DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 1, DAY 3, AFTERNOON

January 20, 2022

On the 20th day of January, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:30 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. JEFFRIES: Thank you. Welcome back everyone from lunch, I hope you got a chance to stretch your legs and at least get some nourishment as it is a short lunch break that we're taking. I'm Cindy Jeffries. I will be your facilitator this afternoon. Just a couple quick announcements. We will have public comment this afternoon from 4-4:30. And if you are someone who has received a time slot, please make sure that when you log into the session that you log in under the name that you registered with, would be helpful. And comments should be surrounding the topics before the committee today so that it's most helpful for them, that would be wonderful, of any of the topics for this, this negotiated rulemaking. For the committee, just a quick reminder that if you are swapping off with alternate and primaries, please send us a quick note of that so that we can announce it so the public is aware of that swap out. With that, the agenda this afternoon is to as quickly as possible, finish up this preliminary discussion on financial responsibilities so that we can then move into the, I'm sorry, the change of ownership and control and having completing preliminary discussions on that and ending today with the start of certification procedures. So I know it's a robust

agenda, but is our hope and intent to at least get through all preliminary discussions on all of the topics and issues by the end of this week so that everyone can prepare for the second session in February. So with that, I'd like to open up the discussion, pick back up where you left off and I believe Kelli you were up.

MS. PERRY: Alright, thank you. Two things. One, in the F I, Roman Numeral I, just my same concern as it relates to the liabilities as opposed to if it's liabilities only resulting from a change in composite score or if it's all liabilities. So I just put that on the table. My second one has to do and there's no changes to this section, but it's in reporting, (f)(ix)(3). If we potentially have an opportunity here and I'm hopeful that the Department will take this into consideration. So this section, in essence, talks about what I would consider an appeal process. Right, it talks about a preliminary determination and then giving institutions the opportunity to provide certain things to demonstrate that they are still financially responsible, as it relates specifically to the triggers. So I would ask the Department if they would consider, and we can we can craft some language, putting the composite score within this section as well as far as having a preliminary

determination based on that composite score with the option or the ability to provide additional conditions or circumstances, or even to review the calculation of the score with the Department, before that mandatory letter of credit or declaring an institution not financially responsible is issued. We talked about an appeal process in the last negotiation that we did this, it didn't make it into here. I do think that there's an opportunity to insert it into this part. Specifically, one of my concerns is is, as it relates to definitions of long term debt, which I talked about yesterday, we have not seen any of the scores or the results of institutions submitting their scores for the first time because of the delays or the pushback and when those were required based on the pandemic and such. So I'm concerned that there might be institutions that based on those long term debt rules, may potentially fall into the zone or fail, because debt has now been excluded, even though it was just simply a refinancing. So I offer that up for consideration.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you, Kelli. Barmak, you're next.

MR. NASSIRIAN: The question I was going to pose, it's kind of challenging because there

there's a real sense in which it may belong in administrative capability, but but we're talking about it here. The consequence of failure to make these very critical reportings is that the Department may take some action against the institution. And the problem here is that at the end of the day, you know, people run institutions. You need to expose individuals to consequences if you want to change corporate behavior. And I'm just wondering whether the Department can contemplate something a little more consequential than simply suggesting that that failure to make the reporting could could have consequences for the institution only. There is language in administrative capability in the statute that, first of all, clearly delineates between nonprofits and for-profits. Then the focus tends to be on the for-profits and ownership interest or individuals exerting substantial control on for-profit entities. And it strikes me as wise for that authority to be exercised under the broad authority that the statute gives the Secretary for financial-responsibility purposes to ensure that individuals in substantial control of for-profit entities face consequences when they fail to make the necessary reports.

MR. MARTIN: Well, I'll take that back

as a suggestion, if you have specific language you want to share, feel free to do that.

MS. JEFFRIES: Thank you. Okay. I don't see any other hands Greg on the Section 668.171 paragraphs (e) and (f) (1) (i through ix) . How would you like to proceed, do you want a temperature check on those or do you want to go a little further?

MR. MARTIN: Yeah, let's do a temperature check because I would like to keep it by by paragraph if I can before we move on.

MS. JEFFRIES: Sure. Alright. So we will do a temperature check on Section 668.171 paragraphs (e) and (f) (1) (i through ix). So if I could please see your thumbs nice and high. Okay. There is one thumbs down. Anything you want to add Brad, as a concern? We can't hear you.

