

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 1, DAY 2, MORNING
January 19, 2022

On the 19th day of January, 2022, the following meeting was held virtually, from 10:00 a.m. to 12:30 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. WAGNER: Welcome to day two of the regulatory negotiation. My name is Kevin Wagner, I am with FMCS, I'll be the facilitator for the morning session agenda, what we're going to go through this morning is we're going to go through a roll call of all the negotiators, the advisers and the representatives from the Department. And then we'll probably pick up with where we left off yesterday, which was the standards on administrative capability. We had a temperature check through M. So welcome. I'll go through the roll call, starting with the accrediting agencies. We have Ms. Jamie Studley- if you could just-

MS. STUDLEY: Present.

MR. WAGNER: Thank you, Jamie. Dr. Laura Rasar King.

DR. KING: Present.

MR. WAGNER: Thank you. For the civil rights organizations and consumer advocacy organizations, we have Carolyn Fast.

MS. FAST: Present.

MR. WAGNER: And Jaylon Herbin.

MR. HERBIN: Present.

MR. WAGNER: Thank you next from the financial aid administrators at secondary postsecondary

institutions, Ms. Samantha Veeder.

MS. VEEDER: Present.

MR. WAGNER: And Mr. David Peterson.

Okay. He's not present. Next, four-year public institutions of higher education, we have Mr. Marvin Smith.

MR. SMITH: Present.

MR. WAGNER: Thank you, and Ms. Deborah Stanley.

MS. STANLEY: Present.

MR. WAGNER: Next, from the legal assistance organizations that represent students and/or borrowers, we have Mr. Johnson Tyler.

MR. TYLER: Present.

MR. WAGNER: And Ms. Jessica Ranucci.

MS. RANUCCI: Present.

MR. WAGNER: Thank you. From the minority serving institutions, we have Dr. Beverly Hogan.

DR. HOGAN: Present.

MR. WAGNER: And Ms. Ashley Schofield.

MS. SCHOFIELD: Present.

MR. WAGNER: Next, we have from the private nonprofit institutions of higher education, Ms. Kelli Perry.

MS. PERRY: Present.

MR. WAGNER: And Mr. Emmanuel
Guillory.

MR. GUILLORY: Present.

MR. WAGNER: From proprietary
institutions of higher education, we have Mr. Brad
Adams.

MR. ADAMS: Present.

MR. WAGNER: And Mr. Michael
Lanouette.

DR. LANOUEPTE: Present.

MR. WAGNER: State Attorney General,
Mr. Adam Welle.

MR. WELLE: Present.

MR. WAGNER: And Ms. Yael Shavit.

MS. SHAVIT: Present.

MR. WAGNER: State higher education
executive officers et cetera, we have Ms. Debbie
Cochrane.

MS. COCHRANE: Present.

MR. WAGNER: And David Socolow.

MR. SOCOLOW: Present.

MR. WAGNER: Student and student loan
borrowers, Mr. Ernest Ezeugo.

MR. EZEUGO: Present.

MR. WAGNER: And Carney King.

MR. KING: Present.

MR. WAGNER: And from two-year public institutions of higher education, Dr. Anne Kress.

DR. KRESS: Present.

MR. WAGNER: Mr. William Durden.

MR. DURDEN: Present.

MR. WAGNER: And from the U.S. military service members veterans or groups representing them, Mr. Travis Horr.

MR. HARR: Present.

MR. WAGNER: And Mr. Barmak Nassirian.

MR. NASSIRIAN: Present.

MR. WAGNER: And we have the two advisers we have, Mr. David McClintock.

MR. MCCLINTOCK: Present.

MR. WAGNER: And Dr. Adam Looney.

Okay. From the Department, from the, representing the Department, Mr. Steve Finley.

MR. FINLEY: Present.

MR. WAGNER: And Mr. Alejandro Reyes.

MR. REYES: Present.

MR. WAGNER: And the federal negotiator, Mr. Gregory Martin.

MR. MARTIN: Present.

MR. WAGNER: Okay, thank you. So, where we were yesterday was we had got.

MS. AMANDA MARTINEZ: I know I'm not.

MR. WAGNER: I'm sorry, I'm sorry, I'm sorry. You are Amanda.

MS. AMANDA MARTINEZ: I just wanted to be recognized.

MR. WAGNER: Oh, please be recognized, Amanda. Go ahead.

MS. AMANDA MARTINEZ: Present.

MR. WAGNER: Okay, thank you, Amanda. Sorry about that. I'll make a note of that. Where we were yesterday was we were at the standards of administrative capability. We had a temperature check through Section M, so I'll go ahead and turn it over to Greg. And I do see that Emmanuel has raised his hand.

MR. GUILLORY: Yes, before we jump into the issue papers, I would like to propose to nominate an additional adviser to the committee.

MR. WAGNER: Okay. And as we spoke yesterday, there's two things, one is that if that person was agreed to by consensus that they would need to be ready to join the negotiations and they were they were supposed to let Cindy Jeffries from FMCS know that. Has that happened, do you know?

MR. GUILLORY: Well, I spoke with this individual to confirm that they would be able to join immediately. And she said, yes, she would be able to. I think I wasn't aware that she had to contact Cindy, I contacted Cindy yesterday, but I have her also contact Cindy if we need to do that. But I know that she is ready and watching right now and available to participate.

MS. JEFFRIES: Emmanuel holding through with what we did yesterday with other nominees. I need to have that confirmed via email from the nominee. I did send you an email last night in response to your email regarding this, and I don't have anything from her at this point.

MR. GUILLORY: Okay, well, we can get that for you as soon as possible and hopefully move forward with proposing the nomination.

MS. JEFFRIES: As soon as we have it from her, then we can go ahead and take care of that business. Okay?

MR. GUILLORY: Okay, thank you.

MS. JEFFRIES: You're welcome. Thank you.

MR. WAGNER: Then there's also something in the chat. Can we get a CD? Can we get a

resume for the proposed person get out like we did yesterday?

MR. GUILLORY: Yes, I can do that, I'll drop her resume in the chat right now.

MR. WAGNER: Okay. And also wanted to acknowledge that Jessica Ranucci will be the primary or the legal aid constituency and welcome. So, I would, should we go ahead with the thinking of consensus to add this adviser now, should we table this?

MS. JEFFRIES: I'm going to suggest that we table it until I receive that in holding true with the process that was established yesterday. And then once I received that from her, I will we will slot this item on the agenda in between issue papers.

MR. WAGNER: Thank you, Cindy, I just want to be sure about that. So, let's start off Greg, I understand we were at the standards of administrative capability you have the floor take it away.

MR. MARTIN: Thank you, Kevin. Yes, we're still in administrative capability, and today we're going to pick up with M, these were the additions to the standards for the administrative capability. And we're going to pick up with M does not engage in misrepresentations as defined in subpart F of this part or aggressive recruitment as defined in subpart B I'm

sorry, subpart B subpart R of this part. And just as a little bit of background here, the last round of rulemaking that was in table one included regulations on misrepresentation and aggressive recruiting practices that have been proposed in subparts F and R as part of the Borrower Defense issue, and we proposed to include those misrepresentations and aggressive recruiting practices. Also in administrative capability, which would give the Department additional opportunity to take action against schools that have committed those actions. I did we did send to our facilitators, and they have sent to you a couple of reference documents from the from table one. It was the most recently released public amendatory text was made public on the changes to subpart subparts F and R. So, I just wanted you to be able to have that as a reference when voting on this. Those obviously, that was from a previous table. I don't I don't it wouldn't be appropriate to discuss that here at this table, but I did want you to have that information for reference. Do you understand that that's just what was most recently proposed for session three of table one? So, by no means indicative of, I don't believe consensus was reached on that one. So, I this is not necessarily the way it will absolutely appear in in in the notice of proposed rulemaking, so I just want you

to understand this the most recent text, but it's just for it's just for context, for all of you. I just wanted you to have it as we think about this. So, I'll open it up for any discussions on that that M.

MR. WAGNER: Yes, we have our Carolyn up first. Take it away Carolyn you have three minutes.

MS. FAST: Thank you. So first of all, I think it's a good idea that the Department has to include misrepresentations and aggressive recruitment in the section, and I'm supportive of it. I am concerned, however, that we don't yet know what the language is going to be that defines misrepresentations and aggressive recruitment because we don't yet have the final or even proposed rule. We just have the suggested language from the earlier negotiated rulemaking, and the reason that that is a concern to me is that if it were, for example, more narrow than, for example, what would be misrepresentation or aggressive recruitment under a state law that could actually have sort of a counterproductive effect of potentially narrowing, in theory the Department's discretion to take action against a school that was engaging in this kind of misconduct. So, I'm not sure exactly how to resolve it, but I would be a little bit concerned about voting without knowing exactly what the reaching consensus,

rather without knowing what the language is, and I wanted to flag that concern. So, for example, one could have a Borrower Defense discharge claim under state law standard that would include something like an abusive or unfair practice that could potentially be outside the scope of the aggressive recruitment in a language of whatever this rule is going to be. We don't know what the rule is yet, so that's my concern.

MR. WAGNER: Thank you, Carolyn.

MR. MARTIN: Thank you, I do, we do, I do understand that that I mean, the issue here is that obviously we will not have that rule while we're doing negotiations on this. And the Department does consider it to be an important addition to administrative capability. So, I do I do understand those concerns. I would suggest that, you know, it's true, we cannot guarantee exactly what the what the NPRN say. But I think that this does give a pretty good idea of the direction the Department was going and so I think that we know it does give a pretty good direction. I do want to point out that the misrepresent the misrep and aggressive recruiting proposed language in subparts F and R are not limited to BD. So, it's these are separate subsections of the regulation. So, it was on the table for BD, but not just related to BD. So do you want to do

want to point that out. And that's what my ask here would be that we look what's look at what's on these papers and try to make a decision moving forward because if we don't do that, then it really precludes any would preclude any vote on this issue during our table. So, I don't want to do that. But I don't know, Steve, do you want to add anything to that? I'll turn it over to counsel Steve. It's not Steve. Steve is not my counsel here. It's, I should know who my counsel is. Alejandro, any comments on that issue.

MR. FINLEY: Actually, it is Steve, Greg.

MR. WAGNER: Oh, it is Steve, I'm sorry, I was.

MR. FINLEY: You get you get multiple advice here.

MR. MARTIN: That's a good thing.

MR. FINLEY: There's nothing for me to add to that. I mean, this is this is an incorporation by reference to a section that's not up for discussion in this group. So, I think the point is noted that there is some uncertainty about what that means, but that's going to be resolved through notice and comment based on the table one negotiations.

MR. MARTIN: Thanks, Steve.

MR. WAGNER: Okay, let's see, we have Yael up next.

MS. SHAVIT: Yeah, so yeah.

MS. JEFFRIES: Yael, before you start, I'm sorry to interrupt you. When we did roll call, Mr. David Petersen was not present. I do want to make note that he has now joined us. Thank you.

MR. WAGNER: Welcome.

MS. SHAVIT: So, my concern is the same concern that Carolyn raised, and I do want to see if we can figure something out a little bit more because I'll tell you that it makes me very uncomfortable to vote to vote on basically non-existent language, right? It's a cross reference to a section that doesn't exist, and we do appreciate that this is sort of an accident of timing and not necessarily super avoidable. But you know, I have kind of two thoughts. The first is, is there to the extent that even having a sense of the Department's proposed language with the understanding that it's going to go through notice and comment and it might ultimately the final rule may not look like the proposed rule for me, at least, having a more concrete notion of what the Department intends to propose would make me feel more comfortable voting on this issue, where otherwise we're really being asked to take a leap

of faith that seems pretty difficult, frankly, to do. So, one question that I had is, is there a sense that between now and the third week of these negotiations, the Department might be in a position to state more concretely what it intends to propose for the two sections that you circulated today? That's one question. And the other question is procedural. I realize this is probably a pretty aberrational scenario that we're in right now. Is there any kind of process by which we could vote on consensus with contingencies? Basically, noting that in the event that the cross references are to propose language that reads substantially like what was circulated today, for example. That would be the basis for a consensus vote and if that doesn't end up being the case, there's no consensus.

MR. WAGNER: Well, all I can say about the concerns, we'll take the concerns back, we'll take the concerns back and look at them and talk about that. I don't know what we can, what else we can get for you by the time we get to our third session. So, I'm not going to make any promises there beyond what we what we have here. To my knowledge, a consensus vote is, and Steve can step in and correct me here, but I believe I don't think that there can be a contingency associated with a consensus vote. It's either consensus or no

consensus. But if Steve wants the way on that, he certainly may. But I can promise we'll take the concerns back, take a look at them, but I would like to say for purposes of just the just the temperature check, I'd like to take for this, when you know, when people have had an opportunity to make comments, I would like us to think about it in terms of what we currently have. And again, as Steve pointed out, what's what was happened to table one is not up for discussion here. We really cannot discuss that. I don't want to prejudice those proceedings or the development of regulations on those proceedings so that we can just look at what we have here because we're not taking a consensus vote today and I promise to take it back and see if there's anything else we can get with respect to that.

