that I've got locations in, so I don't want to speak for all 50 states. So let me let me ask, Dave raised his hand, I see, and he probably has audit experience in a lot more states than I do. So let me defer to him.

MR. MCCLINTOCK: Yeah, I would just say that our experience auditing 90/10, the difficulty of this is going to be 90/10 gets calculated on a student-by-student basis, so you must look at each student and determine how the dollar amount of institutional charges, so we talked about the nuance of what gets included in that earlier, and then apply the funds by a set priority against them. So, you know, and the way that schools have this information is based on what gets posted to a student's ledger card. And so, you have the types and you know how to apply it. Well, now we're saying that some of those amounts posted, you must split up into two different amounts. I don't know when you're going to find out when those amounts get included. I don't know how often it changes. Again, when I was part of SEOG, it was, they were de minimis about, so it's almost going to make it impossible to track 90/10 and only because you don't look at, okay, how much money do we get from the state grant program? And at that level, subtract out what the federal portion is. You must look at it for each individual student, and that's what's going to make it very difficult to calculate and I would say difficult for us to audit.

MR. WAGNER: Thank you, Dave. Okay, David, you're up.

MR. SOCOLOW: Yeah, I will just renew my point that at least as it relates to a grant from the state that might have co-mingled federal funds with other state funds, you know it's the word unless the federal portion of those grant funds can be determined. I think you can shift some of that burden to the states. In every case that I know of, it will be very easy to simply say a percentage. I mean, you've just given the example on the federal funding where it's 75/25 on campus-based programs like work study and what else ever have you that's 25/75. You just apply 75. I mean, it's a simple mathematical number that you can get from the state government, and that would be the case in all 50 states because as it relates to federal funds, cost accounting to the feds about when you co-mingle your funds with theirs is done in a uniform way.

MR. WAGNER: Thank you, David. Brad, is your hand still up? Yeah?

MR. ADAMS: Yeah, I was wanting to confirm in four romanette two that that, the whole segment is just specific to WIA, I mean, because WIA is the low-income job training and I just want, should we just state what it is or?

MR. MARTIN: It's generally WIA. What’s provided under contractual arrangement with I, the wording in the regulation allows for it to be different. I mean, at one time, I think if we go back to the dark ages, WIA was JTPA if you're old enough to remember that. Unfortunately, I am. So, I think that could change. Probably won't. But it's built in there so that it would be any such program. But yes, I think you're correct in saying that it's mostly with. And someone could correct me if I'm if they feel I'm in error there, if there are other things that I should be aware of.

MR. ADAMS: I mean, that's the only one I'm aware of. So, I was just going to ask if we should just list it, but maybe there's more. I think Dave just said there might be more.

MR. MARTIN: And you know, you know, we're writing the regulation going forward. You never know when you're going to have another shot at regulation. So it needs to be, I don't think we want to say, you know, if rather than just say, you know, we are a successor or programs or whatever, it's better just to say just to list the type of arrangement that it is and for that reason, I would I would my feelings that the regulation works best to state it, but I can take that back if you think we should say something like such as WIA or something like that.

MR. ADAMS: I think so, but I'll defer to David.

MR. SOCOLOW: Yeah, I would strongly disagree, Brad, there are several other programs, including the federal SNAP E&T program that operate the same way, contracts from state agencies to the with federal money to the local job training providers to do contracts for low-income individuals to get job training. So, I think this is the right generic. It certainly covers WIOA and SNAP E&T and stuff that people might be doing with their local TANF federal block grant.

MR. MARTIN: Thanks, David.

MR. WAGNER: Thank you, David. I don't see any hands, Greg. Do you to take a temperature check on this? Do you want to keep going?

MR. MARTIN: Yes, we could take a temperature check on this, so we'd be taking a temperature check on four.

MR. WAGNER: Okay. Just a reminder, if everyone could vote with your thumbs and so we can see them, hold them up, please. I see one thumb down. Thank you. Back to you, Greg.

MR. MARTIN: Thanks, Kevin. So, we are moving on from four. There are no, we made no changes in five over what you had last time, and so we are moving on to, I believe, six, funds excluded from revenues, if I'm not mistaken, just make sure I'm correct here. Yes, we are moving on to six specifically. So, we're in romanette seven. So, our addition here further specifies that third party loans cannot be included in the 10 side of revenue. We have similar suggestions. We had similar suggestions from a negotiator but have provided our own suggestions here for language. So, these are going back to make sure we're all aware of what we're talking about here. These are these are all funds excluded from revenue. So, if you go back to the stem of six for the fiscal year, the institution does not include [inaudible] things that we're all familiar with, the amount of works that it came up previously. So just to clarify that the amount of work study wages paid directly to the students are not included. However, if the institution credits a student's account with work study, which it can do with the permission of a student, that doesn't really happen very often, but, FWS is excluded. The amount of funds received by the institution from a state under a LEAP, SLEEP, or GAP [ph] programs the amount of institutional funds that are used to match Title IV HEA program funds as was talked about earlier, the amount of Title IV funds refunded to students under 668.22 [inaudible] charge for books, supplies or equipment, unless the institution includes those that amount as tuition fees or other institutional charges, which is, you know, goes back to the discussion we had earlier about making revisions to clarify institutional charges instead of using the words books and books and supplies. Any amount from the proceeds of the factory and sale of accounts receivable or institutional loans, regardless of whether the loans were sold with or without recourse. That was a change we had last time we met in January. And then this is the updated one again. Any funds, including loans provided by a third party related to the institution owners or affiliates, to a student in any form. So, I'll stop there and open it up for discussion.

MR. WAGNER: Thank you, Greg. Let's see. I see Yael,

MS. SHAVIT: Thanks, and Greg, I don't know if the language you just read was maybe an attempt to get at this, but Adam had proposed language in section five that I know we didn't go through now because you didn't make changes there to make very clear the role that ISAs play and the fact that any funds provided to an institution from an ISA provider or, I should say, any other sort of fintechy alternative, the kind of the traditional loan product. Of course, ISAs are loans, can't be included by institutions to get to the 10, and I think it's you know critical that the Department do this explicitly. My concern, you know, there was a loophole in

90/10, which is the reason that 90/10 needed to be revisited. I am worried that a formulation of 90/10 now that doesn't make very, very clear that schools can't pad their calculations by relying on ISAs or similar products will result in students being pushed into potentially predatory but certainly, you know, frequently problematic financial products, and I really can't state this enough. So, I saw that the Department chose not to go with the suggestion that Adam made previously. But I caution the Department not doing something quite explicit about this in this regulation could really be opening a very problematic [inaudible].

MR. MARTIN: Yeah. In response to that, I want to say that we have not yet decided on that. We're still considering that language. We are aware of the of the issues posed by income share arrangements, and we are we are looking at that. We weren't ready to put to address that in these in this iteration here, we probably will. I have many more to say about that in the third, in the third round, but we certainly are aware of your concerns. I don't want to; I don't want to seem dismissive of that. And I share the concern that those types of arrangements could be used as an alternative to loans, you know, to potentially circumvent some of the ramifications of 90/10, so we certainly are aware of that.

MS. SHAVIT: Thank you, I appreciate that.

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

MR. ADAMS: Greg, I know we talked about this briefly in romanette six in week one. And you know, I proposed taking the whole thing out. I I'm okay with the language, basically saying that they are or institutional loans that are sold with recourse back to the school, leaving that as a as something that's exempt from the cash being included on the 10. I'm good there. I do completely still disagree, though. If you're selling a loan or an account receivable without recourse, that's a bona fide transaction that someone is paying a fair market value for that loan and you're receiving cash for that loan and we're in a cash accrual basis here. I mean, not accrual, we're on a cash basis of accounting. You're not on accrual basis. So, remember when you disperse a loan, if we disperse a thousand-dollar loan, we don't get a thousand dollars towards the 10, right? It's only what they pay. And in a loan, that's sold in the same year that then disperse to the student, the revenue is already there. So, you're getting hit on the revenue side. More likely in my instances, they would have probably received some sort of other aid because we don't do 100 percent of tuition and an institution [inaudible] close to that. So more than likely, they already received 80, 90 percent of their tuition costs with federal aid. So, you're counting that towards the 90 and what you're telling me here that if you sell a loan or AR, you can't count that towards the 10. Again, I'm not saying sold with recourse back to school. That's that is not really selling anything, that's just really pledging or pledging your asset, I'm saying. But if you sell it without recourse, you've got to count that as you've counted the federal aid tied to that tuition already and I submitted that comment and I'll submit it again, and I'd love the Department to talk about why a loan sold without any recourse back to the school is not allowed from a cash perspective here.

MR. MARTIN: Our position with this is I think, as I stated the last time, we were here in January is that the principal of 90/10 why it was enacted was to with the understanding that that a program that a program should be of value enough that students would be willing to put something out for it other than federal money, that to be willing to put some amount of their own resources. Some students would have would be willing to pay, you know, other through other means to the institution and that that would be actual payments to the institution. So, with these sales of receivables and sales of institutional loans that we don't see this as and as in the sale of a receivable or institutional loan as an indication that this was anything that was paid for where the students are willing to pay for. In fact, in large, in many cases they were uncollectible, which is why they were not, not in every case, but they can, therefore they're being they're being sold generally, generally at a discount. So, it does not represent money that was paid towards tuition and fees at the institution and therefore should not be allowable as part of the 10 as part of the 10 percent.

MR. ADAMS: I'll let Steve speak, he had his hand up, and I'll comment.

MR. WAGNER: Yeah, same thing. Go ahead. Do you have anything to say, Steve?

MR. FINLEY: Yeah, I apologize if this just sounds like exactly what Greg said. I think he responded adequately. You know, the person buying the accounts receivable is not paying the institution for the education that they provided. They're making a business decision that if they pay 60 cents on the dollar or 80 cents on the dollar, or 10 cents on the dollar that they can recoup more than that as a business investment, right? When the students borrowing the money from the school and making payments on that loan, the student is purchasing the education from the institution, and that seems to be a meaningful distinction between those two transactions.

MR. ADAMS: So here are my overall two concerns by doing this, Mr. Finley, it is one we're now encouraging, encouraging institutions to essentially be servicing companies, right? That's not what we do well at. And so now we're servicing these loans for a longer period. The other portion is now students that may not have wanted to pay cash, they may be now encouraged to say come up with $500 instead of an institutional loan because of 90/10, if you only have $500 left on your tuition to go, you may have qualified for an institutional loan to cover that. But because of this, we're going to require you to pay cash. And now because of this, they won't be able to go to that nursing school because they can't come up with that $500 cash payment, and we're not going to give them an institutional loan because of this. So, you're encouraging students to turn away, you're encouraging institutions to turn away students that may want to attend for a small little gap because you're excluding that and I’m struggling with that.

MR. MARTIN: I would point out that, yes, I think you do have your point about the fact that if you make the loan, you will have to retain it in service it as opposed to selling it. But all those things are institutional decisions. I mean, if you choose not to extend credit to the student because of this preclusion, then that I think is on the institution. We're not saying that you can that you cannot have an outstanding receivable or that you can't make an institutional loan to the student. And we're not saying you can't and we're not saying you can't sell them either. We're simply saying that it can’t count as revenue for 90/10 purposes.

MR. ADAMS: I will just submit my comment in the chat. I mean, my changes to the language in the chat, but I still disagree.

MR. WAGNER: Thank you, Brad. Jaylon.

MR. HERBIN: Thank you. Thank you. Yeah, we would like to see annual repayments of institutional loans move into this section. We have submitted a memo addressing our reasoning here. This addresses the issue of transcript withholding, which is discussed earlier because 98 percent of institutions say that they, they use that practice to collect their receivables. I can also put this source in the chat as well, but I also want to go back to what Brad just stated to the point of the lending. I also would like to see, excuse me, not Brad, David, in the chat, will also like to see the language changed from loans to also include the word credit because ISAs says if you look at it, they are not essentially a loan, it's a credit or an advance investment to the student, which in return they must repay back to the institution. And I think if we can include that in there, that would be helpful in this argument as well.

MR. MARTIN: Thank you. Again, we have heard the concerns expressed about ISAs, and we are looking at it just, took us a little more time than we didn't have enough time to respond to it fully at this meeting, but we'll have something more to say about that in March.

MR. WAGNER: Thank you, Jaylon. Thanks, Greg. Oh, go ahead. You have a follow-up?

MR. HERBIN: We'll be happy to provide some language on ISAs as well. We're working on some items that would address that as well.

MR. MARTIN: Sure, feel free to provide that to us.

MR. WAGNER: Okay, I'll turn it back to you, Greg, so you can continue with six.

MR. MARTIN: As we're moving on to so I believe that is everything. Make certain here, that was everything for, that was everything for six, right? I think we got to the bottom of six. That was everything that we had that we had in six and we would be moving. So let me just stop there and we'll take a take a temperature check before we move on to C sanctions, which is the last thing we must consider on this paper for today.