MR. ADAMS: Sorry, I was, had my mic muted, I added my one concern right before lunch, and so that was it.

MS. JEFFRIES: Alright, great. Thank you. So Greg, and Aaron is sharing, Aaron Washington, is sharing with us, I believe still this afternoon. So if you want to queue up the document? Greg, do you want to take us through the next section?

MR. MARTIN: Yes, so the next- (g) is

included, though there are no changes to paragraph (g). So we're going to move on to paragraph (h). Before I do that, I wanted to just briefly, I promised Amanda a response to her question regarding the discretionary trigger related to to annual dropout rates for the institution. And her question was, does the Department have any, I think, particular formula by which we calculate that? And is there any threshold that we use? The answer to both of those questions is no. And (inaudible), for those reasons, we've not yet invoked that particular discretionary trigger. So we do welcome any suggestions from the committee as to what might be an appropriate methodology for that. We have a methodology and an added capability for initial institutions. There's an IPEDS methodology, does not apply to either of those or any other. But if there are suggestions, I'm willing to entertain those in writing since we've moved on from that section, but I did want to answer that question. Okay, we're ready to move on to paragraph (h), which is audit opinions and disclosures. And we have suggested language here that clarifies the requirements around the institution's ability to continue operations, so I made a few a few clarifying changes here. Even if the institution satisfies all the general standards of financial responsibility in

paragraph (b)B, the Secretary does not consider the institution to be financially responsible if the institutions audited financial statements, the opinion expressed by the auditor was adverse, qualified or disclaimed opinion, or, this is the addition, the institution was required to include a disclosure in the notes to the financial statements that contains information about the institution's ability to continue operations unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition, or that the institution's ability to continue operations has been alleviated. So just a couple of wordsmithing changes there, but they are present so I wanted to go over them. And that is all section 171. So I don't think we need to take a check here. I will ask if there are any comments or questions before we move on to sections 174 and 175.

MS. JEFFRIES: Barmak.

MR. NASSIRIAN: I apologize, but you kind of jumped over (g) so quickly that I didn't get a chance to interject. I just have a question here. With the advent of new arrangements under which public institutions enter into arrangements that purport to be ownership arrangements with nonprofit, or with for-

profits, does this necessarily satisfy the Secretary? For example, where the entity being acquired purported to be a public institution solely on the basis of the fact that the that parent company that the parent entity, a public state university, was behind it? Do we not need some language here to ensure that public transcends just a letter from somebody saying we backed the liabilities? We have yet to name the school if you want to, but-.

MR. MARTIN: I appreciate you're not naming the actual school. I think we should try to avoid names wherever possible. We do propose some changes to what is considered to be not-for-profit under change of ownership when we get to that particular paper. So I would ask that we hold comments related to that until we review those sections when we get to that particular paper. Steve do you have anything you want to add to that?

MS. JEFFRIES: Steve, you're on mute.

MR. FINLEY: I think we should welcome comments as to whether we need to make changes in the language in the regulations here as well.

MR. MARTIN: Yeah, I am certainly open to that.

MR. NASSIRIAN: Yeah, this is my

concern again. The conversation becomes difficult when you can't name names, but it's critical that that the arrangement specifically that (g)(1)(i)(b) should transcend the parties to the transaction. It shouldn't be so easy for the two parties to a transaction to basically cloak behind the suggestion of state backing unless the state itself provides that assurance. Do you see my point that we have had cases where the state is not actually on record, saying this acquisition is backed by my full faith and credit, but an entity that the state has backed has provided a letter and I feel like the Department, needs stronger assurances that any acquired entity is indeed fully backed by the full faith and credit of the state that backs the parent entity.

MR. MARTIN: So Barmak, you don't believe that the current languagethatsays provides a letter from an official of that state or government entity is sufficient?

MR. NASSIRIAN: It's the or other government entity, if the or, I would exclude the parent entity from being that other governmental entity. In other words, Public University A acquires for-profit entity B without the state fully endorsing it and all you have in your hands to treat the new Entity B as a public institution is a letter from the CEO who

negotiated that deal on behalf of Public University A. I feel like you need to have the state back that.