MR. WAGNER: Okay. Thank you, Greg. Barmak, you are up next.

MR. NASSIRIAN: So, I share the concerns of Yael and Carolyn, but I also take the point that Greg just made that we cannot renegotiate the misrepresentation reg at this proceeding. But it seems to me that one of my complaints about the proposed language is the meek is the overall meekness of it. When I look at the statutory language, the statutory language says that the Secretary is authorized to establish

procedures and requirements relating to the administrative capacities of institutions of higher education, including consideration of past performance of institutions or persons in control of such institutions with respect to student aid programs. Sounds to me like if there was state action associated with the institution's conduct that that very much relates to the past performance of the institution. And that's the way of addressing whatever the misrepresentation regs may end up being at the federal level, along with any state action. So, I suggest that we need to expand this language. It shouldn't focus, you know, this kind of cherry picking of misconduct is problematic. I think any kind of bad behavior that that raises alarm ought to be included here. And candidly, I think it actually has to reach the person in addition to the entity itself. So, I suggest that we need some language to expand this to include other modes of bad past performance. In my book that would also include institutional collapses, institutions that have that have precipitously closed on students. You know, there's very little to go after at that point, but it seems to me that at the least, we can exclude the individuals involved with such institutions from being qualified to do it again under a new corporate banner.

MR. MARTIN: Thanks, Barack, if you have if you have a language you want to add, I'm not certain if you're proposing another paragraph or you want to add something to M?

MR. NASSIRIAN: I'll submit I'll submit language.

MR. MARTIN: Yeah submit some language to us, we'll take a look at it. But thanks for your comments.

MR. WAGNER: Brad, you're on deck, go ahead.

MR. ADAMS: Thanks, good morning. I agree with Carolyn. Our concern is that the aggressive rule making definition has not been defined. But in addition, I also have concerns that the word substantial was left out in front of the word misrepresentation. The Department is already authorized to take action against an institution that engages in a substantial misrepresentation, and that's because the substantial misrepresentation requires that a person could have reasonably relied on the statement to their detriment. And a simple misrepresentation, in contrast, was any statement made by an employee of an institution to any member of the public that has the likelihood or tendency to mislead under the circumstances. Does not matter if

that was intentional or inaccurate, and there is no requirement that a reasonable person could have relied on it or that it would have harmed them if they had. I would like to ask the Department why did they not include the word substantial in this wording?

MR. MARTIN: Well, in thinking about this again, when you put it in the context of this is an administrative capability and note that the language does say, does not, does not, does not say, does not engage in a misrepresent in a in a misrepresentation as defined in support effort says does not engage in misrepresentations. What we're looking at with a with any type of administrative capability standard is, you know, does the school engage in a pattern of misrepresentation? And I think what you said is how you characterize it is correct. You know, per what's in subpart F, here we're talking about that, even if these are misrepresentations and not substantial misrepresentations, we believe that the consistent their occurrence on a regular basis does weigh on a determination of administrative capability.

MR. WAGNER: Jessica, you have your hand up, your next.

MS. RANUCCI: Thank you. You know, I think from my perspective, again, as a legal aid

practitioner, I see people all the time who have been the victims of misrepresentations by their colleges. And I think that it's really important that we keep this definition of misrepresentation as broad as possible. And I think just one example of why it might be important is that often we've seen this representations in generally applicable recruitment practices. You know, there's a school where we saw a bunch of students enrolled in here in New York City that would like drive a van around the city and would hand out fliers or say things in the van that weren't necessarily on their website. And I think it's important to give regulators like the Department flexibility to identify any misrepresentation regardless of without having to focus on the proof of the individual reliance piece, and I think, you know, not to suggest this is what you're saying, but I think none of us want to see any institutions make any misrepresentations, and I think that that's really what our focus should be on.

MR. WAGNER: Okay, Greg, are you ready for a temperature check on this particular on M?

MR. MARTIN: I am, and I just want to remind everybody that I would like to, I mean, obviously everybody comes at it from their own perspective, but take that temperature check in view of what we've said

with, you know, what we currently have for subparts F and R understanding that this is not a consensus vote. Thank you.

MR. WAGNER: So this will be for F and R and M?

MR. MARTIN: I'm just I'm just saying that when they vote, when they take the temperature, check on M, just do it in recognition of what we currently have for F and R understanding, that's not final on the rules, but it's the best, it's all we can all we can go on right now. So, we're just doing it on M.

MR. WAGNER: I do see that, Debbie; you do have your hand up. Do you have something you want to add?

MS. COCHRANE: I did thank you. I just wanted to flag I had put up a potential suggestion in the chat, which was the option of including language, including but not limited to.

MR. WAGNER: Thank you for that. I would also make a quick note before we take the temperature check just to encourage the negotiators, I know we have a limited time, and we want people to have comments if there are specific questions that may make sense to put those in the chat and that would help move

things along. So that being said, if we go ahead and take a temperature check with thumbs for M and hold them high so we can see them that would be appreciated.

MR. NASSIRIAN: I'm sorry, can I ask a clarifying question? What are we I know it's not binding, but honestly, I don't even know what we're voting on. What are we voting on? The language as written, the language as contemplated in each individual negotiator's mind, I just don't know what the what the value is of.

MR. MARTIN: It's just simply a temperature check of where the group is on, remember, though, I mean, we're looking at we're not, the only reason I gave I provided what was in in what came from table one with respects to with respect to subparts F and R is to give you some context. We're not we're not voting we're not we're not voting here we're just taking a temperature check. From what's here. What's just strictly what's an M? That's it. As it's written here.

MR. WAGNER: Amanda.

MS. AMANDA MARTINEZ: I think just so I'm also I'm also understanding clearly how this impacts, because you said Greg, to view this part of this issue paper currently view this from a perspective without the papers that you added to us subpart F and R

to view this only solely as the regs, as they are in place and the definitions that we have currently and take those new editions out. So now it's kind of like there's theory here. Where was the was the Department viewing and adding this language from that perspective, as well as looking at, okay, this is the definition that we have currently not being influenced by the new definitions that were discussed in a previous negotiation in the new potential regs. Were they actually doing it from that perspective? And that's why they viewed, that's why they included this line to add an additional, they view this as a tool to solve a problem. I'm just trying to understand the Department's thinking in was that their actual perspective?

MR. MARTIN: No. What this is about, no, I'm not, we absolutely did propose this rule here in view of what we did at the previous table, at the table one with subpart R and subpart F. So no, they're not they're not disassociated. We had that in mind. What I'm saying is that there are no existing regulations. Subpart R is entirely new. The changes we made at the subpart F again came from table one. They're not in regulation yet, so we did, it's kind of an odd juxtaposition, as Steve pointed out with doing it this way. But so no, I'm not telling you to forget about what

you read, just to understand you're not voting on that or, you know, you're not giving a temperature check rather on that, you're giving a temperature check and what's in M. And you know, I was just trying to make people assuage people with respect to the to the other regs. But you're not I don't want you to, yes, we did, they are connected the proposed rules there and or that amendatory text and what we're looking at here. But nothing we're doing here affects those, those rules. Or proposed what's proposed rather, what will be proposed in the NPRM, I should say.

MR. WAGNER: Kelli, you had something to add?

MS. PERRY: Yeah, just a question. What outcomes can the Department gain by having it here as well as having it in F and R? Like, is there something else that you would be able to achieve by having it here if it's already in those other two places?

MR. MARTIN: Well, recall that, you know, or I would rather I would have people note that that what's an administrative capability is often reflects rules that are elsewhere in the regulations. This is this is a separate, you know, when we talk about adding capability, it's not a finding the Department

often makes, it's we usually make it in conjunction with other serious issues of the school has. So, these just reflect on the administrative capability of an institution. So, it's quite common in these if you were to look at break down all these rules that they that they are all referencing other areas of the regulations. So yes, we'll have we would still have what's in those in those subparts if we didn't include it here. But it allows us to if we're making a forming and analyzing, does the school have administrative capability, it folds that in.

MS. PERRY: But I guess in addition, that's understood, but I guess in addition to that, what would there be a different outcome if it was in the administrative responsibility section and not in as opposed to being in the others for the school?

MR. MARTIN: Well, the outcome would be so, you know, any compliance action if the school, if we were to note that an institution they would be, they would obviously the finding would be with reference, for instance, what is in subpart F or what is the subpart R. But if the Department was making an overall finding of administrative capability, in addition, if there was an administrative, if there were an admin capability finding it would be an addition to those other, those

other, those other findings. So, it would allow us to make that assessment of the school is not administratively capable.

MS. PERRY: Can I ask, I'm sorry, can I ask it one more way? So, from a school's perspective, whether they have a finding as it relates to administrative capability or they have something that's in R and F, what does the school need is what the school needs to do to rectify those things different, I guess, is my question? Or is it the same? Because ultimately, it's the same finding.

MR. MARTIN: Generally not. But understand that we would likely not for one, if there was just that issue. When we do administrative capability, generally, there are other issues involved which we make the determination of administrative capability. So, if you had a finding of administrative capability, the chances would be that there were many other things that went into that that determination. But as far as resolving the finding related to misrepresentation or aggressive recruiting, no, that would be that would probably be the same the same process you would have to have to go through.

MR. WAGNER: Sam and then Steve.

MS. VEEDER: Thank you, so let me let

me see if I'm understanding this correctly or maybe ask it a little differently because I think we're kind of down this rabbit hole a little bit. And I'm wondering and based on Kelli's question, does it matter? Do we need to go here? I mean, the definitions in subpart F and R are going to happen through that other process and we have no control of it. They're going to be what they're going to be. We're just simply cross-referencing here to whatever that is. So maybe that shouldn't hold us up from this decision here because that decision is already made separately.

MR. MARTIN: Well, let me, you know, I think I'm going to turn it over to Steve, he wants to make a comment and maybe Steve can approach this from a little bit of a different angle. Go ahead, Steve.

MR. FINLEY: Yeah, thanks, Greg. So, often when the Department is citing multiple violations of different regulatory requirements, we do reach the conclusion that the institution lacks administrative capability. When we see recurring patterns of violations, they tie together and it's a pretty straightforward assertion that there's a failure of administrative capability at an institution. Some practices are so essential to the institution's duties to administer federal student aid funds appropriately

that we want to just establish in the regulation that a violation of a provision like the aggressive recruiting or misrepresentation itself constitutes a separate administrative capability violation. It is a shorthand in a way because the department could do a more extensive documentation to tie the points together. But by doing it in the regulations, it's clearer that this is a central responsibility of the institution and it can be a separate violation when you've got of the administrative capability requirement. I hope that helped.

MR. MARTIN: Thank you, Steve. I'd kinda like to move ahead and take the take a, you know, take a little bit of temperature check, here we are. I don't want to cut off anybody at all, but we are we are somewhat pressed for time, so.

MR. WAGNER: Yeah. Could we go ahead and yeah, sure. Can we go ahead and take the temperature check on M with a show of thumbs and hold them high so we can all see them, that would be appreciated. Don't see any, there is a thumbs down and there's one thumbs down. Would you care to say anything about why that is a thumbs down? Is there anything that could change at this point or will that be something that you can put in writing for later?

MR. ADAMS: Yes we proposed definitions in the last rulemaking, we've yet to hear back from the Department on those comments. So really, it's just the fact that we don't have a solid definition unit to review, and that's the concern. I'm not sure what I'm temperature checking on at this point.

MR. WAGNER: Okay, thank you, thanks for that. I do see that Jessica; you have your hand up.

MS. RANUCCI: Yeah, I just, you know, I think there are two issues for the Department to take back on this now that you made us do a temperature check. One is, what's your plan going forward with respect to the regulatory language here, and it sounds like maybe this is all we're ever going to get and like, you're going to make us do on that. But I think trying to figure out if there's any other option would be great because I think there's a lot of discomfort among this group of approving a section that's exclusively a cross reference to a section that doesn't exist. And then I think the second one is just to put a finer point on this question that other people have asked me over and over, which is what the utility of this language. And I'm obviously, as I've said, I'm all for this. I think it's super important I want to protect students, but I think without a clear explanation of how this language

helps us do that, it's hard to understand why this is an important thing that we need. That being said, I'm all for the Department [inaudible], but I think like the Department coming with those two things next would really help us.

MR. MARTIN: Thank you, and I think, you know, we've heard that and obviously we have some work to do before the second session, and we'll take that back and see if we can, you know, if we can get you something else in advance of that. Thank you.

MR. WAGNER: Just as a as a housekeeping, we do have confirmation from Ms. Menditto, so it might make sense at this point to ask for any comment or and then take a consensus, whether we, you know, whether she should be added as part of the negotiations. So, we know we'd get to that, but we do have the confirmation while we have time and we're right finished with one, we want to try to jump in and figure out what that is. So, I know Emmanuel had put that forward. Is there any I see Emmanuel jumping on you can go ahead and have the floor.