MR. WAGNER: Real quick, Greg. Sorry to cut you off. Jaylon, before we go to that temperature check, do you have a comment?

MR. HERBIN: Just quick. Greg, I would like to also see if we can include institutional loans into section six as well.

MR. MARTIN: So, I just want to be clear what you're what you're asking here, so there would be so any institutional loans would be excluded, excluded from funds would be funds excluded from would be excluded from revenue rather? Correct? Irrespective of whether they were sold or whether it will service [ph].

MR. HERBIN: That's correct.

MR. MARTIN: Okay, we'll take that suggestion.

MR. WAGNER: Okay, Greg, so we're taking I just want to make sure I understand what we're taking. How far along in six we're taking the temperature check for?

MR. MARTIN: So, we are taking the temperature check for, this is the entirety of this is the entirety of six, right?

MR. ADAMS: May I respond to Jaylon's comment?

MR. MARTIN: Of course.

MR. ADAMS: Thank you. You know, if the Department does that, I really think you're going to find that a lot of students that have small gaps in funding won't be able to go to school if you exclude institutional. I wish Bank of America would lend everybody a loan. I wish any bank would loan. I don't want to issue loans to students, but sometimes when there's a small amount of money left over and students can't pay cash for that money, the institution alone is the option. So, I don't know what else to say about it, but if we could get more banks to lend to students, I'm all for that.

MR. WAGNER: Thanks for your comment. Greg, are you ready to take the temperature check for six?

MR. MARTIN: Sure.

MR. WAGNER: Alright.

MR. MARTIN: And I do want to point out, though, just as a point of information with respect to institutional loans as they as they stand and as it continues, forget about the sale of them. But we do currently only permit institutions to use the amount that has been paid. So that already is, so currently it only is what is what is repaid to the institution. And in any instance where an institution is required to pay recourse, they must factor that in too, to 90/10, the recourse that they must pay so we do have we do have controls for institutional loans. I didn't want anybody to walk away thinking that an institution can simply just make a loan to the student and book the entirety of that loan as revenue. That's not that's not possible under the current rules. I don't know if anybody wants to speak to that. Dave, did you, Dave McClintock, did you want to say anything else about that or?

MR. MCCLINTOCK: I [audio] agree that it's all tied to the [audio] payments and so, you could have a five-year institutional loan over those five years as the student makes payments in those future year future years is when the cash counts toward the 10, not you make a loan and the school just books that full amount to the 10.

MR. MARTIN: Okay, that's all I wanted to say. And we could take we can take a temperature check on six.

MR. WAGNER: Okay.

MR. MARTIN: That would be A6.

MR. WAGNER: A6, we still have B through C, correct?

MR. MARTIN: Yes, [inaudible]

MR. WAGNER: I just want to be sure so I understood where we were. Okay, if you could do the temperature check by voting with your thumbs and hold them high so we can all see them, I'd appreciate it. Okay. I see two thumbs down. Alright, great, thank you. Oh, three thumbs down, I'm sorry. Alright. Thank you for that, I'll turn it back to you, Greg.

MR. MARTIN: Thank you. So, we're moving on to C, sanctions so, Renee will be pulling that up, and he has. So, there we are at sanctions and this talks about the basically the consequences for failure to meet 90/10. And you see there, if an institution does not meet, derive at least 10 percent of its revenue from sources other than federal funds, it talks about the loss of eligibility there in one and the becoming provisionally certified if it fails for any fiscal year. And then we move down to three and four. So here in three, we have an addition that creates a disclosure requirement for the institution to inform its students of failure, and this was added at the request of negotiators. So you'll see there in three for any fiscal year that it fails to meet the requirements of this section, it must notify students of the possibility of the loss of Title IV eligibility and then in and in four this revision further clarifies that institutions must report a failure within 45 days of the end of the fiscal year or at any point after the institution learns of its failure if it is determined that the institution did not correctly determine it had passed the requirement in the in the prior in the prior fiscal year. So, basically in four, it must determine whether it passed the revenue requirement and report a failure no later than 45 days after the end of this fiscal year or immediately thereafter if subsequent information is obtained that shows the institution incorrectly determined that it passed the revenue requirements for the prior fiscal year, so that that also was requested by negotiators at the previous session. So, that is everything for paragraph C. So, I'll open it up for discussion.

MR. WAGNER: Thank you, Renee. And Brad, I see your hand up. You're up.

MR. ADAMS: So, so this comment may change depending on where we land with the money that students receive. Primarily, I think it's just VA monies that go directly to the student, not the institutions, so depending on where we land on that, I may not need this comment, but if there's still any money that is not going directly to the institution that the institution is having to include in its 90/10 calculation, I've got major reservations here with four. So, I'm glad the Department modified their language here, but obviously we can't report failed 90/10 if the Department hasn't given us the data to let us know we have failed. So, and so it's very confusing to me why the Department must make an institution liable under five for any funds it disperses after failed 90/10 if they are unable to calculate 90/10. I mean, so just as an example, what if the Department takes nine months, which is not unreasonable dealing with the VA to get its disbursement data from the VA, is the Department really going to call back all the funds to the institutional fiscal year for nine months because it became aware way after the fiscal year end that we failed for the second time? So, hopefully we can agree that everything's just coming directly to the institution. And then this makes it easier because we do this all the time. Right now, I can calculate my 90/10 on the last day of the fiscal year, and I can have it audited in a week and I'm good with 45 days. But if you're saying we've got to get data from the VA and still hit this 45-day mark and be on the risk for the money when it's the VA's delay that's causing us the problem. I can't believe that we would propose this.

MR. MARTIN: I we do understand that there are some logistical issues with this that we'll take back. I think it's it isn't, it's our intention to get that information to the institutions as soon as possible and, because, again, I just as general information to anybody listening who's not familiar with 90/10, as has been pointed out before, a 90/10 must be done on a student-by-student basis. So in order for if we were going, if we're going to require inclusion of funds that were given directly to students by these federal sources, they're non-Title IV sources, it would be necessary for the institution to know exactly how much money the student received in order to be able to do that calculation so that there are there are concerns with certainly how timely that that occurs, and we are aware of that, and so I thank you, Brad, and we will discuss, we will discuss that.

MR. ADAMS: If the VA, if we're waiting on VA as written, this would mean the institution could have a very longs worth of financial aid that's been disbursed to students and be obligated to repay those back to the Department. So, that's, we should not be tied to the VA.

MR. MARTIN: We understand your concern.

MR. WAGNER: Thank you, Brad. Let's see here, I think Travis, you're up.

MR. HORR: Thank you. And yeah, I just want to respond to that, I understand VA is VA, but I also think it's important to include money that is paid directly to students, specifically Chapter 35. I want to point out like survivor benefits and tuition from that way and Montgomery GI Bill, which is still around, and that money is paid directly to students to pay for their tuition. And it should be included. So, I want to you know state that, for the record, that we shouldn't just, you know, exclude all VA money that's being that's being paid because those are very different things. We talk about the post-9/11 GI Bill with the tuition assistance is a very different thing than the survivor benefit as far as Chapter 35 GI Bill goes. And I understand there's complications in how to include those, but things like Chapter 35 need to be included or else we're just going to move the target that's been on service members and veterans for a long time, just to the surviving families and a more vulnerable population. And it's very important to protect those in these regulations. So, thank you.

MR. MARTIN: Thank you very much for your comment, Travis. The Department is aware of the need to work with VA. We've already, you know, we've been trying to establish some connections there. You know, it would require, obviously that the VA begin, DOD begin reporting things to schools at a level that they that they don't currently do. So, we are aware of the need to do that and we do have some time to work to work on that and understand that getting that information forwarded to schools in a timely manner is important. So, I just want to make certain that I convey that how important the Department feels that is.

MR. HORR: Thank you.

MR. WAGNER: Thank you for that. Let's see, Carney, you're next.

MR. KING: Yeah, I'm just curious what we would be waiting on the VA to provide the information for the like as far as housing allowance goes. Pretty much everyone's getting the same allowance just based on the school, so if you're a chapter 33, you're going to get the VA age that's already assigned. So, I feel like universities can already be calculating what the VA would be sending directly to the students, and then I just want to kind of support, including all the money going to students, especially the housing allowance, just because oftentimes the total cost of tuition is more than what the GI Bill will cover. And a lot of students end up using some of their housing allowance to cover those gaps. So, a lot of times that money is ending up back at the university.

MR. MARTIN: Thank you. With respect to how much I'm no expert in VA funding, so I might defer to Travis on that as far as you know, my understanding is that there are there are differences in what students receive or that's that that that's a possibility. So, I don't know that it would be possible for schools simply to impute those students receive a certain amount merely because they had they were aware that the student was receiving a certain VA benefit. But if Travis if you want to, if you want to talk to that, go ahead.

MR. HORR: Yeah, the housing allowance would be based off the zip code of the school if I'm correct in that [inaudible] for where your, the school's physical location. I also just want to be clear that as far as my position goes, I don't want to for what I was talking about. We're very supportive of including, you know, the Chapter 35 disability or the survivor's benefit. Sorry, Chapter 30 Montgomery GI Bill. The housing allowance, we understand that that is earmarked not towards tuition. So that's, you know, something that was discussed earlier or it was in the regulations earlier. I don't know if we discussed it. So, I was specifically talking about the survivor benefits on that and Montgomery GI Bill.

MR. KING: Yeah, because I mean, if it's like Chapter 33, the post-9/11 GI Bill, it's going to be basically the standard housing allowance that for, you know, E5 rank or whatever. But if it's Chapter 31, then it's like a flat rate of 600. But I mean, it's all transparent online, and the universities are going to know which GI Bill chapter they're using. So, I don't think it would be difficult to at least have a very solid estimate of where you would be at.

MR. MARTIN: I do want to point out that with 90/10 calculations and I'll invite David to come if he wants to, but it's imperative that that the calculations be done exactly and be based on the actual student's account so that we're looking at when he's auditing or when the school, when the school is doing its 90/10 and then it's being audited by someone, they have to look, they have to look that exactly the amount of their student's account in order to do it correctly. So, I don't know if David wants to comment on that.

MR. MCCLINTOCK: Yeah, I turned my video on just to say that same thing, so the reporting would be needed to test the calculation to know what the amount is that's included for each student.

MR. MARTIN: And of course, now it's easier now because all those amounts only Title IV. And so those are on the account, you can see it on the student account. This would be the first type of aid that where that wouldn't be on the account. So, they must be some mechanism whereby the VA reports to each school, each individual student, and the exact amount that a student received. Otherwise, it wouldn't be possible to do the 90/10 calculation correctly. So, I just wanted to point that out just as a matter of order.

MR. MCCLINTOCK: And that's what that creates the delay that we're talking about getting the report.

MR. MARTIN: Right. So, I just want to say we are aware of that situation and going to take that back.

MR. KING: Gotcha. I hear what you guys are saying, but I have I have faith that the VA can do one thing right eventually.

MR. MARTIN: Well, it's a faith that the VA will be able to provide, will be able to provide the information.

MR. WAGNER: Anything else, Carney, to add? Okay, thank you. Let's see, Johnson, you are, you're on. Go ahead. Take it away.

MR. TYLER: Yeah, having been on hold with the VA on the phone for like an hour and a half to ask some very basic questions, I appreciate Brad's concern. But on the other hand, I have had administered contracts and we plan throughout the year to make the goals of the contract. And I think I'm hearing from Travis and others that there is data that you can plan on making sure you don't go you know right up to the edge of 90/10. So, I would just, you know, to that it's we all must plan to comply with things. You don't wait till the last month to say, oh, where am I at? [Inaudible]

MR. WAGNER: Thank you, Johnson. Before I get to you, Brad, Steve, I see your hand up.

MR. FINLEY: Yeah, thanks. I just want to note for this discussion that the proposal from the Department is to not count designated housing payments as part of the in the 90/10 calculation here. So, I, you know, to the extent people want to talk about that and make suggestions to the Department, I don't want anybody to be under the wrong impression here that those are going to be counted under the proposed regulation language.

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

MR. ADAMS: Thank you, Steve. Yeah, no, I agree, and my reference was what we talked about earlier on the potential book stipend tied to number one going to the VA. So again, if that comes off the table and we're not relating to the VA this this discussion goes away completely and we're back to you know calculating it on institutional cards. But now VA is part of the 90. That's really the main change. And the majority I want to point out to the majority, vast majority. I'm not a VA expert, but I know the vast majority of VA does come directly to the institution. And so, we're not we're not talking about a at least in my institution's case, a material number here by any means. And I do want to just end my comments around, you know, I just want to make sure that the administrative burden tied to someone like the VA or tied to this state thing is just worth the effort on the 90/10. I understand the 90/10 statute and I want to comply with it. I just want to make sure that we're able to comply with it in a timely manner. And this 45 day worries me when you're when you're adding in outside parties and noises and we all lived through the gainful rollout and it was difficult and it was very burdensome and HEERF was probably not much better. So, I don't think it's going to be easy to do with the VA, and that's just my take.