MR. MARTIN: So you want a clarification that government or other government entity does not include officials of any school involved in the acquisition or something to that effect?

MR. NASSIRIAN: Yes.

MR. MARTIN: Okay, I see what you're saying. I'll note that.

MR. NASSIRIAN: Thank you.

MS. JEFFRIES: Great. Thank you.

MR. MARTIN: Okay.

MS. JEFFRIES: Sorry. Jessica.

MS. RANUCCI: Thanks. I just had a quick question on (h). Sorry, and you don't need to respond right now, but is there a meaningful difference between (h) being (h) versus being a mandatory trigger? And if there isn't, maybe it should just be a mandatory trigger. And if there is, I guess I'm curious why, but you don't have the answer right now.

MR. MARTIN: Okay.

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

MS. PERRY: Just a question on (h) as well, and maybe David can weigh in if necessary. I'm,

this is not a big deal, but why the change from as a going concern to operations? Because this is referring to audit opinions and disclosures, which from an accounting perspective, it's referred to as going concern footnote. Again, not a huge deal. I'm just curious as to why the change.

MS. JEFFRIES: Steve, you have a response to that?

MR. FINLEY: Sure. Yeah, this is tracking a change that was made in the accounting reporting standards for going concern findings. So the language has slightly broadened and it shifts for some responsibilities on the auditor's expression of an opinion about management's assertions. And we're just capturing what we think is the change that was made and make sure it appears in (h).

MS. JEFFRIES: Okay, thank you, Steve. Alright, I don't see any more hands on that and the Department has indicated they don't feel they need a temperature check on that. So Greg, are you ready to move into 668.174, Past Performance?

MR. MARTIN: Yes. Why don't we move to that?

MS. JEFFRIES: Hey, Aaron, can you cue that up?

MR. MARTIN: There isn't a lot here in 174 that we've changed, except you will note in (a)(2) and this has to do with slightly restructuring the sentence to clarify the programreview findings must have been for the current fiscal year or for the past two fiscal years, rather than having a report issued in those years. This is a technical change to conform with how we already read the language. It will look at findings, where those findings resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review. Those findings may be in its two most recent compliance audits or in a report issued by the Secretary for its current fiscal year or either of its preceding two fiscal years. So the finding keys to the years and we're not keying the report, that's the only that's the only difference here. So, not a big one, but I'll certainly open it up for discussion if anybody has any anybody to say about that or has questions.

MS. JEFFRIES: Aaron, can you drop the screen for a minute? Thank you. Barmak, you have a comment?

MR. NASSIRIAN: Yeah, I'm assuming that the language here is incomplete, right? I mean, there are other provisions in this section.

MR. MARTIN: That's correct. We don't, as a rule, include the entire section unless it's necessary to do so.

MR. NASSIRIAN: So the past performance of individuals who who exercise substantial control is still on the books.

MR. MARTIN: Yes.

MR. NASSIRIAN: And tracks this in a parallel to institutional.

MR. MARTIN: Yes. If anything that we have rescinded, you would see red lines.

MR. NASSIRIAN: Okay, so a couple of thoughts here, it seems to me. First of all, I'm delighted to hear that that that individuals would still be on the hook because again, you need to change the behavior of individuals to change institutional conduct. And it seems to me that you again, this is one of those triggers that may be placed way too late in the downward spiral of those actors against whom you would be well advised to act much earlier. So I would strongly suggest broadening the definition of problematic past behavior. You know, one of the problems we saw back in the 80s, which seems to be a recurring issue with the oversight practices at the Department, is that people engage in practices that end up costing taxpayers and

students enormous sums of money and then create huge wastes of time. And then they simply regroup under a new banner and do it again and again. And it seems to me that, for example, individuals associated with sizable collapses, that past performance has to constrain their ability to participate in the management of other entities. You know, again, Borrower Defense issues creating the kinds of bad outcomes that the Department would be well advised to to prevent repeating in the hands of same individuals under a new corporate banner.

MS. JEFFRIES: Okay. Thank you, Barmak. I don't see any other hands on this. But before I ask you what you want to do, Greg, I want to note that David Socolow is now at the table representing state agencies instead of Debbie Cochrane. So Greg, where would you like to go from here? Do you want a temperature check?