MR. GUILLORY: Thank you. So, I would like to officially nominate Sue Menditto for an additional adviser role. Obviously, this role is not a voting role, so she won't be a part of the voting

committee, but she will be able to advise us. I think it will be very important and she will be a great resource for us when it comes to financial responsibility. That issue can be very weedy and so if we have certain questions that may be difficult for even the Department, maybe to answer, I think Sue from her experience would be able to just be a valuable resource for us. I know that the first time the Department did advisors was the most recent negotiated rulemaking session. And so, I think that this is still new and having this additional advisory role will only help us and not harm us. So, if you have not gotten a chance to read the bio that I put in the chat, I just want to quickly go through who Sue is. So, Sue Menditto she works for the National Association of College and University Business Officers, which is also known as NACUBO, and she's the expert on accounting standards, financial accounting and reporting, managerial analysis and financial viability. She has been with NACUBO for 19 years and is charged with fulfilling higher education advocacy needs with the Governmental Accounting Standards Board, which is GASB, the Financial Accounting Standards Board, known as FASB, and the Association of International Certified Public Accountant AICPA in the Department of Education, actually. As such, she is considered one of the foremost

experts on the federal financial responsibility standards, and her presence on this negotiating committee is essential to positive outcomes for this topic area. She has represented higher education on the Governmental Accounting Standards Advisory Council from 2006 to 2012 AICPAs Revenue Recognition Task Force from 2016 to 2017 and Department of Education's Financial Responsibility Subcommittee in 2017 2018, where she de facto became a leader of that particular subcommittee in helping them formulate what the language was that we saw in the 2019 Borrower Defense regulations. So, with that, I'm happy to take any questions or we could just move forward to the consensus vote. But I think she'll be a great addition to help us.

MR. WAGNER: Jessica.

MS. RANUCCI: Yeah, just a quick question, are you proposing that she's an adviser just on a financial responsibility piece or on the whole neg reg? I don't even know if that's an option. I just thought you mentioned specifically financial responsibility.

MR. GUILLORY: Yes, I'm proposing just specifically financial responsibility.

MR. WAGNER: Brad, you're up.

MR. ADAMS: Yeah, so, you know, I'm

just curious, I don't know Sue, but I know we do have Dave McClintock on as an accounting advisor for this committee, so I'm just not sure how her background, I'll be it, she is in a public accounting background, how it's different than Dave McClintock's and what additional value she may add?

MR. GUILLORY: So, I would say the additional value that she brings is from her experience of being a negotiator before from her 19 years of working with institutions of higher education, specifically and knowing directly what their needs are and a more grassroots level. And being able to bring all of that experience with her in her knowledge of financial responsibility solely beyond just the composite score calculations and figuring out what those aspects are. But I think having that additional voice and knowledge will only be a benefit to us because when we get to that topic, it is indeed very weedy. And I know the Department has indicated they don't want to really discuss the calculation of the composite score at this moment, but that will that conversation will come up with, you know, at some point in time. And I just think it will be helpful for us to be able to reference her if we need to.

MR. WAGNER: And I agree that

discussion around composite score is going to be important. Still, not 100 percent sure the value in addition to Dave McClintock, but always open to additional resources from accountants.

MS. PERRY: Brad, if I could just interject there. With him representing from the from an auditing and accounting perspective, Sue really brings knowledge of financial responsibility, specifically with all the negotiations that we did in 2019 or 2018 I think it was. So, she has more I think she has more experience there in this specific conversation that we will be having as opposed to auditing from a general perspective.

MR. ADAMS: Thank you, Kelli, that's helpful.

MR. WAGNER: One point of order real quick, is that when people raise their hands, they'll be called on it in the order that they're putting their hands up. So, I just want to let everyone know that Jamie had her hand up. Just going forward and I appreciate the comment, but we want to try to keep things orderly. So, Jamie, you're up next and then Barmak. You're on mute, Jamie.

MS. STUDLEY: I'm just wondering if the if Cindy or the Department can explain how we use

advisers? Because there are lots of complicated topics where we go back to others who know issues, I'm not taking a position yes or no on this one. This might just be a good moment to explain. Do we call on advisers? Does the Department or the facilitator call on advisers? Do they say, I have something I want to offer, even if we didn't think of calling on them. I'm just trying to think how that will affect the process, and it is a complicated topic. There are many like that where we're expected to sift or bring the thoughts. So, in order to make a smart decision about this, I could use some background.

MS. JEFFRIES: Greg, do you want me to field that?

MR. MARTIN: Yes, please go ahead.

MS. JEFFRIES: Okay. Alright, so the role of the advisers is to assist the committee. Right. They are there for you to ask for information, data, analysis, whatever it is you need and those give your request would be sent to me. I will send them to the advisers. You're free to ask questions and have dialog with the advisers during session. Most generally, they will need time to compile any information you ask for. So we ask that you would either put that in the chat and or send it to me so that I can send it on to them. When

they have that, they'll come, they'll have the ability to speak and present whatever information they're able to obtain for you. Feel free to engage them, that's what they're there for. They're there for you to be able to get the information and that you need to have this. And I know the Department, as with the last neg reg and this one put a lot of thought into how best broadly to assist you with a full, you know, people who have a full range. And so, as I understand Emmanuel, he's suggesting an additional financial adviser be invited or added to the committee. Financial advisers or any committee when they're added committee members added both in the beginning or at this point are expected to participate fully in the negotiated rulemaking and be available to get you the information that you need. Okay? They're your resource. You are free to talk with them, you are free to meet with them, you are free to send them written requests, verbal requests during session, however you need to get the information. Does that help Jamie? And the committee? Alright.

MR. WAGNER: Greg, go ahead.

MR. MARTIN: Sorry, I didn't hear the last comment.

MR. WAGNER: I just you had your hand up or were you.

MR. MARTIN: Oh, thank you. Yes, I have a hand. Indeed, I did. I didn't. I just want to say, you know, from the Department's perspective, we certainly do not, we do not oppose the addition. But I want to make it clear with respect to financial responsibility that the Department will not entertain adding composite scores to our discussions on this table. Is not to suggest that we don't think the topic is important. We certainly do. We understand that the current composite scores go back a number of years, and we are looking at the we are looking at them and looking at the possibility of adding that to a future to a future table. But we just don't have the wherewithal to do it now. And those of you who were around at the time know that in advance of the of those rules of the rules where we put composite scores into place that we had a fairly substantial analysis done by a large accounting firm. And you know, there was a lot of preparation for that that has not been done in advance of this of this table. So, this is not to say that I don't believe that this individual could add expertise in a lot of different areas. I just wanted to make it clear that the Department is not considering putting deposit scores on this table. Thank you.

MR. WAGNER: Thank you. Barmak, before

we get to you real quick, I do see Johnson with his hand up, I just wanted to let everyone know that he is switching out for Jessica Ranucci for the legal aid. Okay? So Barmak, take it away, you have the floor.

MR. NASSIRIAN: Yeah, I don't quite know how I feel about this, primarily because an, you know, an essential qualification of an adviser beyond technical expertise, which Ms. Menditto certainly has is independence. And I kind of worry about. And in fact, you know, the fact that she was herself a negotiator sort of speaks to the fact that she represented a sector. She represented a stakeholder in previous conversations. The thought sort of went through my head when Brad brought up the availability of Mr. McClintock to address financial responsibility, I have the same concern. A perfectly needy of expertise. But I worry about expertise sort of bleeding into normative recommendations that are not necessarily objective, that are simply that represent a very sophisticated technical presentation of a point of view rather than of basic facts. So, this is a little vexing, quite honestly.

MR. WAGNER: Anne?

DR. KRESS: I would underscore Barmak's comments. I also want to go back to, I thought, where Jamie was going, which is that there are lots of

complicated issues that we're going to face and as our discussions just over a day and a half have already shown. So, I do think, you know, we've got advisers, we also are all here. We've been selected as negotiators from specific constituencies. We can draw upon those constituencies for information as well. I'm just hesitant about going down a road where we begin to add adviser after adviser on specialized topics. I don't, that just strikes me as not the spirit of what we're trying to do.

MR. WAGNER: I was just want to I see Johnson in the queue, and then once Johnson has given his comment, we're going to go ahead and take a consensus on adding Ms. Menditto. Okay? So Johnson, welcome and you have the floor.

MR. TYLER: Hi, thank you. You know, I often hear from my clients that, you know, the process is opaque, they don't understand it. And they have a point of view, and I feel like getting experts into the this sort of issue of, oh well, the institution has to do this and this and this and that. I kind of am worried that it's going to become a discussion about why an institution cannot do something. They have representatives here at the table on that issue. I'm not, I'm sure this person is very qualified and knows a

lot of stuff. But I at this late, I wouldn't say late stage, but I just don't understand her role completely here other than as Barmak said, to be an advocate of a position. And I think there are plenty of advocates at the table here to represent that position. Thank you.

MR. WAGNER: Thank you, Johnson. So, we're going to, Greg do you think it's a good idea to take the consensus check now?

MR. MARTIN: Yes, I do.

MR. WAGNER: Okay, so if everyone could vote with their thumbs as we've done before and hold them high on adding Ms. Menditto as an advisor for specifically the financial responsibility, that'd be great so we can see them all. Okay, we have several thumbs down, so Ms. Menditto will not be added as an adviser. Thank you. Thanks for going through that discussion. So, I'll turn it back to you, Greg. Where would you like to go next? I know we just finished M.

MR. MARTIN: Right. Thank you. I almost lost track of myself during the whole discussion there. But yeah, so we're going to look at that paragraph T. We're talking about was former paragraph P developing and following adequate procedures to evaluate the validity of a high school complete of a student's high school completion if the institution or the

Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. I want to point out that what we're doing here is proposing clarifications to existing regulations that are related to the validity of a student's high school diploma to address some gaps we've seen with the actions of unscrupulous institutions. Specifically, we are aware of institutions that intentionally look the other way or arrange for diplomas with what might be referred to as diploma mills that are definitely not valid. These proposed rules would clarify how institutions must evaluate those diplomas, including obtaining documentation from the school, such as transcripts, written descriptions, of course requirements or written statements from the school. The proposed rules also specify when a high school diploma will be considered invalid. Specifically, we propose to clarify that a diploma is not valid if it does not meet the state's requirements or is not recognized by the state. If the Department of State or Court has determined the credential invalid and or diploma was obtained from an entity that requires little or no education or coursework to obtain the diploma, including through a test that does not meet Department requirements for a

GED or equivalent of a high school diploma. So that's a little background for it. Let's walk through the change itself. You can see here that we mean we've retained the most of the language from the existing regulation existing paragraph P we have added develops and follows adequate procedures, and we are now defining what those adequate procedures must be. So adequate procedures to evaluate the validity of a student's high school diploma high school completion must include obtaining documentation from the high school that confirms the validity of the high school diploma, including at least the following, and remember that all of this what precedes all of this is that these are procedures to evaluate the high school diploma. If the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. This is not a requirement to for schools to collect high school diplomas in every instance. So given then that what that language is in T let's look at what the adequate procedures are. The obtaining documentation from a high school that confirms the validity of a high school diploma would include one of the following other transcripts written descriptions, of course requirements, or written and signed statements by

principals or executive officers at the high school attesting to the rigor and quality of the coursework at the high school. And if the high school is regulated or overseen by a state agency confirming with or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency. And lastly, a high school diploma is not valid if it is not recognized or does not meet the requirements established by the appropriate state agency in which the high school is located has been determined to be invalid by the Department, the appropriate state agency in which the school was located or through a court proceeding, or was obtained from an entity that requires little or no coursework to obtain a high school diploma, including through a test that does not meet the requirements for the recognized equivalent of a high school diploma found in 34 CFR 600.2. So that's the those are the proposed rules. I'll open the floor for comments questions.

MR. WAGNER: Okay, I see Amanda, you are on the clock. Go ahead.

MS. AMANDA MARTINEZ: I just have a procedural question before, but I do have questions on this part. But just another procedural question, if we do have questions on sections of this issue paper that

we've already passed on. When is the appropriate time to bring maybe that discussion up or that question up? Would it be now before we get into another issue? And is there allowable time? So that's my first question. My second question on this issue in particular, is, this is a just a clarifying question, these procedures are mostly are can you confirm with me if they're mostly done the burden is on the institution. I'm wondering what that if the education department understands how institutions receive this information like, is it mostly on their burden to communicate with high schools and work with work with high schools to receive this these processes? Or is it really the institution working with the student and kind of pushing these regulations onto them to then conduct most of the work, to then go and work with their high schools and conduct all of this basic, you know, basically, the student is really doing all the work to ensure these federal regulations and I'm wondering whether there's understanding or experience of who's the burden facing this. I know that the institution has to provide the information, but really, what's happening on the ground of who's the burden of ensuring this information is being provided to the education department?