MR. WAGNER: Thank you, Brad. Dave, I see your hand.

MR. MCCLINTOCK: Yeah, I just want to follow up quickly about the planning and be able to be ready for it close to year end. Working with the VA, and I agree, hopefully we can set up something so there can be timely information shared but as Greg alluded to, this will be the first time that there's, there's payments included in 90/10 that the school doesn't have ready access to. And so as far as planning and knowing where you are during the year, you're going to be dependent on getting that from the VA. So, it doesn't mean, there can be planning, people can calculate it, but it's going to be the first time that schools won't control all the data that gets incorporated into it. That'll just be the main switch.

MR. WAGNER: Thank you, David. Okay, Travis, I see your hand, you're up.

MR. HORR: Yeah, just one last thing on this is I understand that it can be difficult to deal with VA. Trust me, I understand that and I understand that that this is going to change how, how things are done. I'm not an accountant by any stretch of the imagination, but just because this is changing things or it's difficult doesn't mean it shouldn't be done. I mean, we need to protect a very, potentially very vulnerable population as far as we're talking about, you know, survivor benefits and dependents and things like that that are first-generation students and not used to this the whole education process that and they need to be protected. And that's why 90/10 exists, and that's why we got this loophole closed. So that's all I'll say on that. Thank you.

MR. WAGNER: Dave, you're up.

MR. MCCLINTOCK: I just want to quickly make sure that I'm not trying to argue against 90/10 or the treatment, just discuss the logistics for how that it's happening. That's all.

MR. WAGNER: Thank you. Any other comments? I don't see any hands. Greg, do you think we have time for a temperature check?

MR. MARTIN: Yeah, sure.

MR. WAGNER: Okay. And that's for C under six. Correct? Okay. If everyone could vote with their thumbs, hold them up high so we can all see them. Appreciate it. Jamie, there you go. And I just see one, Brad, you have any comments on that? Okay. Does anyone have any other comments on any other things that were voted down in terms of thumbs down or anything on 90/10? Okay, I'll defer back to Greg, but I would propose taking a well-earned last 15-minute break as it is Friday. Does that make sense, Greg?

MR. MARTIN: That makes plenty of sense. I want to thank everyone for the discussion on this. I think it was very useful to just take back and thank everyone for the thoughtfulness of their comments. And yes, we're ready to take a break whenever you are.

MR. WAGNER: Okay, great. So, we can say, why don't we come back at 2:20 eastern time? Before we go to break quickly, Johnson, you had a comment.

MR. TYLER: When we come back, are we going to go back and discover, discuss some of the things we didn't spend a lot of time on? I'm particularly interested in the bright line gainful employment earnings question that the Department asked us about in the gainful employment paper.

MS. JEFFRIES: That's one of the things that we're going to talk about on break and how best to break this up. Okay? We just need a chance to regroup and look at some notes. Okay? Thanks.

MR. TYLER: Thank you.

MR. WAGNER: Thank you, Cindy. Thanks to John.

MS. JEFFRIES: Hey, welcome back from break, a well-deserved one as well. So, we met while we were on the break and we have heard your concerns about wanting additional time on both ATB and GE. So, what we would like to do is take about 15, 20 minutes to look back at ATB and get additional feedback for the Department on that. And then the remainder of the time we would revisit GE, but we want to start with the additional accountability metrics page because although we visited that, the Department that is a page where they want and need additional feedback that you know, they haven't received yet. So, with that, let's look at ATB and open that that up for discussion and get some additional feedback. I know there was some desire to get more information to the Department. And Carolyn is coming to the table with consumer and civil rights organizations. Okay. Can we see hands? Anybody want to offer anything on that? This is your chance. Going and going into that final week for you to get information to the Department and David Socolow is coming to represent state agencies for the ATB piece as they go through the process of preparing the final amended text for the third session. Greg.

MR. MARTIN: Yeah, I don't want to limit conversation, but I or discussion rather, but I know I noticed that we noted rather than at the last when we talked about this earlier in the week, there was there was some interest in discussing the role of IETs and whether or not that was what we see Eligible Career Pathways Program should be limited to IETs, and we're interested in hearing what people think about that and if and why, what the reasoning for that would be for those who support it and then to hear any other comments on the other side of that issue. So, I'll just throw that out there to start conversation if anybody's interested in picking up on that.

MS. JEFFRIES: David, one second, just a couple of announcements. Kelli is back at the table for ATB and, as is Will Durden for two-year colleges, and Michael is in for proprietary institutions for this discussion. David.

MR. SOCOLOW: Yeah, thanks. So, yeah, I appreciate the chance to talk about this briefly again. The way I understand the construct of this new ATB regulation is that the statutory definition is at the beginning in two, but then 157 are the standards for Title IV for a very specific population, adults without high school diplomas or a high school diploma equivalent. And that's a very limited and specific group of students that the intent of the law is to cabin and be careful with their eligibility for Title IV. And so, the purpose of the standards should be to give as much clarity and guidance as possible for a super high quality career pathway program. The point is not that you couldn't have other moderate and low quality career pathway programs that might satisfy the plain language definition of a career pathway for other purposes, but that when using a quality screen for Title IV eligibility for eligible career pathways for Title IV purposes for this population, that the best practice and the really good quality screen would be what the Department's own research has shown is the evidence-based, robust program that gives students those students their best chance at academic and career success through dual enrollment IET coordinated programs that are partnerships between multiple systems that can't be go it alone, higher ed institution only career pathways. And so that was the recommendation that not that that's the only thing to do, but that it should be the only thing to do for this purpose. The standard the Department will apply to ATB. So that was just the clarification. I think that I made that point, but I'm trying to encapsulate it again. And so, I would just respectfully request that the Department give that consideration.

MS. JEFFRIES: Okay, David, I'd like to invite those who had other concerns and were thumbs down on ATB, especially this piece of it to offer to the Department ideas and suggestions of what might get you to a, you know, at least a sideways, if not a thumbs up, so that they can really look at that because in the third and final week, we will be moving to consensus, not temperature check. So, we want to be able to afford you the ability to get that information out to the Department, even if it's a refresher of what you said before so that they have that in mind. Johnson.

MR. TYLER: Yeah, I would just say that, you know, making sure that the educational component going towards the high school degree is actually meaningful and doesn't create sort of online self-directed education or something like that, that would really not achieve what's wanted here, so just a little more thought into how to either be more prescriptive or just have more safeguards in there so that the educational component where a student would get a degree, a high school degree would actually be achieved.

MS. JEFFRIES: Can I just ask you a little bit of clarification on that, Johnson? Do you have an idea in mind of what that would look like at this point? Or maybe it's something that you'll be submitting?

MR. TYLER: Yeah, I would have to consult with my expert, David, here on this. But he's got his hand up, so maybe.

MS. JEFFRIES: Great. Great. Alright. Thank you. David.

MR. SOCOLOW: Yeah, I mean, there are three bullet points in the paper that the Johnson and his colleagues sent in. I think they all make good sense that they incorporate the one that I've mentioned. So, I mean, the Department's had these papers, they understand what we're suggesting. And the response we got at the beginning of this week was, well, you know, we don't agree that that's the only way to do it. And that's not the point we're making. The point we're making is you need a quality screen here for Title IV eligibility. That's more than just restating the statute. That's a little more granular and specific and protective of students. And we've and we've sent suggestions on that, so I guess what we ask really at this point is for the Department to respond to our suggestions substantively rather than the sort of frankly missing the point statement that we got at the beginning of the week.

MS. JEFFRIES: Thanks, David, I think that's a helpful clarification. Johnson.

MR. TYLER: Yeah, I would just add that I submitted our comments at the last moment, I don't even think they had time to be considered, so they're still, they're still out there.

MS. JEFFRIES: Alright, great. Alright, thanks. Greg, go ahead.

MR. MARTIN: Yeah, I would ask, I know, I know, David, that you submitted information, so has so has Johnson, but I would for the for the edification of the of the group and I haven't had a chance to, I mostly just sit around and be nervous about the next day when these things are going on as opposed to I don't get to spend too much time reading anything new. So could you just elucidate for us what you would, you know, you don't have to be specific, but what you would do in 150. So, I imagine these would be these would be changes to 157, correct? That you would want to see incorporated or additional elements?

MR. SOCOLOW: Yeah, you got it.

MR. MARTIN: So, you could you just, you know, give us a brief overview of what how you would see that working.

MR. SOCOLOW: Yeah, I'm happy to walk through it. So, in 157A, at the very beginning, recommend that what's being documented to the Secretary demonstrated to the Secretary through documentation is not that the institution this is the philosophical question is, is the institution saying we have a career pathway that we the IHE did all on our own? Or are they documenting a partnership with multiple systems? And so, the recommendation is that the documentation is of a partnership between the institution of higher education and adult education through the WIOA Title II adult education and services. So that's what you know, that's what you want is to do that both in A at the top and in A1 romanette two. If you look at the Department's definition of IET, which is somewhere else in 34 CFR, I don't have the number in front of me right now. But you have your own statutory regulatory definition already in your regs, your WIOA Title II regs. And so, you could cross reference to that and put that in here so that instead of just saying coursework training or other support services, you say what has been said by OCTAE that in romanette two that for the purposes of adults without a high school diploma, that's got to be the WIOA Title II adult education and services, all the various components of IET. There are three components of IET, and they are mentioned in the reg. And so that would be the second change. In the point about the demand occupations, which is in 157A2, you would deal with this issue of again showing a documented consulting with the workforce system, which is a demand driven, employer led system that's supposed to be figuring out what the labor market demand is. And so, a connection to that because the concern is self-created, one-off career pathways, selfasserted career pathways at the institution of higher education makes up without talking to other folks in their area in their state who are talking to employers. It's nice that you're suggesting they go out and talk to employers themselves, and I strongly recommend that, but I would rather they also do that in partnership with the workforce system. And so, it's already been mentioned by Johnson in six that the program is designed to lead to a valid high school diploma. And Johnson's paper has several suggestions for how to make sure that that is robustly enforceable so that you're not having fake high school, bogus high schools or other tricks that are not really leading to a real high school diploma. And again, going back to five, that's where I found it. The IET definition is 34 CFR 463.35 coordinated education and services between the Title IV institution and the WIOA Title II adult education and services. And so, you would add a reg, a piece there that makes it quite clear that again, this number five that you have written is the statutory definition, which applies to all career pathways. But for this specific kind of career pathway, which is a partnership between higher ed and workforce adult literacy. For Title IV purposes, you'll have a more stringent screen here in number five, and so and then we have recommended several people have recommended that there just seems to be a lack of clarity at the very beginning of A where it says as required under 668.156 A3 of this part seems to imply that you're only applying 157 to those ATB students that that use the state process and that you're not also using the same standards for the other two processes to determine what's an eligible career pathway. So, you need to strike that out and then put in B, just make it very clear that when the

Department is determining what's an eligible career pathway for things that are not for career pathway programs that are not through the state process, that is through the other two ATB methods taking six credits or taking a test that they'll use the standards in 157 A. So, in a nutshell, that's the that's the list of ideas.

MS. JEFFRIES: Okay, thanks. Greg, do you have something? And I see Steve, your off mute. Did you want to? Either one of you?

MR. MARTIN: Go ahead, Steve.

MR. FINLEY: I'm using this as a learning opportunity as well, so that's why I appreciate the background discussion.

MS. JEFFRIES: Okay. I just saw you were off mute, so I didn't know if you wanted some [inaudible]. Greg.

MR. MARTIN: I just wanted David to go through. I hate to keep asking him for a lecture here, but I just to help, so, the individual elements of an IET, could you just, so would you want to see that those incorporated in here or just the or the reference to the to the regulation you, you cited? Can you just go over those just review for us a little bit what those some of those elements are?

MR. SOCOLOW: Sure.

MR. MARTIN: -in an IET if you wouldn't mind.