MR. MARTIN: I don't think we need a temperature check. I mean, we gave an opportunity for comment. Barmak made a comment. It's been noted, and the change itself here is pretty much just a clarification. So I don't think it's anything we have to change. It also is codifying current practice, so I don't think it's anything we need to take a take a temperature check for. I'd like to move on to 175.

MS. JEFFRIES: Okay.

MR. MARTIN: Alternative standards and requirements. So, our first change. Just look at what's general here, an institution that is not financially responsible under the general standards and provisions in 668.171 may begin or continue to participate in the Title IV HEA programs by qualifying under an alternate standard set forth in this section. So the first change we just made some a few clerical changes here, but in (c) we have clarified in this section that institutions must have remedied any failures to meet their financial obligations in order to use an existing financial protection alternative that allows the school to be considered financially responsible if it provides surety of at least half the school's prior year Title IV volume. So, that's in (c), financial protection alternative for participating institutions, that is a participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under 668.171 (b), (c) or (d), or because of an audit opinion or going concern disclosure, qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Secretary, or providing other surety described in

paragraph (h)(2) romanette (i) of this section for an amount to be determined by the Secretary. Not less than one-half of the Title IV HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to public institutions. And we know here that for purposes of the failure under 668.171 (b), the institution must also remedy the issues that gave rise to the failure. And moving on from that. We've, nothing under (d), (e), (f), and I'm sorry, we have changes under (f). So we're going to go to provisional certification alternative. And we note here that the Secretary may permit an institution that is not financially responsible to participate in the Title IV programs under provisional certification for no more than three consecutive years if the following standards are met and we'll go down to, and again, , Steve did an excellent job of describing this in his comments before lunch. So looking at (f)(2), under this alternative, the institution must provide the Secretary an irrevocable letter of credit acceptable and payable to the Secretary. It will provide other financial protection described in paragraph (h) of this section for an amount determined by the Secretary to be not less than 10 percent of Title IV HEA program funds received by the

institution during its most recently completed fiscal year. Except this does not apply to public institutions the Secretary has determined are backed by full faith and credit of the state, and again, we've inserted "remedy the issue that gave rise to the failure." So that is the change there. And the language mirrors the language we just described about the financial protection alternative. It clarifies institutions must have remedied the failures to meet their financial obligations in order to continue participating in the Title IV programs while not financially responsible. So, that is the entirety of what is proposed in Section 175, so I'll take any comments on that before we move on to change of ownership.

MS. JEFFRIES: Thank you, Greg. Carolyn.

MS. FAST: Yes, I generally am supportive of these changes, but I do have a question or and/or suggestion, in the section that deals with alternate means of of of maintaining eligibility while having failed this financial responsibility, there's a provision that says that this kind of alternative standard is only available for no more than three consecutive years. However, Barmak and others have raised the issue that schools have remained for longer

than three years in eligible status when showing significant financial problems. And I'm not sure. I guess my question is, how is that possible? Are there loopholes or other considerations that we need to be thinking about here? Or is the issue that is it consecutive year as being the issue? Because I know that there are a lot of examples of schools that have sort of limped along prior to their collapse for quite some time, longer than three years. And I'm not sure if it's because they somehow managed to bump up into financial responsibility for one year and then back down again, or whether the Department somehow permitted them to continue. And perhaps you could shed some light on this, but it seems to me there may need to be some further modification to ensure that schools are not continuing to limp along on the edge of death for years and years.

MS. JEFFRIES: Thanks, Carolyn. Steve, you-

MR. MARTIN: I was going to say, Steve is a lot more familiar with that than am I, so I'm going to let Steve address that.

MS. JEFFRIES: Thanks, Greg.

MR. FINLEY: So the short answer is you can participate for no more than three years under provisional certification. At the end of that period,

the institution can be certified again and it can be provisionally certified again, even if that's for lack of financial responsibility. So that's how you address the seeming contradiction of there's a three-year limit, but you'll see institutions that participate year after year after year. And in part, that was because when the financial responsibility regulations were first put in place in the mid-nineties, there were institutions that demonstrated they had very good operating histories. But they were very poor and they were honest enough to say, we're never going to meet your financial responsibility standards, but you can judge us by years of operation that we've met our obligations under the programs. And so the Department backed away from an original proposal that would have said after three years, you had to be financially responsible in order to continue.