MR. MARTIN: To your first question,

as far as if there's something we've discussed previously, I don't I don't want to preclude discussion of something we've done over previously. But as you are aware, we have a pretty full agenda and I'd like to get through and try to get through our agenda. If you have specific questions, you can feel free to or comments on something we've previously discussed. You can feel free to submit those to the facilitator, and we certainly will make every effort to answer them or to or if there's something you want us to include on table two. I'm sorry this is table two. Session two of table two. But I at this point, I don't think we have the time or resources to go back and revisit areas we've already touched. But I don't, certainly, if you have a question about something, feel free to feel free to submit it. If there is time at the end of this week and we do have time to go back, I have I have no objection to that. Regarding your question about the high school diploma and whose responsibility it is. So, and this hasn't changed, you know, and if a student indicates on the FAFSA if he or she has a high school diploma, that's essentially a self-certified question, there's no database against which that is checked. We don't we don't require institutions to collect high school diplomas for every student. Some schools do, obviously

schools and schools that depends on how schools admit. Many institutions are going to get the transcripts and final transcripts for every student that goes to the institution. So, they will have that as a matter, of course. What we're talking about here is, again, those instances where there's reason to where the school has reason to doubt the validity of the high school diploma. So, the school and the school would have to validate that by obtaining documentation from the high school now as far as the burden the who burden falls on, there's no I mean, so the rule would be that we're so in an instance where an institution has reason to question a student's high school diploma or whether that student has a high school has completed high school. They would obviously approach the student about that. There would be no requirement here, a school could certainly assist a student in trying to obtain that documentation, but there's nothing in these regulations that would require the school to do this. The school would be required to obtain that documentation through some means, whether it's the students applying it or if they want to go get it themselves. But the burden of to the institution falls on them to say this is this is not valid for these reasons, or we can't or we don't know, we have reason to question the validity and if they need these things that

are written here, transcripts, written descriptions. Of course, the school could always go out and request that. But I think in most of these cases, there probably would be student involvement in trying to obtain and trying to obtain this. And that's because the student was unable to present something that indicated that what he or she had was a valid high school diploma. And I get I totally get that that could be that could be difficult, especially for students who spent a lot of time since they've been in high school. Maybe they've moved around a lot and don't really even remember where that was, but where what we do feel that there's a compelling need where this is in doubt to obtain this information.

MR. WAGNER: Before I get to you, Barmak, I'm going to ask Cindy Jeffries from FMCS. She has something she'd like to add.

MS. JEFFRIES: Yeah, I just want to add to what Greg said about going back and addressing things that we've moved on from. I want to remind the negotiators that this is week session one. The goal here is to get through all of the issue papers to try to have some meaningful dialog session two that is going to continue. So, all of these issues do get circled back to provided that we can get through them initially. And then week three generally is where most of the consensus

takes place. If not, I mean, it could take place a little before. If you have some that you think, clearly you're ready to move on. And so there will be more times to address these and have conversation about them, especially as we progress with updated reg text that comes from the Department. Based on things that you submit to them. So, if you do have questions that you want us to forward to the Department, please feel free to send them to me as well as we encourage you to put your proposals in in text, and the Department prefers that you utilize word to do that. And forward those to me and we'll get them to the Department so that they have ample time to look at that and see whether or not they can incorporate things into their next round of reg text that they'll be presenting. So, I hope that additional information is helpful.

MR. WAGNER: Thank you very much, Cindy, appreciate it. Barmak, you have the floor.

MR. NASSIRIAN: So, in a previous life when I used to do admissions policy, we dealt with the problem from hell that is high school diploma mills. So, what I can tell you is that romanette one under (t)(1) is utterly meaningless. Because a diploma mill will provide you spectacular transcripts. They very typically have very extensive course listings and course

bulletins, and they will sign anything you ask them to sign so that all of that is just word salad that doesn't really substantively add anything by way of actual protection. Romanette two is helpful when you go to subsection two. Certainly, romanette one is meaningful. Romanette two is meaningful. Romanette three is problematic because, of course, there is no consensus on what the definition of an education is. Folks in education often refer to the Holy Trinity of education being curriculum, instruction and assessment, and really the meat of that is instruction. So, I would really strongly urge you to replace the word education with instruction in in that subsection. And then I would also add a romanette four to that section, where the Secretary would view any high school diploma, any diplomas from an unaccredited high school that has a business relationship with the postsecondary institution that is admitting the student. That was one of the biggest loopholes that we used to see 10 15 years ago was that they would set up fake high schools that charge nothing, mostly because the college was basically paying the school to rubber stamp diplomas. So, I would add a romanette four there.

MR. MARTIN: Thanks, Barmak. Could you please submit that and we'll definitely consider that.

MR. NASSIRIAN: You're killing me.

MR. MARTIN: Well, you know, it's the burden has to be placed on someone Barmak and so I'm going to place it squarely on you since you made the suggestion. I won't, well, I will probably remember that, but it does help if we get the if we get the language. So, you wanted to change education to instruction in romanette three, right? And you wanted to add a romanette four that addresses if the if the high school was unaccredited and has some type of a business relationship with the with the institution, correct?

MR. NASSIRIAN: Yes. But also in the language.

MR. MARTIN: Right, I notated and captured that but please do submit.

MR. WAGNER: And just for everybody to know that Jessica is on deck next. Go ahead, Jessica.

MS. RANUCCI: Thanks. I just want to reiterate, I think, you know, the diploma mill problem is a real one, and I appreciate the Department taking a step to do that. You know, as a legal aid practitioner, we see literally thousands of Ability to Benefit discharges at my organization. I guess I was just wondering at the Department because speak a little bit more to why this and why here? Like, why do it's sort of

the question that I think Kelli asked last time, like why do you think administrative capability is the right place to do this? And how do you think it's going to make a difference here?

MR. MARTIN: Well. We still have the definitions of a recognizable equivalent of a high school diploma in other sections of the regulation and also under student eligibility requirements to obtain a high school diploma. Why is it here? Well, because again, this is a this this is a tool. Administrative capability generally is a tool that we use going back to the way Steve described it when we've made other findings at an institution that are generally serious. Then it keys to this to this overall finding of administrative capability, and it actually puts into this codifies in regulation for the first time, really these steps that we now have to determine if the high school, if the high school diploma is not valid. And even if, you know, we felt they made the most sense to do it here in this discussion of administrative capability since especially since this was the part of the regulation we were opening up in this on this table. It does get it into regulation that this that this that a high school diploma is not valid if it doesn't meet these, these currently these three criteria. So even

though we address this in other areas of the regs of the regs, it is here in codifies here so we can hold an institution to that where the institution had cause to believe of the Department has cause to believe that it's not valid. So, I hope that answers your question.

MR. WAGNER: Steve?

MR. FINLEY: I'm just going to add to what Greg said. Making sure that I'm not muted. So, if you look at the standard of conduct in the Department of regulations, the institution is held to the standard of being a fiduciary. The federal Student Aid funds it administers, it does so on behalf of its students. Those are not the institutions funds. When it draws them down, they are students funds. And then the institution applies those funds to the accounts at the institution and is responsible for disbursing the additional funds to the student for living expenses that were calculated under the regulations. But the baseline for all of that is the institution's determination that the student is eligible. And one of the fundamental requirements of student eligibility, as Greg mentioned, is that the student has a high school diploma or some equivalency that satisfies the requirements under the Title IV of the HEA. And if this is not a baseline finding for holding an institution, a determination the institution

is not administratively capable. I don't know what is right, and this is actually putting it in the right place to make this connection to the to the primary responsibility in the institution to make sure the students are eligible.

MR. WAGNER: Thanks Steve, appreciate it. Brad, I see your hand up.

MR. ADAMS: Thank you, Kevin. I just had a few clarifying questions for either you or Greg. Obviously, no one wants to allow diploma mills, but I think some of these details here could be challenging for institutions. The Department is requiring the institution to reach out to the high school, what if the high school won't cooperate, or what if the high school is closed in those instances that the institution force was forced to deny admission to the student. I could see this being particularly challenging for nontraditional students that went to high school a while ago, who lives in an area that has had high schools closed. So, if you help me on that first piece and I've got follow up.

MR. MARTIN: Well, I you know, we can I can see that it could be that it might be difficult to obtain the documentation necessary. I don't want to belittle that. But remember that what precedes all of what's in one and two is that we start with this what's

in T and you need to we need to always review that, that this is an instance where the institution or the Secretary has reason to believe a high school diploma is not valid. So, with this the first step, there would be the institution this is this is in an instance where you already have cause to believe this is not a valid high school diploma. Again, I don't think that and what the regulations said was that Steve said, you you're this keys back to student eligibility, rather. The student is not eligible if a student doesn't if you have reason to believe that this that this credential might be invalid at that point, that is not an eligible student until it's determined that the reasonably determined that it is indeed valid. So, the steps in acquiring the documentation, the school would have to get it to obtain the documentation. Again, how the school does that is not does it do it through the student does it assist the student? We don't, we're not really regulating that here. We're saying that the school has to obtain that documentation. I don't know what we can do in instances where the student is unable to obtain that. If the student is unable to obtain it, then it might be that the situation is the situation could be such that it is indeed invalid. And in that case, the student is not an eligible student. So, I don't know that we can entirely

address that.

MR. ADAMS: I guess to follow up on that and thank you for your comments. You know, if the assumption is the registrar has the bandwidth or ability to know the names of each high school, consider an issue, I'm not sure they would have that bandwidth or expectation. But if we were unable to get an answer, are we assuming we should deny admission and all instances if they won't respond?

MR. MARTIN: Well, again, this is a situation where you already have cause to believe that what the student we're not requiring that you look that you obtain a high school diploma for every student, right? So, we're looking at instances where you believe there to be a problem or a belief that it is not valid. So, at that point, yes, the student is not valid until you have cause to believe it's invalid. That has to be that needs to be resolved. So, if for whatever reason, if it couldn't be resolved in such a way that you obtain the documentation necessary to confirm the validity of it, then yes, that would not be that students would just not be eligible.

MR. ADAMS: And then one final question here, it says in here that we should expect that high school principals and executive officers write

letters to colleges and universities attesting to the rigor of their coursework. It seems like an atypical request to high schools being hesitant about providing that kind of information. Why would the Department want the letter to be from a principal executive officer?

MR. MARTIN: Well, what we're doing here is, I mean, consider that with so it's obtaining documentation from a high school that includes at least one of the following. And what we were trying to do here is provide provide options. So, we're not saying necessarily it has to be that that that is a that is an option to give schools some flexibility in what types of documentation it obtains in instances where it feels that the or it has cause to believe, rather that the high school diploma is not valid.

MR. ADAMS: Just not sure we were going to get a lot of response at that level, but I'll defer questions at this time.

MR. MARTIN: No point taken. I think in some cases it might be difficult to obtain those statements. But we do have other we do have other options there. For instance, you know, transcripts. I think in most cases, somebody would have a transcript of their time in high school.

MR. WAGNER: Sorry about that, I had

to get myself off mute. We have two more people in the queue and then I'm going to go ahead and call on them, and then I would go ahead and ask to move for a temperature check on T. So, the two people in the queue. First up, we have Debbie.

MS. COCHRANE: Thank you. You know, I do appreciate the goal here and just had a couple of questions about how this works currently from the Secretary's perspective. In terms of, you know, how frequently does the Secretary have cause to believe that a transcript or a high school diploma might be invalid? What contributes to those beliefs and how are institutions notified? Or is there like a process like verification flags and the FAFSA where schools get kind of pushed some information?

MR. MARTIN: So, what is what you're asking here, how would schools be made aware of the Department's belief that a high school diploma is not valid?

MS. COCHRANE: And also, how kind of how common it is I'm still trying to get a sense of like how we can think of some instances where this might be really challenging I'm trying to understand how frequently they would arise.

MR. MARTIN: Well, you know, our

overall, it's not our only concern, but I think one of our one of our chief concerns here is our instances where this has happened, we do have instances of this where an institution, an unscrupulous institution has entered into arrangements, I think Barmak brought that up, that that was particularly problematic. He had seen that and he's absolutely right that it does occur that some institutions will enter into arrangements with an entity they clearly know is not a legitimate provider of high school or a high school education and funnel the students from that entity into the school. This would allow us to give us considerably more teeth to go after that that that practice which is just inexcusable on any account. It's clearly just a circumvention of what's required by law and what's in regulation. So, we do get the we do get to we do we would pick that up here. As far as, I mean, probably where schools would be made aware from the Department. You'll recall that in 2010, when we did when we were doing program integrity regulations, the Department had indicated its interest in in and providing lists of diploma mills and we are interested in pursuing I know we it's been pointed out to us that we never did it. It's not an easy thing to do, but we are thinking about going back and trying to provide that, it wouldn't be an exhaustive list, of

course, it wouldn't mean that any entity not on that list is automatically valid, but that that would assist schools and be a way of us informing institutions that, like a specific entity or entities, is not providing high school diplomas valid high school diplomas.