MR. SOCOLOW: Or I can, I can do that and I'll look it up. But I mean, in sum, there are three specific things. It's a set of services. It's workforce preparation activities, it's adult literacy, and it's the vocationally relevant, occupationally specific, vocationally relevant training. So, all three blended together and done concurrently. And so let me tell you what we're trying to prevent. So, you know the law now says you can't do this, but without more guidance, people are going back to the way ATB existed prior to its being eliminated in 2011, which was just not really coordinating at all with the high school or forget high school with the adult basic literacy part of what's obviously needed for this specific population. We need them to succeed. We need to give them a chance to succeed not only in the skills related training that they're going to be getting from the Title IV institution, but also in the other portion of a career pathway. And that was what Congress meant by putting this back, putting ATB back in the law, but only if it's in a career pathway. It was to prevent the kind of one-off thing that you'll see where an institution will pretend it's doing ATB. They'll pretend it's okay now to just teach the class to individuals without a high school diploma and say, go over there and take your GED class self-paced on a computer. We have nothing to do with it. It's not integrated. It's not contextualized. It's not coordinated. So, the best practice IETs tried to build the literacy education into the into the instruction of the other coursework. That is to say that occupationally relevant coursework, because what does an adult without a high school diploma want? They want a job and you know they're not going to sort of do the training on, it's harder for people to do these two things separately than if you combine them. That's what IET does. It integrates education and training.

MR. MARTIN: Thank you.

MS. JEFFRIES: Alright. Thank you. Johnson, your hand was up, now it's down, are you good?

MR. TYLER: Yeah, I'll just say we put in language expanding the definition of the of the training for secondary school and educational literacy in the paragraph B6 of 668.2 general definitions, that’s kind of the meat of our contribution. So, we just want it to be a real, you know, a school that's designed to, you know, it's more robust and likely to result in some likelihood of success in terms of achieving the high school diploma.

MS. JEFFRIES: Ok, thank you. Will.

MR. DURDEN: So just to clarify, you're wanting us to review proposals we've already made because you're just trying to kind of collect them moving forward. So, you want me to, you want me to say again some things I said earlier this week.

MS. JEFFRIES: And that's fine, Will. I was looking back at that at the paper and looking at those who you know where it comes down on the temperature checks, specifically in his section and just offering, you know what you know, maybe drilling home a little bit concisely, what would it take to get you at least to here for a consensus?

MR. DURDEN: Got it. Well, not knowing exactly if we're focused on one section or a couple, I think to reiterate our positions, we don't really like the success rate in general and don't think it's the right approach. To try to support a success rate, we might look at a lower threshold than the 95 percent. So that's one consideration is that success rate. Talking about a 1 percent cap on people enrolled in ATB. We would want to make sure that that was for the state, not for the institution. And I and I think that those were the big ones that we had raised from earlier in the week on our on our end.

MS. JEFFRIES: Okay. Thank you for that. Oops, Greg was on and off there.

MR. MARTIN: No, no, no. Okay. I clicked [inaudible].

MS. JEFFRIES: Okay. David.

MR. SOCOLOW: Just a brief clarification on the point that Johnson made about the protecting against fake high schools. You know, I mean, I understand that the elegance of having, you know, to just literally be the statute basically verbatim. And then again, not restating those. It doesn't do any good to restate that in 157. 157 is doing something else. It's creating quality standards. And so, it seems to me 157 A6 is where you put all the language that that Johnson suggested, relative to making sure that these are real high schools.

MS. JEFFRIES: Okay, thank you. Alright. I don't see any more hands-on ATB, and we did spend about 22 minutes on it, which is what we had suggested. So, at this point, let's turn our attention to the GE document specifically at this point surrounding the additional accountability metrics for consideration. Greg, do you want to let the committee know what you're looking for here?

MR. MARTIN: We're talking about on page 18 of the and I have maybe could have a Renee pull that up, the additional accountability metrics for consideration. Before we get to that, I want to thank everybody for the discussion on ATB. The Department appreciates your comments and-

MR. FINLEY: Greg, could I, could I add one thing to your thanks on that discussion?

MR. MARTIN: Go ahead, go ahead.

MR. FINLEY: To the extent anyone has a suggestion for how to set a breakpoint below the 95 percent mark, we would like to have that provided to us to consider as well.

MR. MARTIN: Thanks, Steve. As I said when we talked about this earlier during the week, we didn't give as much time, this is perhaps we should have and I and you know, it's a bit of a balancing act trying to figure out while you're going through these, how much time to devote to each to get through it and never quite know where you're going to wind up. But I'm happy to have some time to go back and revisit this and give people an opportunity to comment on these. So just to reiterate, we had the issue here is that that we had analysis that would some showing that some programs that would otherwise pass the debt to earnings rate because they have relatively low debt levels, also have very low earnings levels. And there could be students who have financed the program, maybe without debt or very low levels of student loans that are able to pass, whether programs are able to pass the D/E rates. And there have been some, some of the negotiators have suggested adding other metrics earning metrics based on the difference between median earnings and of program graduates and a threshold of earnings compared to you know, compared to some other group and we so the threshold for passing earnings premium could be specific, could be specified rather in several different ways, and we gave you a number of those. Just some ideas that we had here. So, the discussion here would be about should there be an additional accountability metric in addition to the D/E rates and if there should be, what be this additional metric? What should it consist of? So, I just wanted to get some more feedback on the negotiators' thoughts about this, so I'll open it up for discussion.

MS. JEFFRIES: Go ahead, Brad.

MR. MARTIN: You're a mute, Brad.

MS. JEFFRIES: We're not hearing you.

MR. ADAMS: Thank you. Sorry.

MS. JEFFRIES: There you go.

MR. ADAMS: I saw Steve's hand up, so I thought he was in front of me. I just wanted to start before going into these four metrics just quick on, I wanted to just ask the Department, you know several community members, including myself, have asked the Department to provide data on a very variety of these issues that we're discussing, and I'm not aware of anyone getting any data they've asked for. I personally haven't. So, I'd like the Department to let us know, do you all have, and I can send you my list of documents that I've requested. But do you have a general timeframe on responding to some of these requests? Because I do think the information in these requests could provide valuable feedback to us before going into week three and week three is the last chance, we get to investigate these issues, and I'm concerned that we're going to run out of time. Do we have an estimate or do you need a list or?

MR. MARTIN: We have we're aware of the data request. We respond to them as quickly as we can. They do often take time to wherever we, the data is compiled, it must be vetted. FSA has a group that does that. So, there is a time lag involved in the data request. But where we're unable to provide any data, we would tell you that that we were unable to do that or else provide the request. So, we're in the process of trying to get that data together. But I don't want to go out. I don't want to say that, you know, or provide a specific date on which we'll be able to do that, but we do make every effort to comply with all data requests.

MR. ADAMS: And I would just recommend, I'm assuming that will be sent to everyone and when they are available, I just recommend piecemealing them because if we wait till, they're all ready, it may be too late. So, as they come available, I would like them just to be sent out if possible.

MR. MARTIN: I think we just generally are our practice would be to do that.

MR. ADAMS: Okay, I'll get back in line for the next discussion. Thank you.

MS. JEFFRIES: Thank you. Amanda.

MS. AMANDA MARTINEZ: Yeah, thank you. On these additional four options that the Education Department has provided us, I think one on the data point offered up by Brad and I would say others on the committee would also raise that issue. We would like to see our data requests be hopefully answered to the best of your ability. And I think Adam Looney's presentation was compelling enough time to show some type of modeling of one of the one of the options here. But I think any other type of modeling or impacts of the different types of institutions of each of these different options, which show would also be helpful specifically for option four. And I think I would say from my point of view, potentially option three as well and if possible, not just the federal minimum wage, but tying that geographically towards different states minimum wage. I think overall, the concept that the principals of the education department should be keeping in mind when figuring out what option makes sense is to ensure that students or graduates from general education programs are receiving or will receive a high or at least a livable wage without any type of debt, right, without taking out any type of debt, because this would consider a scenario in which debt is not indicated or considered. And then also, I would hope that the design of this metric an additional metric to already the two debt-to-earnings metrics would hopefully be effectively implemented and that your current data infrastructure would allow for a robust, you know, yeah, it would be an effective tool if it has utility and if you all have the data infrastructure to do that. So, I'm assuming here, but it would be great to hear if you all think that an analysis to say that, yes, safely implemented these options, that it would be able to be run by the Department effectively just as the other the other metrics in [inaudible].

MR. MARTIN: Yes, there would be no issues with our, applying any of these additional metrics, and we certainly could do that because they all are all are keyed on earnings, just just not debt, so there would be no issues with us doing this and the fourth one simply eliminating one of the annual D/E metrics and saying with the discretionary debt to earnings. So that would certainly be very, very easy to do so I don't think there's any whether anyone was in favor of choosing any of these or any others would not want any of these presented here shouldn't be contingent on the Department's ability to do it because it would be able to do it.

MS. JEFFRIES: Thanks, Greg. Just quick, Johnson, a couple of things here that I noticed in the chat. Kelli is back to the table. Nope, she was for ATB. I'm so sorry. It is Anne Kress is back in for two-year colleges and Debbie Cochrane is back in for state agencies as well. So, with that, Johnson, go ahead.

MR. TYLER: Can you hear me, okay? My internet's kind of crazy.

MR. MARTIN: You sound okay.

MR. TYLER: So, the one thing I would my clients would be in favor of a of some income related metric because it's really a huge investment of family capital for someone to go to school, whether it's a night online, when someone else is going to have to watch the kids or whether it's, you know, it's just they don't do it again, if that's their one shot and they're either going to capitalize it or they're not going to. And so, for to have people go back to the jobs they had before, which is often the case because the job didn't work out, the career path didn't work out and not have anything to show for it is difficult even when the debt is relatively low, because it's, you know, often that leads to default at which the debt gets collected. In part, that's because people feel like they're ripped off. And why should I pay this back? And when they stop paying back low and behold, nothing happens for many years until suddenly, they come to me because their tax refund was taken. Or, you know, in another scenario, their Social Security years later is being taken for, and I have a client who's now 73, who has a debt from 1988, going to a beauty school that ripped her off and that Jessica's office has gotten lots of relief. But she's not entitled to it because she went there with a high school diploma, so she doesn't fit into any of the categories that gets released. So anyway, I really think it's important to put some level there and in terms of what should it be? I mean, I think this is a very difficult question, but there are a lot of people who have thought about this, a lot of experts and probably Mr. Looney is one of them. But you know, I just googled during the break here, MIT has a whole thing on what you need to live by each state as a living wage, and it's minimum. So, and it varies from, you know, and it goes by county as well. So, there's a lot of data that could be used by people who study this stuff and find something that really kind of makes sense. But it is an investment, and I think people are entitled to some relief, you know, even if they don't have debt. And the last thing I'll say is I ran the numbers once on this and you know, you could be paying $250 dollars a month and earning 30 grand, and that would pass, as a single person, and that would pass gainful employment. But in New York City, you know, you could probably earn almost that much. I mean, they tend to I mean, the annual the minimum wage is $15 an hour in New York City. But people don't get 40 hours often. But I mean, it's, you know, kind of not getting much for a lot of debt that you must service. That's a, you know, for 10 years, you'd be paying that amount. That's a lot of that's a lot of wasted time and energy. So those are my thoughts.

MS. JEFFRIES: Thank you, Johnson. And I'm not I just want to remind you that I don't know it may be a possibility some of this data the advisors might be able to help you assist with, too. So just keep in mind they are there for or to assist you. Brad, you are next.

MR. ADAMS: You know, I'm curious because there's some specific numbers in these four different proposals that someone came up with, so I'm assuming there is some data that the Department has used or developed or is working on that came up with these numbers. I don't think they were randomly selected. So, is there, I guess my question is, is there any data that the Department has been using that we could see to help us through these four options here?

MR. MARTIN: Well, I mean, what's here are just, you know, fairly standard figures, I mean, you know, nationally the median high school and graduate rate earned about $20,300 or at least [inaudible] mostly we looked up on the web as far as you're talking about have we run data as to what the what the outcomes would be regarding the eligibility of schools if we if we applied these? What the Fed index [ph] would be, is that what you're talking about?

MR. ADAMS: I'm really asking, has the Department modeled, I guess, would be the better way to say it, how these four options, you know, how schools would fare against them and kind of just in general terms, you know what the impact would be to institutions?

MR. MARTIN: Yeah. I'm not, I don't know. I don't want to say I have not been privy to it if we've done it, which isn't to say that we haven't been doing it. Any specific, as I said before, any specific data requests anybody wants to put in, we would do our best to comply with. I'm not aware of anything that we have that we could share right now. I don't. I don't want to. I don't want to commit to that, but I certainly will investigate if we have any, any data we've already done on this.

MR. ADAMS: Right, well, you know, maybe there are questions maybe Adam could model these for if he's got the data to do so. And then I do want to just a general statement that you know I'm generally supportive of these options, as you know, just if they're applied to all institutions. So again, I want to protect all students and ensure they're gainfully employed. So, I'm interested to see what others think about them, but you know I just want to make sure they're applied to everyone. Thank you.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thanks, Brad. Anne. Oh, let me say, Anne, before you start. I keep missing this and I apologize, Emmanual is back at the table. Thank you.

DR. KRESS: So, I think when we look at this metric, these metrics from the two-year college perspective, and I think I brought this up before, but we want to make sure that regional differences are somehow factored into any wage metric. The other thing is we need to be looking a little bit at apples to apples. So, you know, most of the high school graduate wage data that I see, it's not somebody who's 18 years old, it's usually 25 years. So, recognize that that's seven years working after high school, whereas with most of these certificates and degrees, you're talking about someone's first job after getting a finishing a program in gainful employment. So that would be a couple of concerns we would bring to the table. And, you know, certainly having some sort of wage threshold make sense, right? You don't begin any of these programs without thinking that you're going to increase your earnings. But as always, the devil is in the details. How do you calculate that in a way that keeps those programs available to students while also helping them to advance as they should?

MR. MARTIN: Thanks.

MS. JEFFRIES: Jamie.

MS. STUDLEY: Yes. This discussion obviously reflects the extreme difficulty choosing metrics that have meaning and especially where high stakes consequences are involved. So, I have a very specific question. Does the Department have a sense yet of what the downside might be of dropping the additional calculation of choosing number four? Because there seem to be some interest in it, but it might help to remind us all why it's there and what it's supposed to accomplish to know whether that's an option we should most seriously consider. Then second, I would just suggest we try and keep it simple. To the extent that data points that we use here are things that need to be understood, both on the campuses that are affected and by students and advisors having as few metrics as possible to do the jobs that they need to do could be helpful. Now that the Scorecard has earnings relative to a high school graduate back in it, is that a reason, if there's not an obvious perfect one, that is different to try and converge on some so that people can model plan, explain things to students? So, I'm not saying it's the right one, but if it is as good as others, that is certainly a reason to think about simplicity as much as we can. State versus county level obviously becomes quite difficult. Each of these has downsides, so maybe do as little harm and do as much value as we can to both the regulatory requirement and the student understanding and the ability to have institutions drive toward better results and explain what they're using to do that could be helpful.

MS. JEFFRIES: Okay. Thanks, Jamie. Steve.

MR. FINLEY: You know, just to answer Jamie's question, I think that the material that Adam Looney presented, the one where he showed two intersecting lines that started low and went higher. If you, one of those lines was the debt to earnings threshold, right? And if you take that out, you'll see that any program that that had earnings that had no discretionary, no discretionary income will fall out of being eligible. And I guess the discussion paper here would suggest that programs that had zero median debt would still be treated could still be treated as passing. But the reason there were two metrics in the earlier GE things is there were just several programs that did not have enough income to have any discretionary income when you use the poverty guidelines to set the threshold.

MS. JEFFRIES: Thanks, Steve, for that. Johnson.

MR. TYLER: I'll be quick. I agree on simplicity, I think if you can't explain it to someone quickly, it's going to be complicated. I like the high school diploma or the high school equivalency, whatever that number would be, even if you discount it. People are continuing their educations to get to a new level. It's very comprehensible to lots of people, most people. So.

MR. MARTIN: Along those lines, I want to point out that the age group we currently use when we look at high school earnings is 24, age 24 to age 35.

MS. JEFFRIES: Thanks, Johnson and Greg. Emmanual.

MR. GUILLORY: I just had a quick question regarding the data, so I kept going back and forth to make sure that you know I was calculating it right based on the 2015 data that we have available to us. And previously, the Department put out data around GE that I've shared a few times, but it showed that within the private nonprofit sector, we had 16 of our programs that failed the GE, the 2014 GE rule. And in the data that Adam had, you know the presentation he'd given us earlier this week, there was 93. He had calculated 93 programs have failed within the private nonprofit sector and that we had 463 published GE programs. And so, I just would like at some point if he could just clarify how he came to those numbers. Because in looking at the 2015 data, like just the actual raw data, I'm still seeing that 16 number and I have a list of programs you know that had failed the 2014 GE rule and just wanting to make sure I understand where he got those numbers from, basically.

MS. JEFFRIES: Okay. And that was Adam's data, right?

MR. GUILLORY: Yes.

MS. JEFFRIES: Okay, and Adam is not with us this afternoon. And so that brings me to something I wanted to point out. Brad, you had put something in the chat about a plus one to Amanda, the data modeling from Adam around low income would be helpful. Is that a request that you'd like to make to Adam?

MR. ADAMS: I think I clarified it in a second chat when I said, you know, can the Department provide data applying to each of the four metrics to all programs and all institutions at the four- or six-digit CIP code with the N-Size of at least 30 graduates? So, I've changed my request. You can ignore the first one and just use that one, but I think it'd be very helpful for us to see using these numbers, where do programs fall and how effective might they be?

MS. JEFFRIES: Is that something you want Adam to prepare? Because I notice your comment is to the Department.

MR. ADAMS: No, the Department, I think the Department. I'm sorry. I don't know [inaudible] that data. To be honest, I don't know [inaudible].

MS. JEFFRIES: I just wanted to point out that, you know, since Adam's not here and data requested, the advisors get sent to me and then I send it on, I'm trying to make sure I don't miss anything in there that might be directed to him. So, if any of you have data that that you didn't request for Adam that you put in there that you want me to forward, please send it to me in email and I will make sure that he gets it. Okay?

MR. ADAMS: Thank you for clarifying that.

MS. JEFFRIES: Sure. Thank you. Johnson.

MR. TYLER: Yeah, I was thinking on a data request, I'll put it in the chat, but I think we're really talking about for this bright line, you know, earnings thing. We're talking about how Pell recipients are performing, whether they take out debt or don't take out debt. So, if there's a way to get income and earnings of Pell recipients, so you get an idea of the possibility and the limitations, I think we might be able to answer some of the questions we have about how this will be affecting various institutions and whether this is you know, just a bad idea or a good idea.

MS. JEFFRIES: Alright, Emmanual.

MR. GUILLORY: One more quick question about the data. With the proposal to move to the four CIP code instead of the six, when the data is released, will we still be able to see the individual programs that passed or failed or would we just only see it at the four-digit CIP code? I'm assuming just the four-digit CIP code that we'd see that, but just thought I'd ask for clarification purposes as I'm looking at the data right now with the six-digit CIP code. If anyone can answer that.

MR. MARTIN: You mean the data request made [inaudible]?

MR. GUILLORY: So I'm looking at the 2013 data from the 2014 rule, and I can see by the six-digit CIP code what programs passed or failed, I'm looking at the private nonprofit sector, but with the proposal to move to the four-digit CIP code in collecting data in that in that way, when the data is released, are we only going to see the four-digit CIP code you know, overall category that category and just pass or fail or? And if you can't answer that question right now, that's okay.

MR. MARTIN: I believe it would be the four, under the four-digit CIP code, but I'll take that back.

MR. GUILLORY: Alright.

MS. JEFFRIES: Thanks, Emmanual. Greg, let me come back to you. With no other hands, do you, do you think you have gotten enough additional information on the additional accountability metrics?

MR. MARTIN: Well, yes, I think I believe so. I would. I'm certainly heard a lot today if. I would ask if there's anybody, are there any opinions as far as outright objections using any additional any additional metrics or belief that the that the earnings metric as was applied in 14 should be retained without any additional metrics? I just want to open that that that possibility up as well, so if people wanted to speak to that because I know we had people speak to using these additional metrics, but I just want to make certain that everybody's had an opportunity to express an opinion on either side of applying an additional metric.

MS. JEFFRIES: Thanks. Brad.

MR. ADAMS: Greg, I'd like to clarify what you just said, you said that any additional metrics to how the calculations were done in 2014, what we just looked at this week was very different than 2014.

MR. MARTIN: I didn't mean the exact, I didn't mean the exact protocol. I just simply meant apply it in as much as debt to earnings was the only was the only metric that through which an institution through which a program could lose eligibility. I'm sorry, I should have put some-

MR. ADAMS: The 24, 2014 rates were calculated in a more reasonable way than what's been proposed, so you got me excited for a second.

MR. MARTIN: No, no, it's not. I just want to say using them, using the metric that we applied and in 20 in 2014. And I just was just to go back to the six digits. Another problem we have with, also more privacy. We have additional privacy concerns with the using six digits, which is another reason that while we would go with the four-digit CIP.

MR. ADAMS: Greg, can you explain this? Because your sample size must be 30 to get data. So, what would be the concern? I mean, I thought 30 was a statistical sample size that you all deemed would be appropriate for not having a privacy issue?

MR. MARTIN: I don't know, you know, I just know that we have some of those concerns, I'd have to go back and see exactly what those are. I don't know enough about the statistical unless Steve wants to speak to that, but.

MR. FINLEY: I think that we'll look at this issue because to the extent data is, would still be provided at the six-digit CIP, we'll, we'll see if that is part of the proposal.

MR. ADAMS: I was just saying, you know, it is hard on your question, Greg, to really know without seeing the data. I do struggle a little bit on how to answer it at this point, so.

MR. MARTIN: I just ask it because it is it is a possible option, so I just want to throw it out there for anybody to address.

MS. JEFFRIES: Thanks, Brad and Greg. Anne.

DR. KRESS: So, I want to go back to your notion of multiple measures, and I want to sort of reference back to what Jamie was saying earlier about keeping this as simple as possible. And I do think in our conversation, we're kind of braiding two different audiences, and I think it's important for us to keep them distinct. So, when you look at something like debt to earnings, that makes a lot of sense to the folks in the Department, right? And so that's about the program qualifying. But then I want to go back to that whole section that was added 668.43 D1 and all the romanette below that. So, I couldn't get out of Friday without saying that. And when you think about median earnings, for example, that's an audience metric, right? That's something that students understand. So, I think when we're talking about evaluating the programs from the Department's perspective, I wouldn't want to confuse that with information, essentially consumer information, that we want to give to students about how to effectively choose a program or a program provider. I don't want that to get lost because if we start to combine all these metrics, it will quite frankly be the same gobbledygook that a lot of disclosures are, and they're completely incomprehensible to the folks that they're trying to serve. So, I think we need to keep that as one of our bright lines as well.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you, Anne. Debbie.

MS. COCHRANE: Thank you. Two quick points. One is around, I would just echo what others have said on the data piece, I think when you, until you see the data, it's hard to know whether you are adding more metrics and for redundancy sake, because you're trying to get at that same problem in the same programs would get tripped up or whether you're really solving for a new problem or whether you can see unintended consequences from it. So, I just I would echo for those reasons that call for more data to steer some of this conversation. And then secondarily, I believe in prior some of the prior rulemaking there has been consideration of smaller cohort sizes, so I don't know if that's an issue that's kind of done and dusted. But as we're talking about four versus six CIP code level and kind of how do we get the most coverage we can just wanted to see if there might be room to also go down to something like 15?

MR. MARTIN: I think the 30 was chosen as a due to statistical validity reasons, and that's why we have chosen to stick with the 30. I don't, I don't know. There has been discussion about departing from that that I don't think we've ever seriously entertained something different than the than the than the N-Size of 30, but I will check on that. You see, you would be you would be suggesting having data on more programs, dropping from 30 to 15?

MS. COCHRANE: Or 20 or something else, yeah, as another way of kind of keeping the level of precision at the program level, but still ramping up coverage.

MR. MARTIN: Okay, thank you.

MS. JEFFRIES: Okay, thanks, Carolyn. Brad.

MR. ADAMS: Carolyn hasn't spoken yet, so.

MS. JEFFRIES: I'm sorry, I am so sorry, I thought you were speaking. I apologize, Carolyn. Yes, you are next.

MS. FAST: Actually, I had originally [audio] because I wanted to say what, essentially what Debbie first said about the point about how it is difficult to evaluate which of the options for an earning metric might make the most sense, or even if it makes sense to have one in addition to the debt to earnings ratio without sort of a little bit more information about what the impact of those of the metric would be in terms of the program's effectiveness. That's why it would be helpful to get data. The other thing I just wanted to quickly mention about the CIP codes, I think I had been a little concerned about the change from the six to four, and I had spoken to others in the meantime about the issue and learned in the meantime that the change from six to four could be really helpful in terms of addressing concerns about schools occasionally trying to sort of game the system by creating new programs or renaming programs at the six digit level to avoid consequences of potentially failing the metrics so that the change to the to the four-digit level might actually help with that, too, and I wanted to make that [audio].

MS. JEFFRIES: Thank you, Carolyn. Okay, Brad. I think I got it right now.

MR. ADAMS: Yeah, I just wanted to you know drop the comment, I had mentioned timing earlier, but I just think personally adding another metric being this substantial. In addition, at this point in the process, prior to week three, when the Department didn't propose it this week or week one and didn't have any data to support it is just setting us up for trouble. I'm just concerned on the timing here, just to be honest. Again, I want accountabilities for all students and protection for all students, but I just feel for everyone here at this table that we're introducing a new topic that we haven't seen before we even get right before week three. That's just my two cents.