MR. WAGNER: Marvin, you have the floor.

MR. SMITH: Yes, I just want to clarify that I do not believe a lot of big public institutions collect the high school transcript and just recognize that that would be a burden, administrative burden, regulatory burden on schools. So, I just want to be clear on what the expectations is as this is written. Are you saying that all schools will now have to start collecting the final high school transcript? And will that be subject to some type of audit? Or, you know, to me, it's another verification burden that we're putting on schools. And I certainly understand the concerns about, you know, false transcripts, but I'm just recognizing it's an administrative burden on schools to start digging in on some of this.

MR. MARTIN: So, to answer your question, is the Department through these regulations requiring schools to collect high school diplomas and transcripts, the unequivocal answer to that is no, we

are not. That we still key to what's in in T where evaluate the validity of the of the student's high school completion. If the institution or the Secretary has reason to believe high school diploma is not valid or was obtained from an entity that provides or was not obtained from an entity that provides secondary school education. So, this is not a requirement across the board to collect transcripts or to collect high school diplomas. We are aware that there are many institutions that do not do that, that they rely upon these students' assertion on the FAFSA that he or she has a high school diploma as long as there is nothing to contradict that. But we're talking about here are instances where you have reason to believe that, you know, that that that there is a problem, and I've seen schools, I've actually talked to schools where they become worried about a particular high school or could be a, you know, a provider of high school of high school diplomas that they see a lot of their students coming from. You know, they began to doubt the validity of this entity. So, at that point, then this was certainly kick in, but it is not a requirement to, in every instance, evaluate the transcripts of a student or to or to obtain written statements or anything that's in anything that's in paragraph one, subparagraph one, sorry.

MR. WAGNER: Okay. I just mentioned, you know, a little while ago that we were going to take two more comments, I've seen a few hands shoot up. Just wanted to make sure that whoever has their hand up, that they have something new to add. And if so, do they please keep their comments brief as possible as we do want to move things along. So that being, said, Beverly, you have your hand up.

MS. HOGAN: Excuse me, I don't really have anything else to add. But let me just say that as a former president, we did have interim processes to determine if a high school diploma looked invalid and that's the texture and you contact the institution, certainly their questions ask the students, but it's a shared kind of responsibility and I don't have any unrest, would any of the others. But there is a process, and it matters.

MR. MARTIN: Thank you Beverly, I really appreciate your pointing out the shared the shared responsibility aspect of it because I think that's where I was trying to go and you said that very well.

MR. WAGNER: Thanks, Beverly. Kelli and then Debbie.

MS. PERRY: First, I want to stress

that I agree with the importance of the validity of high school diplomas in this. I have a couple of recommendations based on the fact that I think what I've heard Greg say is that the validity of or the responsibility for the validity of this is with the institution, and this only occurs when there's some question as to whether or not the diploma is not valid. So, my first recommendation would be a number one that you change the word must to shall or remove it because by saying must, you're basically saying that the institution must do these things, which you said that the institution is not required to collect transcripts. I think that that word needs to come out. And the second recommendation would be to strike number two altogether, because you're saying that the high school diploma is not valid if, but the responsibility of determining whether or not it's valid or not is on the institution. So, I think removing that might help.

MR. MARTIN: You would, I'm just trying to clarify. And I want to be sure that I say. First of all, we don't want to use the word shall anymore, because if it's a requirement of the school to do it, then we feel it's incumbent on us to make that clear that it's a that it's a that it's a must. And remember, we're saying the school must evaluate this and

that the evaluation must include, so what I say must include, yes, the burden falls on the institution to do this. I'll take it in an absurd example I'm a student and the institution questions the validity of my high school diploma. We're not saying here that the student can sit back and say, you know what, yeah, you requested it so it's up to you to get the it's up to the you school to document that I'm that I'm that I'm eligible. No, the documentation has to be received by the school, but it may be that the student has to participate in that process of getting it. I mean, ultimately, it is the school's responsibility to have it in order to validate the or to validate the diploma. But quite frankly, if a school questioned it and the student said, you know, I'm not going to do anything, it's up to you to try to contact my school and do all that I don't think something incumbent upon the school to do that. That situation would be the student is not eligible at that point until this is obtained.

MS. PERRY: But I think what Marvin said earlier was that the bigger public schools are relying on the certification of the student not so much in the fact that the school is validating the validity of at least one of the following, which would include transcripts and et cetera. Right? So, we're not you're

not saying that that the institution must do these things. You're giving examples of things that they can do in order to ascertain the validity of something. And you know, the biggest one that he mentioned is not listed here.

MR. MARTIN: I'm sorry, which was what?

MS. PERRY: I think what he said was that the students are, well, can I defer to him to answer that question?

MR. SMITH: No certification on the FAFSA is what schools are relying on.

MR. MARTIN: Correct. And as I pointed out earlier, these rules, these rules proposed rules do not preclude that they did not preclude relying upon the FAFSA. They do not require that you collect transcripts for everybody. Remember, it goes back to where it's only where you have reason to believe the high school diploma was not valid. And in most cases where you're relying upon the FAFSA or even where you're receiving transcripts, you probably don't have cause to believe that it's not valid. So, where that doesn't, where that is not where that does not exist, that that that's reason to believe it's not valid, then none of this kicks in. So, this only comes after there is so we're

not talking about a routine requirement to collect transcripts or written descriptions. This is only where you have reason to believe the high school diploma is not valid or you've been informed by the Department that a particular in the in the instance of a mill or something where we may inform you that those diplomas are not valid. Does that make sense, I hope I've explained that properly.

MR. WAGNER: Barmak. Is this something new, and if so, could it be quick?

MR. NASSIRIAN: Very quick.

MR. WAGNER: Thank you.

MR. NASSIRIAN: The issue is not we're conflating two distinct questions here. The FAFSA certification and the and the kind of routine practice which had the vast majority of institutions does not include the collection of final transcripts has to do with whether the student graduated. And yes, there are some students who may not have actually graduated, who may slip through them, but that's a different problem than the school, the entire high school being fake. And that's the reason why number two is really necessary there. This is not a mandate on ensuring that every student that you may admit or enroll actually graduated from a legitimate school. That's the norm, and that

whatever practices institutions engage in today would be adequate. It's in those hopefully exceptional cases where the entire high school is a fake construct that this provision kicks in and a burden then is added to the institution, at least along these lines, to establish the legitimacy not of whether the actual graduation occurred. Graduation did occur. The issue is, is the school real? So, I think those are two distinct issues that are being addressed quite adequately here under two.

MR. MARTIN: Thank you, Barmak. That was very well said, I like the way you said that. That's exactly what we're doing.

MR. WAGNER: Greg, would you like to proceed for a temperature check on T at this point?

MR. MARTIN: I think yes.

MR. WAGNER: Okay, everyone, you know what to do. Go ahead with the temperature check with your thumbs and raise them high so we all can see them. Okay. It seems that everyone is in agreement on T for a temperature check. Thank you for that. Greg, how would you like to proceed?

MR. MARTIN: Okay. I believe our schedule calls for us to move on to a discussion of gainful employment. So that's what we'll take up next,

so give everybody enough to get that paper in front of them. And I want to say at the outset before we get into the discussion of gainful employment here that unlike with the other issue papers we've given you thus far, I will give you before the end of this week, we don't have any proposed amendatory text or red line in here for you. We are proposing to bring back subpart Q, which, as you're aware, was taken down. And what we're hoping to do in this with respect to gainful employment at this session is to get some feedback from you. Sort of, for those of you who participated in neg regs in the past you there we have in the past used the first week as obviously a listening session. We departed from that somewhat and tried to provide amendatory text where we can. We don't have that yet here for you. So, this is you'll notice that we have a number, a number of discussion questions. We would like to receive your feedback on that. So, I'll introduce the topic. After I do so, I'm going to step back and let the facilitators present these questions. And then we really like to get some feedback from you and I, and I want to try to get through all of them because they're all important for us to have to take a check of the negotiators here to see where they where they want to go as we formulate as we formulate the amendatory text going into the next table.

So just as a as a matter of introduction, we know.

MR. NASSIRIAN: I'm sorry, can I interrupt quickly because I hope we're not done with administrative capability. If you recall, at the beginning, I pointed out that I thought there were omissions that that we need to address. Could I very quickly just cite two of them and then be tasked with drafting language before we finish administrative capability?

MR. MARTIN: You can. Yeah Barmak, you can go ahead and tell us briefly what they are, but I would request that you put those you put those in writing to us and we'll bring them up to the next session. But go ahead.

MR. NASSIRIAN: Two issues that that are proving problematic time and again with regard to the participation of bad actors in Title IV. One of which has to do this sort of is a segue to financial responsibility, but I think it belongs here in administrative capability. The Department we've seen from past gigantic collapses of publicly traded institutions that whatever the substantive criteria the Department uses to establish compliance and financial responsibility, those seem to be annual events that there is no real time monitoring to ensure that that

institution that might have adequately satisfied the requirements at a given point in time continues to be compliant with the requirements. So, what I'd like to add is language to the administrative capability section that would require the institution and its and its executives people exercising substantial control to report any material adverse events to the Department within 30 days or something that that would prevent the kind of scenario where an institution may satisfy financial responsibility requirements and then be looted by insiders and leave the Department holding the bag. It tends to be pretty standard in commercial law, and it seems to me that it would that it would make a lot of sense to require that of institutions. The other trigger that I hope we can add, perhaps to the to the language in M, would be that that when institutions lose eligibility in other federal programs that have which loss has consequences for Title IV, it seems to me those need to be factored into financial into administrative capability as well. An institution that suddenly loses eligibility for this is what we are very familiar with. The institution that suddenly loses eligibility for GI Bill benefits because of findings of the SAA typically forces all of the students who relied on the GI Bill benefit when they enrolled to take out loans. That has

consequences for Title IV, and it seems to me that that loss of eligibility ought to be reported to and acted upon by the Department. I think we can add this to the misrepresentation section, but I just wanted to flag it.

MR. MARTIN: Thank you. Yep, please submit that we'll take a look at it, thanks.

MR. WAGNER: Just a few things before we get to the next topic. Just announced that let's see, Carney King is now in for Ernest Ezeugo representing student and borrowers. Johnson Tyler is back in for Jessica Ranucci. We have a Emmanuel Guillory in for Kelli Perry for the private nonprofits and Barmak will remain as a primary for this discussion.

MS. JEFFRIES: Just a point of clarification Kevin, Ernest Ezeugo is at the table. Carney was there for the end of that last conversation. So, Ernest is back.

MR. WAGNER: Got it. Thank you trying to keep track of that, thank you, Cindy.

MR. MARTIN: Okay. We have, I'm sorry, yeah, we have the summary of the issue in front of you. Just some highlights here that with what's in the statute, the Higher Education Act requires some programs and institutions that generally all proprietary

institutions and any non-degree programs that are at public or private institutions to prepare students for gainful employment in a recognized occupation in order to be eligible for Title IV aid. We talked about that for many years, the standards by which institutions can demonstrate compliance were undefined. We go back in 2011, the Department conducted rulemaking and issued a regulation establishing standards for gainful employment. It was based in part on the debt of graduates that was incurred for the program relative to the earnings that they received after completion. That regulation was reissued in 2014 following a court challenge and was based on similar debt to earnings structures. When the data were first released in 2017, over 800 programs collectively enrolling thousands of students did not pass the GE standards. In 2019, the Department rescinded the 2014 rule almost in its entirety. The Department, however, remains concerned about the prevalence of programs that fail to help students obtain sufficiently remunerative employment to justify the investment of their time and resources. So, we did discuss that a growing body of academic research that is identified persistent problems with the GE programs, including some very low or negative labor market returns for graduates. So, we do have concerns

about that. We point out that most recently available data that is published via the College Scorecard show that the median cumulative loan debt of students in many programs is quite high compared to the amounts of money that the students earn. And we say, for example, median cumulative borrowing levels exceed median annual earnings at about 12 percent of undergraduate programs. And we note here that or 9 percent of public and nonprofit proprietary institutions, however, the analogous figures are 28 percent for associate and 42 percent for bachelor's degrees. Multiple studies have found that accounting for differences in student characteristics borrower outcomes like repayment rates and the likelihood of default are worse in the proprietary sector. And finally, research indicates that federal accountability efforts can be effective in driving improved student outcomes, especially for students who tend for-profit colleges. So, we're seeking feedback on the overall state of GE here, including the greatest problems that students who enroll in GE and GE programs currently face. We're looking at what would be an appropriate framework for these GE standards, including metrics we could utilize, sanctions that might be applied where these standards are not met. And finally, we were going to request feedback on the need

for improved consumer information about the outcomes as well as GE programs failure to meet required standards. So we do have a number of questions here. We are interested in establishing criteria to determine how an applicable program can demonstrate its preparing students for gainful employment in a recognized occupation. And that is required by the statutes. The Department seeks to promulgate regulations promoting better labor market outcomes. Create value for students' investments in higher education protect students from acquiring debts they cannot afford to repay, and finally safeguard the interests of taxpayers. So just give the first question here for you to consider and then we'll open it up. So, the first question we have here is, oh, before I give these questions, I'm going to try I want to get through all of them. So, we I don't want to cut off debate on any of this, please. As our facilitators constantly remind us, if you have a, which is a good thing to make certain that if you have a comment that it is something new that has not already been brought up as we do want to get through these. So, the first one is what metric or metrics or thresholds pass fail cut off points in those metrics, best to distinguish between programs that prepare students for gainful employment versus those that do not, including different credential

at different credential levels. For instance, we seek feedback on the use of repayment rates, debt to earnings rates, earnings thresholds and other measures. And we ask should the Department include noncompleters in any of these metrics? How would the Department assign noncompleters to programs and what metrics would be most suitable? So, consider that I'll step back and we'll open the floor for comment on question number one.

MR. WAGNER: Thank you, Greg. Just to just reiterate, this is a, you know, it was a big conversation, there's a lot of questions if we can try to limit the discussion to the specific questions as we go through that be helpful. And as Greg mentioned, if there are specific comments or other things you'd like to put in writing, feel free to do so. You know, the Department is seeking, you know, your input and ideas. So, we'll go ahead and start it off. We have Barmak. You have your hand up. No, you don't have your hands up. Okay. Then we have Brad.

MR. NASSIRIAN: There are people ahead of me.

MR. ROBERTS: I see Yael is first on my screen, Kevin.

MR. WAGNER: Oh, okay, I'm sorry. You know, it's backwards for me. I apologize. Yael, you're

up, sorry about that.

MS. SHAVIT: No problem. You know, we, Adam and I submitted initial comments yesterday, so I won't rehash all of them. But it's certainly relevant to the first questions here about the metrics that should be employed. So, I do want to briefly reiterate our position that the 2014 gainful employment rule should be the Department's baseline for the regs that come out of this process. The 2014 rule was the product of multiple, thorough and, I would say, painstaking rule making processes. It established accountability metrics, the earnings metric in particular that provided critical protection to vulnerable students and I think notably withstood both judicial scrutiny and the test of implementation. The Department's rescission of the 2014 rule under the previous administration was unreasonable. The Department does not need to be bound by it, and I'd note I just think there's simply no reason to reinvent the wheel here. I think it may well be the case that in the intervening years, we've identified potential opportunities for additional protections and additional metrics, potentially earnings threshold. And these types of additions should be considered, but the modifications should be minimal to the 2014 baseline and additional metrics should be just at additions. I'd like to just

give our, I think, unique perspective, our view that the Department should be effectively reinstating the 2014 rule comes from years of experience by my office and Adam's office and AGs across the country. Addressing the fallout from the lack of safeguards and standards that predated the 2014 rule. We know that a large segment of for-profit institutions enrolled students in our states with false promises and basically left them buried in debt with no meaningful career prospects. I can say confidently from our experience with these investigations and enforcement actions that had the 2014 rule been in effect, it would have prevented a lot of schools from continuing to operate programs that harm borrowers. And my final point here is that I really think it's important to frame the discussion is just a reminder that an institution's access to Title IV funds is not an entitlement, it's a privilege. And it's the responsibility of the Department to ensure that only those schools that provide students with meaningful educations are allowed that privilege. So, we have the imperative here to make sure that we're not reinventing the wheel, that we're doing things that are far reaching and robust, and that students are no longer left holding the bag for institutional and regulatory failures. So, thank you for the opportunity.

MR. WAGNER: Thank you, Yael. Let's see, we have Johnson, you're up next.

MS. JEFFRIES: No, actually, Brad is next.

MR. WAGNER: I'm sorry, my screen is a little funky, so I apologize.

MS. JEFFRIES: I'll feed it to you.

MR. WAGNER: Alright thank you, I appreciate it.

MR. ADAMS: Good morning. On gainful employment, I have two main opening points relating to accountability and statutory authority that I would like to discuss before going into the specific gainful employment questions. First, the Department should develop an accountability system that protects all students by promoting good student outcomes across all programs and all of higher education. Any regulation that only applies to gainful employment programs only will fail to protect over 75 percent of the students in higher education because it will only cover students who attend proprietary schools or enroll in non-degree programs. Respectfully, it does not make sense to pour an enormous amount of effort and resources into an accountability framework that protects less than a quarter of its students. There is also no question that

that the students in all sectors would benefit from this protection. In every sector, there are programs that serve students well, and there are those that do not. It is also worth noting that the Department is on record supporting accountability measures that apply across sectors. Last June, Secretary Cardona confirmed his view to the House Education and Labor Committee that all postsecondary institutions, regardless of tax status, should be treated the same under the law. I'll drop that video into the chat so everyone can listen to it over lunch. Just a few months ago, at an FSA conference undersecretary Kvaal committed to addressing student debt issues and ensuring equity for all students. Lines between our sectors are also blurring. Recently, proprietary schools have converted to nonprofit institutions. Public schools have acquired or merged with former proprietary institutions, and many nonprofits and public schools are now partnering with private for-profit online program manager companies called OPMs. On January 14, Senator Warren sent a letter to a group of OPM companies seeking accountability for all students attending over 300 OPM partner programs offered at nonprofit and public institutions. These institutions have partnered with the for profit OPMs to allow them to manage their marketing, recruiting and

admissions processes in exchange for a significant portion of the nonprofit program's tuition. We wholeheartedly agree with Secretary Cardona that all students, regardless of sector or background or tax status, deserve equal protection. If we are serious about protecting students during this rulemaking, then we need to protect all students. I will get back in queue to make my second point regarding statutory authority next. Thank you.

MR. WAGNER: Thank you, Brad. Let's see if we got this right. Johnson, you're up.

MR. TYLER: Thanks. So, I agree with Yael's assessment that the 2014 provides a framework with a bunch of categories metrics that no one is a tripwire. You need to really fail in one or fail and a number of them, I think it's really useful. I would add to that the high school earnings as a metric, that's something that's easily understandable by lawmakers, legislators. You should be earning more than a high school diploma after you go to school, you know, making investment or going to college. I would like to just reframe this a little bit in that there is just a terrible amount of debt that's taken out by schools that don't provide quality and there does need to be a metric. I have file cabinets filled with clients whose

I've been telling your job is to manage your loan. You're never going to repay this because a place like the Art Institute has really swindled a number of my clients. Other schools as well. So, I think there has to be a metric and we have to go back to the statutory authority since at least 1978. Gainful employment has been in the statute and it's applied to proprietary schools and non-degree granting programs. Congress is well aware of that. It's capable of changing it if the if they started viewing the value of those institutions differently, they chosen not to. And gainful employment really needs to just address that issue. Thank you.

MR. WAGNER: Thank you, Johnson.

Barmak, you're up.

MR. NASSIRIAN: Yes, thank you. First of all, I was a negotiator for the 2014 gainful rule. I was not satisfied with it at the time, but I want to associate myself with the comments Yael made and Johnson made that what we have is likely to be far better than anything we can generate on an issue among so many others in this very truncated process that we are undertaking now. So, I agree that the 2014 rule ought to be the core of whatever this committee ends up producing. Now, having said that, I also remind folks that the statutory language for gainful employment

represents an eligibility criterion. The Department chose back in 2014 to essentially let institutions offer programs and then kick them out if they failed this criterion. I think we have an obligation for purpose of protecting both students and taxpayers to also add to the 2014 language some provisions on the front end to at least give us a reasonable assurance that the program does in fact prepare the students it intends to enroll for gainful employment in a recognized occupation. I think that ought to be separable from the conditions that are articulated in 2014 rule that are post facto. But there are some things we can do on the front end to prevent victimization and for people get plugged in to failing programs years later. It's just it's a very backward way of doing things. You know, Brad, I have enormous empathy for your perspective. I do agree that that that all programs ought to be held accountable, but I worry a little bit about making the perfect the enemy of the good. The idea that we should protect no one unless we protect everyone, you know, is just an impractical one. And frankly, that these programs are in fact where so many problems have concentrated. So, there is good empirical reason to start here. And furthermore, and I'm curious what your statutory interpretation is, the statute very clearly only gives the Secretary

authority to address the programs that the 2014 rule does address. We can go to Congress and ask to expand it, et cetera, et cetera. But at the moment, we have to operate within the confines of the statutory authority that the Secretary does have. Thank you.

MR. ADAMS: Thank you and Barmak, I appreciate I will address your comment when I'm back up to speak.

MR. WAGNER: Thank you. Thanks, Barmak. Let's see here, Ernest, you are next. You have the floor.

MR. EZEUGO: Thank you. First, just want to take a moment to agree with those comments, Johnson's comments, Barmak's comments related to the 2014 rule being the benchmark here. I'm sorry being the baseline benchmark. And as to the second part of this question, I hate to kind of comment on a question with a question, but I would like to get the context on why the Department wouldn't include not completers and any of the metrics. And Greg, if you wouldn't mind speaking to that, I'm just trying to get context, you know, why that's a question to begin with.

MR. MARTIN: Well, the Department we're seeking we're seeking comment on, should we complete, should we include noncompleters previously in

the last time we had the rule that the 2014 rule it only it only took into consideration those who had those who had completed the programs. And I think that there are, you know, admittedly, there are arguments on all sides of that. And one of the things you know, and if you look at the way the rule was, the rule was put into effect, you know, it does look at people who have completed a credential, and so there is when you look at only completers, it does give you this, your baseline is those who actually completed the program and would be expected to go out and earn an income related to that credential, which they have obtained. So, it's probably makes things more compact. It makes it easier for us to assign students to a program, certainly. And if we departed from that and when you went to include even those who were not completers. I'm not arguing one way or the other for it. I'm simply saying that there are some. There would be some challenges in doing that. And we're just asking we're asking here for feedback on whether we whether or not we should go in that direction. But I think the reasons why back in 14 we went with completers is that it is a if you're looking at tying the, if you're looking at tying earnings to somebody who's practicing the actual profession, then then then there is a more direct tie, I think, to

someone who's actually completed. Which is not to say that we should look at people who don't complete and say that that's that too could be that but that does not saying that that is not an indication of a problem to the program because there very well may be. So, we're just throwing it out there for comment. You know, to read, certainly anybody could go back and read the preamble to the final to both the NPRM and the and the final rule for the 14 regulations and get more of a handle for the for the discussion on that. I say Steve, Steve was there at the time, I asked Steve if he wants to add anything to that.

MR. WAGNER: Steve, you're up.

MR. FINLEY: Thanks. Just a couple of things. As Greg noted, I mean, there was some discussion about whether completers should be a part of the prior GE framework. And there I think there are persuasive arguments that if you're going to evaluate programs' ability to prepare students for gainful employment and recognized occupation, it makes sense to only look at the students that actually complete that program when you're doing that assessment. I will say there's another anomaly that kind of comes into play as well, which is if you've got a lot of students that drop out quickly in a program and their earnings are not dissimilar from the

program graduates, you're going to make a program look better because the students that drop out early are going to have substantially less debt that's going to be considered compared to those earnings. So, it's, there's a lot of pieces in the framework and that's why we're asking for comments this time as well.

MR. EZEUGO: I just wanted to respond by saying, thank you, I appreciate that context, and it promises a lot to think about. And kind of emphasize my point, Barmak made about thinking through ways that through this rule and otherwise we can think about how we are bolstering this rule and other regulations to consider protecting as many students as possible in respects to triggers for when GE and other programs take effect and essentially making sure that we're thinking through how we can limit as much damage to students as possible. And that's all I'll say for now.

MR. WAGNER: Thank you, Ernest. I do see adviser Adam Looney had his hand up, if that's okay if we'd go to him and then go right back into the queue. Does that make sense? Okay. Adam, and then we'll go back and queue and Debbie you'll up next.

MR. LOONEY: Okay, thanks. I just want to jump in on a couple of these topics because I had some background that I want to share. So, one issue on

the topic of completers and noncompleters, you know, I think back in 2014 and before that, part of the issue was how quickly the administrative capacity to assign somebody to a program quickly to understand if you're a freshman or a first-year student or something like that, how do we know when somebody is in a program? But on the other hand, so it seemed like there were some challenges, and as Steve said, like it was in some ways appropriate to assign somebody to a to a program only after they completed. On the other hand, an enormous number of students drop out of programs before they complete them. That is, in some ways, a negative outcome, and it impacts their subsequent earnings. Likewise, they accumulate less debt, which can bias the debt to earnings metric. So, there is a strong case for including noncompleters in these metrics because they affect the outcomes, and they reflect some elements of how the institution is serving the student. The other thing I wanted to say beyond just the completers versus noncompleters was the other element of the potential earnings metrics and accountability metric is the earnings premium or the earnings that the student earns after they leave school. So, the 2014 rule included that debt to earnings metric, which certainly, you know, is one potential pillar of an accountability system. But

there are also schools where students leave the program with a lot of debt but don't boost their earnings and so their programs that can fail students on a different dimension by not leaving them with an education that allows them to do better than, for example, a high school graduate does. And so, another potential metric can be used that is widely available, easily produced by the Department of Treasury are those earnings outcomes. Thank you.