MS. JEFFRIES: Okay, thank you. Greg, I'm not seeing any, oh, Jamie.

MS. STUDLEY: Would this be the time to speak to other issues within this issue paper?

MS. JEFFRIES: That is just what I was going to ask, Greg, so if you could just bear with me for a second. And I know sometimes I'm a little slow getting on my role here. So, Greg. I didn't see any more hands on the accountability metrics. There's been some requests in the chat to go to 668.43 briefly.

MR. MARTIN: Sure, we can do that in the time we have left.

MS. JEFFRIES: Alright, we have I need to have about five minutes before public comment starts to wrap things up so that you're not staying over because several people do not have the ability to stay past four. So, with that in mind, it is 3:23. We will take comments for just a couple of minutes on 668.43 or another brief comment you may have. Jamie. You're on mute, Jamie.

MS. STUDLEY: I have a related comment on 409 that's very quick. I'm going to admit that the first five times I read it, I didn't realize it applied to all institutions. And as I go back and see that it is within subpart Q, which is titled GE Programs, I think the Department may want to consider whether 409, which is universally applicable, is in the clearest place. And it followed your thinking, probably. But it would not be evident to people trying to understand what their institutional obligations would be if they knew what [inaudible], they may stop reading and not know that it was there. That's just a suggestion. On 668.43. I guess my I think that two and three are understandable. We recognize the Department's desire to do that. I am not speaking for the world, but myself think that those are positive directions and that that kind of consistency would be helpful. I guess what I'd like to know is whether this is the process by which the Department expects us expects to be defining the data elements here. The language says, may be established among other, and it gives some examples. And what I'm wondering is whether this is where the Secretary will make the decisions about what those are or no, those are examples of what he may consider, among other things. And at some other point, the way the Scorecard was developed, metrics would be discussed with community, with students, with people who think about what supports student understanding and so forth because there are some concerns about those. So, it's a question about whether we're trying to at the end of this regulatory process, will these be defined and locked in or are they just examples here of what the requirements in two and three will go to? Let me give you two examples. I mentioned them, but just as we returned to this topic. What is a program for this purpose is important because the primary occupation is the program prepares students to enter? I'll go back to my example. Is it UCLA's bachelor's programs altogether or their bachelor's degree in history? And if that's a program, are these the primary occupations that people go into from UCLA's history program or from all history programs anywhere or from all bachelor's programs anywhere? So it may be that and is it in fact or what the institution proposes? If we don't have to decide that today we can have those conversations with the relevant student advocates and policymakers and institutions. But I can see one school saying. In fact, our history program prepares people to be federal agency and legislative aides, to be reporters and to be high school teachers or wait a minute to be a high school teacher, you need additional certification. Do you do you need to say that on this list? It's rife with a lot of issues.

MR. MARTIN: I think I take that point, Jamie. I think we need to look at because you're certainly right that what, what, what, what is meant by a program can be oftentimes considered different at different types of institutions. And certainly, you're talking about a large four-year traditional type. Is the program the bachelor's degree in you know in arts and humanities or is it the history major? So, and the Department has, you know, here we're doing it by SOC code, which may not be. So, I get I get your I get your point. We'll, we'll have to since this is for all institutions, we'll have to take that back and think about it [interposing].

MS. STUDLEY: And the question is, the simplest one is if we're not negotiating them through this process and they're just examples, how specific does it need to be here, if that will be decided somewhere else and if it is going to be decided here, we need to know for the next round what the Department is thinking so that we can negotiate.

MR. MARTIN: Well, it will be. These will be determined through the Federal Register, was published in the Federal Register and there we would always, you know, give the ability to comment there. But I think that we should probably think about the issue of program even outside of that of that that [interposing] process.

MS. STUDLEY: Sorry. Which of the many definitions of program because accreditors define programs that for certain review purposes and sub-changes and all the rest you have definitions of program that have different effects? Thank you.

MR. MARTIN: Thank you.

MS. JEFFRIES: Alright. Thank you, Jamie. Brad, we are two minutes from public comment and I need two minutes. Do you have something very quick to put out there?

MR. ADAMS: Yeah, can Steve or Greg just confirm for certain because I think it was a question 668.409 that does apply to all institutions. Is that accurate?

MR. MARTIN: That's correct.

MR. ADAMS: Thank you. And then the last thing, very fast. On this, where it says as per provided by the Secretary for debt and earnings, that would imply that I think you're getting data sent to you. So, we just need to understand what data do you need and how that's sent to you? And that's my two questions. Thank you.

MS. JEFFRIES: Thanks, Brad. Okay. With that, we're going to close the discussion on GE. I thank everyone for that. I want to thank you all for your hard work this week. But so, in preparation for your third and final session, March 14th through the 18th, I told you this morning we would offer some additional guidelines to kind of help you in in in the process between. So, we are highly recommending that the negotiators strive to have your proposals, be that red line regulatory text, bullet point, etcetera, preferably in a word document format to the Department, for the most part by February 25th. Yes, I realize that is one week from today. Alright. The reason for this recommendation is that by submitting them, by submitting them by then, the Department would then have approximately one week to consider them during the week of February 28 to 24 as they work on the amended text towards their aim to have the new amended text documents to you on or around March 7th, which is one week before your next session. So, if them being able to meet that goal would then allow you to have that last week before the session of March 14th, 18th, through the 18th to review them in preparation for the session. So, the recommendations are built around the bulk of proposals being submitted one week from today, which is one week on the negotiators side. The Department would then have one week to utilize those and give them the consideration that they deserve and the Department wants to give and then get you back amended text with approximately one week for you to be able to review and utilize in preparation for the third and final session of this. That is not to say that if you have things after the 25th that you're not allowed to submit it, you should submit it, just knowing they need that, that that week. And like Johnson stated just a few minutes ago, it might be a little, you know he had submitted the one a little later and wasn't sure if they had time. So, you will be moving to consensus checks instead of temperature checks and consensus will be taken on each issue per protocols. There will be no grouping of issues and you will not have a consensus check on the entire package. I will have additional opening statement on the third week to help guide you through that process. In the meantime, don't hesitate to reach out to me or anyone on the FMCS team if you need any guidance or assistance, okay? With that, Brady, can we move to our first speaker?

MR. ROBERTS: Absolutely, I just admitted Melissa Whitehurst, who's here representing themselves.

MS. JEFFRIES: Okay, thank you. Hi, Melissa.

MS. WHITEHURST: Hi, how are you?

MS. JEFFRIES: I'm wonderful. You will have three minutes to speak today, and that time starts whenever you are ready. So, the floor is yours.

MS. WHITEHURST: Okay, thank you. I speak to you today about creating accessible education systems. Education should not be a one size fits all approach. It should be a dynamic and constantly evolving to meet the needs of millions of Americans. The rules and regulations formed at the federal level need to ensure that access to education is enduring, consistent and just which is why I'm writing this letter to you today. As a proud graduate of the University of Phoenix and as someone who's experienced the challenges and higher education, I'm grateful for that institution, like the University of Phoenix, which existed to provide a quality education on a flexible schedule. I was a single parent when I attended the university, and not only was I able to graduate and provide a better future for myself and for my family, but I was also fortunate enough to serve as an enrollment advisor for the College of Nursing and HealthCare. The experience gave me the opportunity to help inspire thousands of others and encourage them on their path. Hearing their stories and listening to their struggles helped me realize that education in whatever form it takes needs to be accessible to everyone and respectful of all backgrounds. I encourage all elected officials to hear our stories and understand that higher education isn't just about graduation. It's about providing resources for all of us to succeed. Please consider all students when you decide to change the rules and regulations. Your decision, I'm sorry, your decisions and committees have real-world consequences. Thank you for taking the time to read my story and hear me out. I'd be happy to answer any questions or have any discussions.

MS. JEFFRIES: Thank you for that comment, Melissa, have a great weekend. Thanks for joining us today. Brady, who is next?

MR. ROBERTS: Cindy, I just admitted Daniel Drazen, who is a veteran representing themselves.

MS. JEFFRIES: Thanks. Daniel, are you there?

MR. ROBERTS: It looks like he might be, oh here he comes.

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

MR. DRAZEN: Yes.

MS. JEFFRIES: Okay, perfect. Thanks for joining us this afternoon. You will have three minutes for comment and those three minutes will start whenever you begin to speak. So, the floor is yours.

MR. DRAZEN: Okay, well, first, good afternoon. My name is Daniel Drazen, and I'm a U.S. Army National Guard veteran out of North Highlands, California. After serving overseas in Kuwait and Iraq, I came home and wanted to pursue a degree in military social work. I reached out to a few universities, and the University of Phoenix sold me on a program that would allow me to obtain this degree within a four-year period, including the bachelor's, and that I wouldn't have incur any out-of-pocket expenses. During the enrollment period, they had me apply for student loans. I think I got about $11,000 in student loans. And when I went to finish my bachelors, I inquired about the master's program because that was my main intent. The program was no longer around because it was not accredited by the state of California. Three fourths of my credits could only transfer to Sac State when I tried to enroll in their program, so I end up having to go back to school to American River College, which is a local junior college. My whole plan when I got back home, which was kind of thrown out the window because of my experience with University of Phoenix, and it's taken until about this year for me to finally get into a master's program with the University of Southern California. Seven years later, after my bachelor's. So, I just wanted to share my story about the University of Phoenix's deceptive comments and progress in trying to entice veterans into their school with programs that do not meet state and national accreditation levels. They pulled a bait and switch and like, well, we don't have social work, but we have an MTF program. And my goal was to take the master's degree so I could be a military social worker and commission. And you can't commission off the MTF program. [30 seconds] And I just figured I'd share, I just figured I'd share my comments and experience.

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

MR. ROBERTS: I just admitted Emily DeVito, who is representing the Veterans of Foreign Wars of the United States.

MS. JEFFRIES: Good afternoon, Emily.

MS. DEVITO: Good afternoon. Can you hear me?

MS. JEFFRIES: We sure can. Emily, you know, you know the routine here. You have three minutes to address this committee and the public, and that begins when you're ready to speak.

MS. DEVITO: Thank you. Good afternoon. My name is Emily DeVito, and I serve in the Veterans of Foreign Wars or VFW National Legislative Service. Thank you for the opportunity to share our comments today on issues being negotiated that will impact hundreds of thousands of veterans, military service members and their families who wish to pursue higher education to accomplish their goals through their earned Department of Defense and Veteran Affairs benefits. The VFW was thrilled when bipartisan effort last year to finally close the 90/10 loophole that long played plagued the military community and putting a target on their back and subjecting them to aggressive recruitment from institutions that would ultimately not fulfill their promises. We thank the Department of Education and negotiators for their time towards meaningful and thoughtful rulemaking that will allow the long overdue closure of this loophole to stand the test of time. It's our hope that the proprietary institution community will continue to negotiate in good faith and work collaboratively with the veteran and military community to ensure language matches the intention behind the closure, which is to ensure that all federal tuition revenue collected by the institution is accounted for when applying for 90/10. We are an active-duty veteran and survivor community who continue to utilize education benefits that are paid directly to them. Specifically, Montgomery GI Bill Chapter 30 and Survivors and Dependents Educational Assistance Chapter 35, it's critical these tuition and fees are used in the calculation and the individuals are not left behind in these negotiations. Institutions with Chapter 30 and Chapter 35 students are already required to have school certifying officials who track the individuals receiving these payments as they certify their tuition and fees for the VA and are keenly aware of the student’s entitlements as they must collect their VA certificates of eligibility. As such, we hope proprietary institution negotiators will work in earnest to present a reasonable plan to account for these payments towards federal revenue. Neither we are nor military and veteran negotiators are asking for an accounting of housing payments or direct to student funds above and beyond the VA payments that are earmarked for tuition, specifically Chapter 30 and Chapter 35 tuition payments, or to the extent that these VA payments exceed the tuition charged by the institution. We believe this ask is reasonable, achievable and reflects the intent of the loophole closure for all students using DOD and VA benefits. We implore further conversations to not paint accounting for students using [30 seconds] Chapter 30 or Chapter 35 dollars as burdensome or unachievable, unachievable and have faith these negotiations will not leave behind those students. Thank you for our time to share our thoughts. And again, thank each of you for your commitment to improving higher education for all, including the military community.

MS. JEFFRIES: Thank you, Emily. Brady, who do we have next?

MR. ROBERTS: Cindy, I just admitted Linda Lopez, who is here representing themselves.

MS. JEFFRIES: Okay. I think she's connecting to audio. Good afternoon, Linda, can you hear me?

MS. LOPEZ: Yes, ma'am.

MS. JEFFRIES: Wonderful. You will have, thanks for joining us, and you will have three minutes for your public comment today and those three minutes will start whenever you're ready to start speaking, and the floor is yours at this point.