MR. WAGNER: Thank you. And then back to the queue, let's see, Debbie, you're up.

MS. COCHRANE: Thank you. I, you know, I was going to make a broader point, which I'll say a minute, but just on the point of noncompleters in particular since we're since we're getting into that. It just it seems to me that the answer about noncompleters in particular depends entirely on the metric you're using and the logic that's undergirding the metrics. So, I have a like in the 2011 rule, you know, noncompleters were excluded from debt to earnings, including the repayment rates. So, some good logic to that. So, I just think it's hard to have that conversation on noncompleters when it's divorced from a particular metric. My overall comment was really about just echoing the calls to really think about the 2014 rule as the

baseline for these discussions and really and particularly because of how heavily pressure tested that rule was and the core provisions have survived significant scrutiny. I mean, I think there's room for discussing some of the details and some of the questions in here, but I don't want to lose sight of the harms that are created by the lack of stability in this regulatory area. And I think if the goal of this role is to set reasonable standards that we think institutions can and should comply with and that will leave students better off, we are just not doing anyone any harm any favors by moving the ball all the time and regulating, unregulating, reregulating. We just need to set a standard and we need to go forward. And that's what's best all-around and clearly not good for students clearly not good for institutions. And of course, it also creates substantial pressure on state agencies. State agencies are often the first line of defense when it comes to helping students through closures, program closures, school closures, helping students find new programs that they can transfer into and find financial relief when needed. So, in particularly related to gainful employment, there were a lot of states across the country, California being one of them that wanted to regulate their own state rule in light of the rescission

of the federal rule in recent years. And a lot of states, including California, need to start from scratch if they're going to do it. And states generally don't have the administrative data sets that the federal government does and that the federal rule really heavily relied on. So, I think while it's very commendable that states one step up in this way and I know they're all trying, it's just simply less efficient to do that at the state level. So that is that is why I really suggest starting with the 2014 rule kind of tried and true just to get back to a place where we can have some stability.

MR. WAGNER: Thank you, Debbie.

Amanda, you have the floor.

MS. AMANDA MARTINEZ: I just wanted to also echo and come out with the majority of the statements about the 2014 rule reinstating the framework there. Obviously, I think we can come together and hopefully we can come together to make improvements or adjustments and updates according to what we're seeing in the field and the outcomes students are making. And ultimately, I think it's you know why I think civil rights groups from our from our perspective, why we support the 2014 rule is for reasons that I won't be able to articulate in the limited time. But I think the first one is that when we think about the Higher

Education Act and its original promise, it was to ensure that all Americans would have access to a high quality education that then would, you know, that would hopefully once they reach that finish line and attain some those credits in that degree that that would, then they would be able to enter the workforce or the labor market with wages, you know, with accurate wages that would help them go through and achieve economic stability or move through into the middle class. You know, it was it was a tool used by Lyndon B. Johnson that would hopefully lessen inequality, income inequality, right? We were entering a stage of more industrialization. There was a need to fill the gap and to open access to educational opportunities, not just for some Americans, but for all Americans, especially those who were in the poverty line. And isn't it great we should be all excited to see that. That did happen, however, there's actors within this market that are disproportionately using that promise and that hope to some communities who were trying to obtain it and enroll and achieve that dream and kind of twisting it on its head. And I think that good racial policy that is equitable has to be targeted, has to go where the data is and the numbers are showing us where we need to go into help communities where otherwise have been

disenfranchised for more than three to four generations in this country. And the 2014 rule did that. It's shown proven mechanisms that it's helped those specific communities. It's helped women get well, it's helped black and Latino communities be given back that promise that they were they were stolen of. So, I think that's kind of where we're coming from, why the proven racial equity tool, this is the best tool we can have. Of course, it needs additional discussion and updates and improvements, but that's really where if this administration wants to do something for racial equity, this is where it needs, the floor needs to begin and it's clear and apparent the evidence is there. Those you know the, Brad, I have limited time when you know, it hurts me to hear 24 percent of the students, that's those are important. 24 percent of the students. Ok.

MR. WAGNER: Okay, thank you, Amanda. Brad, your next.

MR. ADAMS: Thank you. And as a reminder, my first point covered develop an accountability system that protects all students and all programs across all of our education. I want to thank Barmak and Amanda for agreeing that all students in all sectors need protection. We hope everyone agrees to this basic standard. We believe we have a solid way in the

statute to cover these comments. I want to emphasize that the Department absolutely has statutory authority to create a universal quality assurance system that could include components of the previous 2014 GE metrics as being referenced around this committee. In other words, there is no reason it has to attach his accountability system to the gainful employment language that severely limits its reach. It's true that as long as the Department decides to connect this accountability framework through gainful employment programs only, the accountability measures only apply to non-degree programs and those offered by proprietary institutions. That's because those are the only types of programs that are required to lead to gainful employment under the HEA. But there is a simple fix. Instead of attaching its accountability framework to the gainful employment concept, the Department could just build the framework under its Quality Assurance Authority. Student Defense actually published a report in 2020 that spelled out exactly how the Higher Education Act provides the Department the ability to protect all students across all institutions participating in the direct loan program at an institutional or programmatic level. And those institutions and programs are promoting strong outcomes, according to the report, Section 454 A of the

Higher Education Act delegates to the Secretary, the authority to implement a quality assurance system. Quality assurance system could include measures like repayment rates, debt to earning rates, earning thresholds, and those measures could apply to all institutions participating in the direct loan program to strengthen the higher education accountability. I'll drop the report in the chat for people to review during lunch. Meanwhile, there is no evidence that Congress ever intended for the Department to base an entire accountability system on the phrase gainful employment. The term has existed in the Higher Education Act since its inception in 1965, nearly 57 years. Not once in those 57 years, which includes eight full reauthorizations did Congress define or attribute this phrase as setting labor market threshold such as debt to earning measure. Subsequently, there is a good argument that trying to attach an accountability framework to the gainful employment language in the HEA exceeds the Department's authority. All this to say if we're serious about protecting students during this rulemaking that we need to protect all students, including the 75 percent of the students that are protected under the previous gainful employment rule, and we should do this under the authority clearly granted by Congress.

MR. WAGNER: Thank you, Brad. Next up, we have a Emmanuel.

MR. GUILLORY: Yes. I just wanted to quickly keep in mind that I hear that folks are proposing that we start with the 2014 rules as a base. And so, if we are to do something like that, then I just want to remind people that the Department did have some issues implementing the 2014 rule. And what I mean by that is it just took a little bit longer than what was expected for things to actually happen. So, for example, there was an original due date of when the completers list would come out and then the challenges to the completers list would come out and then the draft to earnings rates and the final [inaudible] earnings breaks. And, you know, because I think the Department undertook something that is still needed, maybe additional capacity or resources to implement timely. There was a delay in lag and when things actually took place versus when they initially thought they would take place. I'm not saying that's ultimately a bad thing per say. I'm just saying that with a 2014 rule it's quite complicated. And so, I just want to say, you know, remind folks of that if we were to go back to that rule. But also that particular rule obviously had a lot of comments as it relates to how do we hold these programs

accountable when it when you are looking at their annual percentages of 8 percent, if they the student, the student has a lower payment rate more than 8 percent of their annual income, then they potentially are not passing or if it's more than 20 percent of the discretionary income they were not passing versus 2010 rule it was 12 and it was 30. And obviously in the former GE 2014 rule, you did have your passing and your zone and you're failing. And of course, a new construct could have that same metric. But I wanted to also keep in mind that even though a student may go through a particular program, especially a student of color and who could take on more debt because of so many other reasons once they actually enter the labor market, they are at a disadvantage than their white peers as well. And so, the latest fourth quarter, 2021 average data for Bureau of Labor Statistics is telling us that if you're 16 years or older, your median weekly earnings for a man is \$1,103. Your median weekly earnings for a woman is \$930. And if we look at the numbers based on race, white, it's \$1,030, black is \$805, Asian is \$1,384, and Hispanic or Latino, it's \$799. So, if we're looking at the earnings to that is also a factor that's going to impact the programs and what would actually be fast passing or failing.

MR. WAGNER: Thank you, Emmanuel. We have Anne.

DR. KRESS: I don't even know if this is allowable in this framework, but it seems like there's a lot of support around this particular question in providing feedback to the Department that the 2014 standards should be the baseline. And I didn't know if there would be value and sort of doing a temperature check from the negotiators because my understanding of these open-ended questions is that they are designed to inform the Department's thinking about the language they will propose. So, I just wanted to throw that out there.

MR. MARTIN: Yeah, if we could certainly entertain a quick temperature check on. So, the question would be just saying indicating general support, general understanding that wouldn't be standing up the exact same rules, but general support for the 2014 rule as a I think it's been described as a as a baseline for other rules, so I'm willing to entertain that.

MR. WAGNER: We have two more people to comment, and then if we could take you want to take the temperature check at that point for the first question and then we can move to the next? Does that make sense, Greg?

MS. JEFFRIES: I'm going to suggest that we do that temperature check on the baseline right now. And then take Jaylon and Barmak and then move on to question two as we are fast approaching the lunch time.

MR. MARTIN: Sounds good, Cindy. I agree with that.

MR. WAGNER: Sounds great. Thanks for jumping in Cindy. And then you can take a temperature check through thumbs. Make sure you raise them high. We can see them. No, I'm sorry, I did see there is one thumbs down. I've got that thank you.

MR. MARTIN: Thank you, everybody.

MR. ADAMS: Yes Kevin, the thumbs down is for the statutory reasons described in my second part of my statement, not the metrics themselves, if applied to everyone.

MR. WAGNER: Got it. Thank you for clarifying Brad. As we mentioned, and just to tee up to Jaylon, he has joined the table. He is in for Carolyn Fast for the consumer advocates. So, Jaylon, you have the floor and then Barmak.

MR. ADAMS: Kevin, I'm curious, is it allowed to do a temperature check on the committee's thoughts around protecting all students and all programs at all institutions? Would that be an appropriate

temperature check that we can take?

MR. MARTIN: I would like not to do that at this moment.

MR. ADAMS: Is there a reason why we can't request that temperature check, Greg?

MS. JEFFRIES: Let me, Greg, let me just address the facilitators are charged with administering the process and the protocols, so we will take that under advisement, Brad, and get back to you.

MR. ADAMS: I would love to do that before the end of the session today, if possible, Cindy. Thank you.

MS. JEFFRIES: Okay. We will have a response for you later. Thank you.

MR. WAGNER: Thanks, Cindy. Jaylon?

MR. HERBIN: Thank you. So, want to start by saying yes, obviously, we agree with 2014 should be the baseline for moving forward with this. What I would like to also see I'd be interested to see is the data on the earnings threshold as well. But also, what I want to do is prevent another [inaudible] college from reoccurring. We have to look at is see here is that a lot of the students that attend these universities are nontraditional students that are obtaining these degrees. So, these are students of color. These are full

time students. Some have families, some have children that come into these programs to obtain a degree. And what we're also seeing is that they are also taking out the most debt as well to complete this program at a speed that is told to them by the university or by that particular program that they can receive it by. So, what I would encourage us to do is to be able to have more accountability and enforcement from the Department to protect these borrowers. We are trying to bridge the racial wealth gap and the cheating [phonetic] programs. [Inaudible] College is only increasing the racial disparities that these student debt crisis has brought forward.

MR. WAGNER: Thank you, Jaylon.

Barmak?

MR. NASSIRIAN: Yeah, I was going to make other points, but I want to engage the point that Brad is raising before a final ruling. It's sounds to me. And in fact, this is more of a procedural issue for the facilitators, perhaps. Brad, it sounds like you simply do not believe that the task we have been charged with, which is to develop regulations for gainful employment under the existing statute, is the task we ought to be engaged in. You know, there are lots of other things I do believe in, right? I mean, I do

believe in equality. I believe in racial justice. There's lots of other things we could talk about and take votes on, but we're not here to just address abstract philosophical points as relevant as they may be, but rather to operate within the scope of the charge this committee has, and that is to develop regulations pursuant to the statutory authority that has been cited. You know, part D is not under consideration here as far as I'm concerned. So as much as I like the student defense paper, that is not something we need to we have any authority to address in this proceeding. And it really sort of brings up the issue of good faith to some extent. If you really don't believe we have, if you don't believe in the task we're engaged in, I just wonder why you'd want to negotiate it. I hope we all agree that we're here to develop regulations so we can argue over what those regulations should be but the idea that that the effort itself is not legitimate is kind of problematic for me. One other point I want to make with regard to the disparate impact of the rule on minority communities based on fundamental injustices within the labor market, which are very real. Look, that should not be used as an excuse to saddle minorities with more debt. I'm hoping that what we develop will end up incentivizing practices that in recognition of the of

the of the fundamental unfairness that and discrimination that minorities face in the labor market. Maybe that the rule we develop will create incentives not to finance so much of their education with debt. So, I don't I don't know that you're doing anybody any favor in saying that, you know, women earn less, or African Americans face discrimination in terms of wages, and therefore they ought to be allowed to borrow even more. I feel like that's or that we should allow institutions to package them with more debt. So, we need to be mindful of the two sides of that argument it seems to me.