MS. LOPEZ: Very good. Thank you. Good afternoon. My name is Linda Lopez. I graduated from the University of Oregon at 58 years old, and I'm currently working with at-risk youth in Southern California. You see, my dreams of receiving a degree were almost crushed because of University of Phoenix, where I spent two years and nearly $20,000 dollars. I was a perfect candidate for University of Phoenix and their recruiting team. I was their target demographic. I was a working mother with three kids and a daughter of immigrants with second grade education. I didn't have the role models to show me what a good education looks like or what the graduation or employment numbers mean. All the counselors told me, don't worry about the finances. You can do that. You need a break; you can take one. You know what that means. That's what drew me in. I wanted to move up in my career, and the school sold me on this idea that I can do it all in the evenings, maybe even just one evening. That would require less time for my family, and that would be less disruptive to my life. The problem is, once the bill starts coming because you took a break, you start struggling to figure out how to pay and manage it all. My relationships, my work suffered because of it. I couldn't afford to keep going and racking up more debt. I was starting to feel buried in it. When I began looking at University of Oregon, I learned that I could, I would need to start completely over. It was heartbreaking. My heart sank when I heard that not only was I still in debt with Phoenix, the two years that I spent there weren't even transferable credits to the to a community college where I started. With the help of grants and scholarships, I was able to finish three years of school at University of Oregon with less debt than what I had racked up at Phoenix. There were so many programs and resources that were never offered to me through University of Phoenix, and there were better suited to help a nontraditional student like me succeed. I'm sharing my story because my time at University of Phoenix as a Latina first gen mother working full time was more harmful than not.

Many first-generation Latinos don't have the mentorship or resources to help navigate them through higher education. I remember my friends and family felt so lucky just to finish high school and get a job right away. Just be happy with that. [30 seconds] When a school starts to target your community with ads that look or sound like, you think, well, maybe I can do this. And had I graduated from Phoenix, it used my story to add to a narrative of Latinas and nontraditional students. But the truth is that if I finish my degree with Phoenix, it would have only been because I thought I had no other choice. Thank you, guys, for your time.

MS. JEFFRIES: Thank you, Linda. You have a great weekend.

MS. LOPEZ: You as well. Bye.

MS. JEFFRIES: Thanks. Brady, who is up next?

MR. ROBERTS: Cindy, I just admitted Joe Collins, who is a U.S. Navy veteran and a congressional candidate in the state of California.

MS. JEFFRIES: He's connecting to audio. Good afternoon, Joe.

MR. COLLINS: Hey, how are you?

MS. JEFFRIES: Good, and thanks for adjusting your camera, I thought we were all going to be on our sides here. Appreciate it. Welcome. And you will have three minutes to address your public comments and that three-minute starts whenever you are ready to speak, and I turn the floor over to you.

MR. COLLINS: Okay, yeah, well, I'm ready.

MS. JEFFRIES: Okay. Go right ahead.

MR. COLLINS: Alright, my name is Joe Collins, I am a 13-year U.S. Navy veteran. I sit on a board of a global development company. I also own a development and contracting company. And full disclosure, I am a U.S. congressional candidate here in California's 36th District. I exited the Navy in 2017 and began the pursuit of higher education utilizing my post-9/11 GI Bill. During this time, among other service-related injuries, I found out that my spinal cord was separated in two different places, rendering me 100 percent disabled, ineligible and ineligible for gainful employment. The definition of gainful employment refers to an employment situation where the employee receives steady work and payment from an employer that allows for self-sufficiency. Under 34 CFR 668 eligible programs, it insists that gainful employment is employment in a recognized occupation that a person is trained in. I also want to speak towards the discharge of Federal Student Loans. As you know, veterans who are 100 percent disabled will have their Federal Student Loans automatically discharged without their knowledge. This automatically, this automatic discharge of Federal Student Loans ultimately prevents that veteran from continuing the pursuit for higher education if they run out of VA benefits. Because once they are discharged, that veteran must get a letter from a qualified physician stating that that veteran is able to participate in gainful employment in accordance with

34 CFR 668. So, what I would like to do is encourage the U.S. Department of Education to do two things. One, regarding automatic discharge of Federal Student Loans, allow that to be an option for that veteran to have those loans discharged. And two, if you can expand the definition of gainful employment to consider those persons who cannot get employment, but who owns businesses and who sit on boards of other businesses and persons who receive other sources of incomes outside of employment. Thank you.

MS. JEFFRIES: Thank you, Joe, appreciate it, you have a wonderful weekend and thanks for your service.

MR. COLLINS: You as well, thank you.

MS. JEFFRIES: Thanks. Brady, who is next?

MR. ROBERTS: Cindy, I just admitted Desrine Prayer, who's here representing Lincoln Institute or Lincoln Technical Institute. Apologies.

MS. JEFFRIES: Connecting to audio. Brady, it looks like her connection is taking quite a bit of time, could you let someone else in?

MR. ROBERTS: Yeah, I can message her and I can go to the next speaker. The next speaker is Andrew Gillen, who's here on behalf of the Texas Public Policy Foundation.

MS. JEFFRIES: Thank you. Good afternoon, Andrew, can you hear me?

MR. GILLEN: Yes, I can.

MS. JEFFRIES: Wonderful. Welcome, and thanks for your time. You have three minutes to speak and those three minutes will begin when you're ready. And so, I'll turn it over to you. Go ahead.

MR. GILLEN: Great. Thank you. So, thank you. I'd like to discuss the gainful employment potential regulations. So, we I work for the Texas Public Policy Foundation and we just put out a report on gainful employment this week. And essentially what we did was we [background talking] so we we've got a couple of main findings, so the first thing is we identified two great improvements that gainful employment made to the accountability landscape that we would love to see replicated. So, the first of those was the focus on program level outcomes. So, program level outcomes are so much better as an accountability tool and as a consumer information tool than institutional level data. So, we'd really love to see that replicated as well. The second thing that we love to see replicated is incorporating earnings outcomes into results. This is something that prior to 2014 gainful employment regulations the Federal Government had not really done. There had been a little bit of transparency work, but nothing, nothing on the accountability front. So that was that was also a refreshing and a great improvement that we would love to see replicated. The main problem that we saw with gainful employment was the selective application of accountability. And of course, this was due to the kind of definition of vocational which captured all the for-profits and then the non-degree public and private nonprofit. And what we found when we when we analyzed essentially what we did was we applied the old gainful employment rule to the new College

Scorecard data. And when you do that, you can apply it to all the higher education, not just the traditionally defined gainful employment programs. And what you find when you do that is that for-profits, instead of accounting for 98 percent of failing of programs that fail the original gainful employment regulations, they account for 11 percent of programs. And so, what that means is that if you if you just reissue gainful employment in the 2014 kind of iteration, we're basically going to miss about 89 percent of programs that would be failing gainful employment. So, this is this is kind of my caution to the committee is that we we've got some things that we should replicate in the program level evaluation and the focus on earnings outcomes. But [30 seconds] problem. And so that's my that's my recommendation, and I would be happy if anybody on the committee would like to see the report, I'd be happy to send it to you.

MS. JEFFRIES: Thank you very much, Andrew. Have a wonderful weekend. Desrine, can you hear me? Can you try and unmute yourself?

MS. PRAYER: I'm unmuted, can you hear me?

MS. JEFFRIES: We certainly can. Thank you.

MS. PRAYER: Hi.

MS. JEFFRIES: Welcome. You will have three minutes Desrine to address the committee and that three minute begins as soon as you are ready to speak, so go for it.

MS. PRAYER: Alrighty. Thank you, I'll start now. Good afternoon, everyone. My name is Desrine Prayer. I am a current student in the practical nursing program at Lincoln Technical Institute. Thank you for allowing me to share my experiences with you today. I always knew I was interested in nursing and to please my parents, I did pursue a degree in business administration at Penn State, but I never finished. Instead, I worked in customer service and recruiting. During COVID, I lost my job and I was looking for a career that would provide job stability. I am currently working as a home care aide Monday through Friday from 8 a.m. to 5 p.m., except on Wednesdays when I work a 12-hour shift. Because of my experience as a home care aide and knowledge of the nursing shortages, I did decide to pursue my goal of becoming a nurse. I believe this job will provide me with job stability and allow me to take care of my family. Now, when I started to look for nursing programs, I looked at traditional and community colleges. I tried to enroll in these schools, but they had long waited lists. And even if you were put on a waiting list, there was no guarantee that you would even get a spot. To me, this is very frustrating at 35 years old, as I did not have years to wait to see if I would be, you know, or might be admitted into a program. I continued searching and I came across Lincoln Technical Institute's practical nursing program. As single parent, flexibility was extremely important for me. I needed to be able to work to take care of my family and go to school. Lincoln Tech Lincoln Tech's Program allowed me this flexibility. Right now, I'm taking night classes on Tuesdays and Thursdays from 6 p.m. to 10 p.m. and I have classes every other weekend. This flexibility was not offered at other schools, and without it, I most likely would not be able to study to become a nurse. Another positive was that I was able to start the program right away. I'm proud to say that I'm on the path to becoming a licensed practical nurse. At this time, I have no free time, but it's all worth it because I'm working harder than I ever did to gain the skills that I need to become a nurse. The protections being discussed today should apply to all students in all sectors. I urge you to consider listening to students like myself. I chose to attend the school that best fit my needs and work with my busy schedule. All nursing students, no matter what type of institution we attend, we all must pass a state NCLEX exam. And when I become a nurse, my patients will not care about what state or what school I went to, but more so about me passing the exam that I need to show that I am qualified to work on them as a licensed practical nurse. And that is all. Thank you for your time.

MS. JEFFRIES: Thank you very much, Desrine. You have a wonderful weekend.

MS. PRAYER: You as well, thank you.

MS. JEFFRIES: Thanks. Brady, who is next, please?

MR. ROBERTS: Cindy, I just admitted Patrick Thompson, who's the president of the Nurtur Aveda and the Aveda Fredric Institutes.

MS. JEFFRIES: Alright, thank you. Good afternoon, Patrick. Can you hear me, okay?

MR. THOMPSON: I can hear you just fine. Thank you. Can you hear me?

MS. JEFFRIES: Perfectly. Thank you. Patrick, you have three minutes for your public comment this afternoon. So, whenever you're ready, please begin, your three minutes will start then.

MR. THOMPSON: Okay, great. I want to start by thanking you for allowing me the time to address you today with some of my concerns about the proposed rules. I think you introduced that I'm the owner of the Nurtur Aveda Institutes and the Aveda Fredric's Institutes, and I also own two salons and spas in the Columbus, Ohio, market. Over the course of the week, you've heard many of my Aveda colleagues addressing our concerns with this proposed rulemaking, including the lack of representation in the negotiations, changes to the allowable credit hours that conflicts with state law, gainful employment earnings metrics, the underreporting of income and the lack of an appeal process. Aveda was founded by Horst Rechelbacher to encourage a lifetime of learning environmental responsibility and giving back to society. I expect that many of you are familiar with Aveda products and salons. You may not be as familiar with our schools, which are called the Aveda Institutes. The Aveda Institutes were founded to create successful entrepreneurs in the hair, skin and nail, esthetics, makeup, massage, and total body wellness areas. Our students are educated by experienced and licensed professionals who teach the theory behind each service, as well as the hands-on application, blending professional techniques with innovative curricula to build student expertise. The Aveda Institute network encompasses 63 schools across the country, preparing over 9,500 students annually for careers as cosmetologists, barbers, estheticians, and massage therapists. As a network of schools, we have strong student outcomes. Our average graduation rate is 81.4 percent. Our average licensure rate is 94.2 percent. Our average placement rate is 69.4 percent, well more than accreditors standards. These are strong outcomes that demonstrate the success of our students and our programs. Thus, I question why you would put in place regulations that place any of these programs at the risk of being eliminated. The Aveda Institute also has a shared goal of minimizing student debt. To this, I would again point to our network statistics. Aveda Institute's average median debt is $8,633 dollars. The Aveda Institute's average monthly loan payment is $83 dollars. The committee and allied research groups have attacked our graduate earnings as a weakness and have even accused us of gaming audited graduate earning surveys used in the prior GE appeals process. [30 seconds] [Inaudible] Excuse me?

MR. WAGNER: You have 30 seconds remaining.

MR. THOMPSON: Okay, I want you to know that this is not the case and it's not true. The reality is that two of our schools filed appeals to the GE earnings data and the SSA database, and those audited surveys demonstrated earnings at least 50 percent higher than the SSA earnings. If the Department has chosen to remove the appeals process altogether and rely solely on flawed black box data that a court has previously found to be inadequate for testing purposes. The real issue here is that if enacted, the proposed rules would eliminate the right to due process. While this may be more convenient and efficient for the Department-

MR. WAGNER: Your time is completed.

MR. THOMPSON: -of basic constitutional principles. Thank you very much.

MS. JEFFRIES: Thank you, Patrick.

MR. THOMPSON: Yes.

MS. JEFFRIES: Thank you, sir. We appreciate your time and your comments.

MR. THOMPSON: Thank you.

MS. JEFFRIES: Thanks. Brady, we have time for one more we're going to squeeze in here.

MR. ROBERTS: Alright. I just admitted Valerie Ferrie, who is here representing the Rizzieri Aveda School.

MS. FERRIE: Hi, thank, thank you. Good afternoon. My name is Valerie Ferrie, and I'm the director of the Rizzieri Aveda School in New Jersey, and I appreciate the opportunity to provide public comment. I want to be clear that we support strong accountability metrics that ensure students achieve graduation and career goals. We also support transparency and data transparency that students and their families have the information they need to make an informed choice. Toward this end, we applaud the recent updates to the College Scorecard, in particular the release of institution level earnings data, which provide an overall sense of career outcome for alumni of the institution. This transparency is imperative for students and parents. [Inaudible] in the gainful employment rule, I would ask that you seek to promote transparency for all institutions. Why not make debt to earnings metrics a disclosure under section 668.43 or better yet, an administrative capability requirement? All institutions, whether publicly funded or private, that prepare their graduates to sit for an examination for licensure should be held to the same standard. Whether a student graduates from cosmetology school, law school, medical school, etcetera, any gainful employment criteria that intends to protect students so that their postgraduate income is sufficient to cover their educational debt, should protect students of all institutions, not just students who attend proprietary schools. I'd also like to address my concerns about student earnings. You've heard several commenters this week talk about the underreporting of income. You've also heard of the efforts to work with the Senate Finance Committee and the IRS to address this issue. To date, it remains an issue that has not yet been addressed. Please, consider these concerns and contemplate ways the regulations can adequately address this issue of underreporting in a fair manner. I arrive at all these points from a thoughtful position. As director of our school, I'm committed to our students and their success. We are a family-owned operation that opened in 1924 and we were the first beauty school in the state of New Jersey. Our school has strong student outcomes. Our completion rate is 86 percent. Our licensure rate is 99 percent and our placement rate is 69 percent. Our median total debt is $5,500 dollars and our average monthly loan payment is $55 dollars. These are strong outcomes, and they demonstrate the success of our students. [30 seconds] When, thank you. When compared to two and four-year colleges, our rates are far superior. So, thank you for taking the time to hear me today, and I hope that you consider my suggestions and look for ways to fairly or ensure accountability and transparency for all institutions. Thank you so much.

MS. JEFFRIES: Thank you very much, Valerie. Have a great weekend.

MS. FERRIE: Thank you, you do the same.

MS. JEFFRIES: Thanks. Alright. That concludes public comment time for today. We want to appreciate everyone who participated. Committee, you did a fantastic job this week. Please go have a long, good, nice weekend.

STATE OF NEW JERSEY

I, Jamie Young, Shorthand Reporter in and for the State of New Jersey, do hereby certify that the above and foregoing contains a true and correct transcription of the public hearing that was held by the Department of Education virtually, on February 18, 2022.

Certified by me this 27th day of February 2022.

JAMIE YOUNG

Precise Transcripts

45 North Broad St.

Ridgewood, NJ 07450

(201) 677-8496

Department of Education, Office of Postsecondary Education

Zoom Chat Transcript

Institutional and Programmatic Eligibility Committee Session 2, Day 5, Afternoon, February 18, 2022

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

I have a process question before we get into this section

From Adam Welle, MN AGO to Everyone:

Yael is stepping in for me for state AGs. Thanks.

From Carney King (A) Students and Student Loan Borrowers to Everyone:

I second Amanda

From Carolyn Fast to Everyone:

+1 to Amanda about scheduling for next session

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

+1 to Amanda

From Anne Kress (P) Comm College to Everyone:

+1 to reordering issues as noted by Amanda and Brad

From Yael Shavit State AGs (A) to Everyone:

+1 to Amanda

From David Socolow (A) State agencies to Everyone:

+1 to Amanda's request that March session start with GE & 90/10

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

David Socolow is coming to the table

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

I think the effort to sort out the federal component of non-federal grants is likely not to be worth the trouble. I think Jamie's comment about the state decision process essentially satisfying the purpose of 90/10 is correct. Trying to track comingled federal funds is just false precision and will vastly complicate compliance.

From David Socolow (A) State agencies to Everyone:

(4)(ii) could also refer to SNAP Employment and Training and TANF job training funds

From Jaylon Herbin (A) Consumer and Civil Rights to Everyone:

+1 to David's comment

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

+1 to Barmak’s comment "I think the effort to sort out the federal component of non-federal grants is likely not to be worth the trouble."

From Jaylon Herbin (A) Consumer and Civil Rights to Everyone:

+1 to Yael's comment on ISA

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

+1 Yael

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

+1 to Yael

From Carolyn Fast to Everyone:

+1 to Yael

From Carney King (A) Students and Student Loan Borrowers to Everyone:

+1 Yael

From Johnson (P) Legal Aid to Everyone:

+1 to Yael on ISA and other fintech ideas that facilitate 90/10 gaming

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

+1 Yael related to ISAs and that eliminating ambiguity is critical for the rule to work as intended.

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

Support stronger language here given this growing problem. Many students ineligible for federal or state aid are extremely vulnerable to rely on these types of products to pay for their education. ED should get at this problem head on and up front.

From David Socolow (A) State agencies to Everyone:

+1 to Yael: ISAs could be the next trick that institutions use to get around the language in 668.28(a)(6)(vii) about "loans"; don't let this rule open a new loophole.

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

here is my proposed language that removes words without recourse. (i)Any amount from the proceeds of the factoring or sale of accounts receivable or institutional loans that were sold with recourse.

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

+1 Jaylon

From Carolyn Fast to Everyone:

+1 Jaylon. Permitting schools to use the amount repaid on institutional loans seems to create an incentive for schools to use aggressive debt collection practices to address. This is a concern.

From Jaylon Herbin (A) Consumer and Civil Rights to Everyone:

Again, students are free to take out loans from institutional or private sources. We simply do not want these revenues to be incentivized in this regulation. We understand that, but there is ample evidence that institutions are using extremely aggressive debt collections tactics such as transcript withholding to collect these loans.

From Johnson (P) Legal Aid to Everyone:

on Brad's comment that sale of accounts receivable should be counted as revenue, I would point out that account balances can increase after enrollment based on new fees that were not disclosed adequately to students, so such new debt could be gamed under 90/10 to the huge detriment of students.

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

some students receive partial GI benefits

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

I do not know how we could possibly know

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

if we messed it up it would be an audit finding

From Carney King (A) Students and Student Loan Borrowers to Everyone:

+1 Johnson

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

+1 to Dave's comment. that is my main concern is that this would be the first-time money would be included that is not hitting the student's ledger card.

From Johnson (P) Legal Aid to Everyone:

+1 Travis on need to protect vets from exploitation

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

+1 Johnson

From Carney King (A) Students and Student Loan Borrowers to Everyone:

Ernest will be returning to the table for Students/Loan Borrowers

From Brady FMCS Facilitator to Everyone:

I appreciate the incredulity

From Jaylon Herbin (A) Consumer and Civil Rights to Everyone:

Carolyn will be returning to the table

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

Michael will come to the table for ATB

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

David Socolow will continue to represent state agencies for ATB

From Emmanual Guillory (A-PNPs) to Everyone:

Kelli will be coming back for ATB

From Anne Kress (P) Comm College to Everyone:

Will Durden will be coming back in for 2 Year Colleges for ATB

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

I am coming back to the table

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

David's explanations were very compelling. I support the language he and Johnson submitted on ATB.

From Anne Kress (P) Comm College to Everyone:

I’m coming back in for Two Year Colleges.

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

I am coming back to the table as well for state agencies.

From Jamie Studley to Everyone:

I would like to come back to a brief comment on 668.409, and 668.43, the disc of which was very truncated.

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

Emmanual will be coming back to table for GE

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

I also agree with Jamie to look at 668.43 again if there is time.

From Johnson (P) Legal Aid to Everyone:

+1 on Brad's request for data on GE

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

+1 to Brad's request for data to help guide this discussion, including on outcomes associated with the additional accountability metrics being put on the table.

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

+1 to Amanda. The data modelling from Adam around low income would be helpful.

From Anne Kress (P) Comm College to Everyone:

+1 to Brad’s request on data

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

As I mentioned during the GE conversation, I strongly support the addition of a HS earnings threshold to passing a.DTE and d.DTE rates as a requirement. Waivers can be granted for exceptional circumstances.

From Yael Shavit State AGs (A) to Everyone:

+1 Barmak

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

+ 1 Barmak

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

+1 Anne on careful suggestion around wage metrics, that was compelling.

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

+1 to Barmak as well.

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

+1 on Jamie's to try to keep it simple comment

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

Can the Department provide data applying each of the four metrics to all programs at all institutions at the four- and six-digit CIP codes with a n-size of at least 30 graduates?

From Johnson (P) Legal Aid to Everyone:

+1 on Jamie's comments

From Anne Kress (P) Comm College to Everyone:

+1 Jamie

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

Jamie's comments on simplicity resonate, +1.

From Johnson (P) Legal Aid to Everyone:

If we could get data on Pell recipients and earnings, that would be helpful.

From Anne Kress (P) Comm College to Everyone:

Also want to +1 Jamie’s request to go back to 668.43

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

+1 to Jamie to move 668.409 to 668.43

From Anne Kress (P) Comm College to Everyone:

+1 Jamie’s question

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

What if the history program prepares students for law school?

From Carolyn Fast to Everyone:

+1 to Jaime that 668.409 should be moved out of the Gainful Employment Rule, because it applies to all institutions. May make more sense to include in section addressing program participation agreements.

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

Cindy, thank you for giving us a deadline. That is helpful.

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

it will be a busy week, but it is good to know the date.

From Gregory Martin ED Negotiator to Everyone:

Thank you everyone. It has been my privilege to work with all of you this week.

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

Thanks Greg. Hope you have a great weekend and get some rest.

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

Thank you, Greg, for your patience and efforts. They are appreciated!

From Emmanual Guillory (A-PNPs) o Everyone:

In relation to our conversation about the cohort size, I just wanted to share what the Department has previously said regarding it when releasing the 2014 rule, "As discussed in the NPRM, we believe a minimum n-size of 30 is a more appropriate threshold for the D/E rates measure when it is used as an accountability metric—not because it would be invalid at a minimum n-size of 10, but because even slight statistical imprecision could lead to mischaracterizing a program as zone or failing which would precipitate substantial negative consequences, such as requiring programs to warn students they could lose eligibility for title IV, HEA program funds. Given these consequences, we believe it is more appropriate to set the minimum n-size at 30 for accountability determinations. So, even though an n-size of 10 would provide a sufficiently precise measure of D/E rates, our analysis shows an n-size of 30 is more appropriate because it reduces the possibility of mischaracterizing a program as zone or failing in a year. From Emmanual Guillory (A-PNPs) to Everyone:

Thank you, Greg, our facilitators, everyone at the Department, and everyone on the committee for all your work this week!

From Jamie Studley to Everyone:

Adding to the chorus appreciating Greg and the whole ED team for your patience, preparation, and responsiveness. And yeah, for FMCS, too.

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

+1 on Emmanual cohort size comment.

From Anne Kress (P) Comm College to Everyone:

Thank you, Greg! And thanks to the FMCS team! And, to our tireless committee!

From David Socolow (A) State agencies to Everyone:

+1 thanks to ED, FMCS, and all the committee members!

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

+1 Anne and David

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

Thank you to FMCS and to the committee. Hopefully all of us will commit to getting some rest this weekend.

From Johnson (P) Legal Aid to Everyone:

+1 to Greg, Cindy and FMS and DOE team

From Yael Shavit State AGs (A) to Everyone:

Thank you everyone for the hard work.

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

Thank you everyone, and especially to ED and FMCS for shepherding us through so much this week.

From David Socolow (A) State agencies to Everyone:

+1 thanks to ED, FMCS, and all the committee members!

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

+1 Anne and David

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

Thank you to FMCS and to the committee. Hopefully all of us will commit to getting some rest this weekend.

From Johnson (P) Legal Aid to Everyone:

+1 to Greg, Cindy and FMS and DOE team

From Yael Shavit State AGs (A) to Everyone:

Thank you everyone for the hard work.

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

Thank you everyone, and especially to ED and FMCS for shepherding us through so much this week.

From Cindy-FMCS Facilitator to Everyone:

Thank you all for your kind words and recognition. It is our pleasure to work with all of you and look forward to the March session.

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

Thank you everyone! Good conversations. Hope you all have a great weekend!

From Desrine to Everyone:

yes