MR. WAGNER: Thank you, Barmak. We in the interest of time would say it's 12:22 eastern. There is Johnson and Brad in the queue. We can hear from them and then I think that should be able to wrap up question number one. I do see Emmanuel, so if you can keep your comments short that be appreciated. So, Johnson you have the floor.

MR. TYLER: Hi. So, I was in the 2017 rulemaking, and I negotiated rulemaking on the gainful employment, and one of the issues that came up was if a lot of people drop out of a program, you're not going to get a statistically valid amount of information to put into a GE metric. You need to have a certain number of

people. And so, if you're only counting completers, you're not actually assessing the value of that program. So, I know it's a nuance thing. I don't have a specific, statistically valid way of assessing it. But I do think, as Debbie mentioned, when you're talking about completers and noncompleters, you have to think of what the metric is. You're using what you're trying to measure. If a lot of students are dropping out of a school and that doesn't get measured in any way in the metric that's going to be a problem because they're obviously not getting supported by the school. But also they're, you know, they may be paying an exorbitant amount even when they drop out for the little bit that they were there. So.

MR. WAGNER: Thank you. Brad and then Emmanuel. And that should wrap it up, I believe.

MR. ADAMS: Thank you. I'll respond to Barmak question that I am definitely here in good faith, and we've been asked to negotiate something that is not even been issued a red line yet. We've got nine questions that we've been given to develop a framework for gainful employment, and we have provided a statutory way to the Department to include protections for all students at all institutions in all programs. And we think that is of utmost importance. And there are good

and bad players, I'm sure, in every part of the sector within higher education. We're not here to try and deny that, but we're here to protect all students. And I think it's contrary to what Undersecretary Kvaal decided in his comments yesterday. The secretary's comments last summer, they both have come out and said that all students need protection. That's why I'm here to ensure that the metrics that this committee agrees to can be applied fairly and equitably to all students. That's the end goal.

MR. WAGNER: Emmanuel, you're up.

MR. GUILLORY: I just want to quickly clarify that I by no means am advocating that students take on more debt. When I went through the statistics, I just want to state the facts and the numbers of what we have today and the data that we can see from the earnings and the inequities in that, even for students of color who have degrees still earn less than their white peers. And so, I wanted to just make sure that that was articulated to my colleagues, but not by any means am I here to support, then there should still be programs that are failing these students and they're going into more debt and being harmed even more. I also wanted to clearly state that the most recent 2014 rule, the private nonprofit sector had the most programs that

were under consideration [audio]. We had over 18,000 programs for-profit sector had over 9,000 programs. And so, with that being said, we will have a lot of non-degree programs in our sector that will be held accountable to this. I want to make sure that they are held accountable accordingly 100 percent. But I just want to make sure that we are taking into consideration what's happening to these students once they do complete the program and then go into the labor market and the inequities that exist based on, unfortunately, the color of their skin.

MR. ADAMS: Thank you, Emmanuel. You know, you may be accurate on the number of programs, and I have not researched that information, but according to the latest IPEDS research, we performed 75 percent of total students on a program basis. The total students were not protected under the previous gainful employment. It proprietary institutions currently today, according to 2019, data only make up 8 percent of the total students attending higher education institutions today. About 1.2 million out of somewhere in the 19 19.5 total student range. That means there's about 18.2 million students attending non or nonprofit and public institutions going somewhere else besides a proprietary institution get their education. We believe that all

those students deserve the same protections that have been given to the proprietary industry. And we have 75 percent of students not covered by this rule. It's just unfortunate, and I have a feeling that many of the students that we might hear from in the public comment period can speak to the fact that they've been unable to be gainfully employed after graduating some programs from these nonprofits. So again, it's not the metrics we want to be fair and equitable to all students. But if 75 percent are not covered, that's the problem. We need to address that problem as a committee.

MR. WAGNER: Thank you. Beverly, we only have two minutes before lunch, so if you could make it quick, we'd appreciate it. Beverly, you're up.

DR. HOGAN: I just want to reference something that Emmanuel said, and I put it in the chart. But the reference to debt to earnings and looking at the earning capacity based on race, ethnicity and gender refer to the weight of that if used as a metric, because those are factors over which I don't think the students or Institutions largely have any control. These are results that outcomes of injustices that still remain in our America today.

MR. WAGNER: Thank you, Beverly. I want to thank everyone for their comments in the morning

session. Just want to confirm that we're going to be picking up with question two after lunch. We have a lunch scheduled from 12:30 to 1:00 o'clock, so the live feed will go down and then come back up at 1:00 o'clock.

APPENDIX

**Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 1, Day 2, Morning, January 19, 2021**

From Brady FMCS Facilitator to Everyone:

Feel free to send any tech questions or hiccups my way this AM!

From Johnson (P) Legal Aid to Everyone:

Jessica Ranucci will continue negotiating on this morning's issues for the Legal Aid constituency.

From Anne Kress (P) Comm Colleges to Everyone:

Can we get a CV for this individual as we did for the others?

From Anne Kress (P) Comm Colleges to Everyone:

Thank you

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

+1 on Carolyn

From Anne Kress (P) Comm Colleges to Everyone:

+! to concerns expressed by @Yael and @Carolyn - this is a critical issue for students and the actual language is very important

From Sam (P) Fin Aid Admin to Everyone:

+1 @Yael

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

Would it be an option to add "including but not limited to" with respect to the references?

From Beverly (primary/MSIs) to Everyone:

+1 to Yael's comment

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

+1 Barmak

From Jamie Studley (P) Accrediting Agencies to Everyone:

+1 to Debbie's suggestion. That would cover Barmak's

proposal to allow the Secretary to take into account state decisions.

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

+1 to Jessica re: need to give Department ability to take action against misreps

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

+1 Jessica's comment. Also concerned that without broad interpretation, the Department's ability to step in on misrepresentation will be relegated to far after damage has been done to students.

From Yael Shavit (A) -- State AGs to Everyone:

+1 o debbie

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

To clarify, Debbie's comment, you mean to propose regulatory text of section (m) that would state "including but not limited to" the definitions in subpart F and R, right?

From Beverly (primary/MSIs) to Everyone:

+1 to Barmak

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

Yes that is what I meant. I accidentally muted myself!

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

Thanks. +1 to Debbie's idea.

From Jamie Studley (P) Accrediting Agencies to Everyone:

Is the main issue here whether we support adding a provision on misrepresentation, recognizing there are concerns, Qs and suggestions about the scope?

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

+1 to Kelli's comment

From Anne Kress (P) Comm Colleges to Everyone:

My question is the same as @Jamie's—what are we temperature checking?

From Beverly (primary/MSIs) to Everyone:

+1 to Annes comment in this chat

From Jamie Studley (P) Accrediting Agencies to Everyone:

is this a way to reply to Kelli: having it here (over and above other compliance findings and actions), this would allow the Dept to consider that issue (alone or with other shortcomings) in determining that the school is not admin capable and not allowed to participate in Title IV programs.

From Amanda (P) Civil Rights to Everyone:

+Jessica

From Anne Kress (P) Comm Colleges to Everyone:

+1, great summary of the concerns @Jessica

From Beverly (primary/MSIs) to Everyone:

+1 to Jessica

From Jamie Studley (P) Accrediting Agencies to Everyone:

Could Greg or Cindy explain how advisors can be used (do negotiators call on them? ED only? at their own instance)?

From Beverly (primary/MSIs) to Everyone:

+1 to Keli

From Johnson (P) Legal Aid to Everyone:

Hi I would like to switch out with Jessica Ranucci
From Jessica Ranucci (A)- Legal Aid to Everyone:

I'm going swap back in for Johnson for the remainder
of administrative capability. Thanks.

From Johnson (P) Legal Aid to Everyone:

Hi Jessica and I are going to switch out.

From Beverly (primary/MSIs) to Everyone:

Thanks to Steve for the clarity. +1

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

+1 to Beverly. Thanks, Steve.

From Sam (P) Fin Aid Admin to Everyone:

I have to step away for a few minutes. David Peterson
will step in as Primary during that time.

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

+1 to Debbie's comment

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

I'll go ahead and drop a data request in the chat:
"How many high school diplomas has the Department found are
invalid in the past five years? How many instances have
there been in the past five years where an institution had
reasonable evidence to believe that a high school diploma
was invalid, but failed to follow its process for verifying
the diploma as required under 34 CFR § 668.16?"

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

This conversation is getting muddied. Falsified
transcripts is a serious integrity problem that needs to be
addressed. If it is a fairly rare occurrence, that means it

should not raise significant concerns about burden. It does NOT mean the problem should not be addressed.

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

+1 to Debbie

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

Hello Carney will be stepping up to the table for the rest of this conversation on administrative capability.

From Jamie Studley (P) Accrediting Agencies to Everyone:

+1 to Debbie. Seems like a reasonable and even elegant way to address the real problem areas

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

Removing #2 would deny the Secretary the ability to reject a participating institution's use of diploma mills as a way of circumventing the HS diploma requirement in the law.

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Barmak

From Beverly (primary/MSIs) to Everyone:

+1 to Barmak's comments.

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

Johnson Tyler is swapping back in for gainful employment.

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

Returning to the table.

From Anne Kress (P) Comm Colleges to Everyone:

+1 to the AGs statement on using 2014 as a baseline—
this was a sound and vetted/tested framework

From Beverly (primary/MSIs) to Everyone:

+1 to Yael's comment to use 2014 as baseline. The aim
should remain to prevent student aid from being awarded to
colleges that operate fraudulent and abusive programs.

From David Socolow (A) State Agencies to Everyone:

+1 to using 2014 GE rule as baseline

From Johnson (P) Legal Aid to Everyone:

If a lot of students drop out, you also can have such
a small cohort in the program that you cannot generate a
legitimate statistic regarding earnings

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

here is the link to the video reference in my opening
statement referencing that Secretary Cardona confirmed his
view to the House Education and Labor Committee that all
postsecondary institutions, regardless of tax status,
should be treated the same under the law. his comment and
question can be heard around 1:47:30.

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

[https://www.c-span.org/video/?512743-1/house-hearing-
department-education-priorities](https://www.c-span.org/video/?512743-1/house-hearing-department-education-priorities)

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Debbie

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

Agree with deploying the additional metric of
programmatic earnings outcomes vis-à-vis HS earnings as a

baseline

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

Jaylon Herbin will be joining the table in my place.

From Johnson (P) Legal Aid to Everyone:

+1 Amanda

From David Socolow (A) State Agencies to Everyone:

+1 to all Debbie's points, and especially wish to reinforce the importance of a federal GE rule using administrative datasets available at the federal level. Such data are more difficult to obtain at the state level, posing significant challenges to the establishment of State accountability standards based on students' labor market outcomes.

From Anne Kress (P) Comm Colleges to Everyone:

+1 @David

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

Student Defense actually published a report in October 2020 that spelled out exactly how the Higher Education Act provides the Department "the ability to protect all students across all institutions participating in the Direct Loan program, at an institutional or programmatic level, and ensure that those institutions and programs are promoting strong outcomes."

According to the report, Sec. 454(a) of the HEA delegates to the Secretary the authority to implement a quality assurance system. This quality assurance system could include measures like repayment rates, debt-to-earnings rates, and earnings thresholds, and those measures could apply to all institutions participating in the Direct Loan Program to strengthen higher education accountability. I'll

drop the report in the chat
(<https://www.defendstudents.org/news/body/docket/100-Day-Docket-Direct-Loan-Authority.pdf>).

From Beverly (primary/MSIs) to Everyone:

+1 to Emmaunual's reference to disparity in earnings relative to race, ethnicity and gender.

From Ashley Schofield (A) - MSIs to Everyone:

+1 to Emmannual's comments

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

Request to take a temperature check regarding whether the committee believes all students in all programs at all institutions should be protected.

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

I'm coming back to table now.

From Yael Shavit (A) -- State AG to Everyone:

+1 Barmak

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

+1 Barmak

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

+1 Debbie and Johnson

From Beverly (primary/MSIs) to Everyone:

I agree with Barmak. However the disparity in earnings is useful to the discussion of debt to earnings in terms of weight because it is beyond the students and the institution's power to control. It is largely an outcome of

the injustices that are still present in our America.

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

Beverly is right! I hope we can create incentives for
institutions to do their part in promoting racial justice.