MS. JEFFRIES: Okay. Thank you, Steve. Okay, Greg, I'm going to, oh, Barmak.

MR. NASSIRIAN: Yeah, I think that's, look, I absolutely understand the need for the Secretary to have some discretion here. In fact, I wouldn't even object to the idea of a 10 percent threshold for letters of credit under the section as inadequate as that strikes me at. The problem is that this same leniency that was justified, and perhaps was

justifiable in certain cases, ended up being the path of least resistance for outright fraud that has cost the taxpayers and students hundreds of millions of dollars. And I don't know whether this is something we need to address in regulations. It's more administrative practice. I have a question, has the, draw the line low, but then make case by case judgments, both with regard to renewals of the three-year cycle as well as with the dollar amount of any letter of credit. And don't let what are intended to be minimum thresholds in the reg become the de facto ceilings on your administrative expectations. I think there have been too many. Has the Department really asked anybody that went on there for more than 10, 10 cents on the dollar? Do we know that? Do we know if ITT or Corinthian had letters of credit in excess of 10 percent? That's the question.

MS. JEFFRIES: Yep. Thanks, Barmak. Steve. Do you want to address that?

MR. FINLEY: I'll just say there are institutions that have been required to post more than the minimums. There was a long-standing dispute with Corinthian about its financial responsibility, structuring whether it met the requirements, I believe. But there are certainly other large institutions that have had letters of credit larger than the minimums,

even at the time that they closed.

MS. JEFFRIES: Okay. Thank you. Steve. I see one last hand up. Carolyn and then I'd like to wrap up this section and move on to the next. Carolyn.

MS. FAST: I just have one further thought about the the provision. With three three consecutive years, it seems like it might be against the spirit of the regulation to continue to re-up provisional status after three years perpetually. And I would suggest language that makes it clear that that that cannot happen in perpetuity, that's not the intention of the strike. Or at least it seems to me that is an end that would not be a great way to protect borrowers or taxpayers either, so I would suggest some kind of limitation on the number of years that a school can remain in provisional certification status.

MS. JEFFRIES: Thank you, Carolyn. I'm certain the Department captured that, but in addition to that, if you have text you would like to submit on that, please feel free to do so. So with that, Greg, how do we stand? You want a temperature check on Section 175?

MR. MARTIN: Let's do that quickly. I'm trying to get one for each major paragraph in which there were changes, so let's go ahead.

MS. JEFFRIES: Alright. So could we

see a show of thumbs on 668.175, alternative standards and requirements? Oh, there you are. Thank you. I'm not seeing any thumbs down, so we can move on to 668.176, change in ownership.

MR. MARTIN: Thank you, Cindy. Excuse me. So we're going to be move into 668.176. Just as a refresher, and we discussed this earlier when we looked at 668.15. But this this is the section where we have incorporated the language from 668.15 that was related to the financial responsibility of institutions undergoing a change of ownership. So those relevant parts of 668.15 have been moved over here with some clarifications to reflect Department practice and reviewing financial responsibility for changes in ownership. This is a rather dense section, as you can see, it's all new, so all of it is all of this red line text. We will go through it. Obviously, (a) is just the purpose. I'll go through (b) to see. I would like to keep our comments fairly general in the interest of the time. We have limited time and a lot to get to, but we certainly want to capture any comments or opinions you might have about this, suggestions for improvement and I encourage you to do as many of those as possible in writing, so that we can capture them. I certainly don’t want to preclude conversation or if you have a major

point you want to make. But I would I would ask that we refrain from minor points of clarification, if we can, in the interest of getting through financial responsibility today. So again, these are changes that we are incorporating what was in 668.15. Purpose here, to continue participation in a Title IV HEA program during and following a change of ownership, the institution must meet the financial responsibility requirements of this section. And first, we discuss a materially complete application, to meet the requirements of a materially complete application as required in 600.20 (g)(2) romanette (iii) and (iv), an institution undergoing a change of ownership and control as provided in 600.31 must submit audited financial statements for its two most recently completed fiscal years at the level of the change in ownership or the level of financial statement required by statements required by the Secretary that are prepared and audited in accordance with the requirements in 668.23(d). The institution must submit audited financial statements of the institution's new owners’ two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 668.23 at the highest level of unfractured ownership or at the level required by the Secretary. If the institution's new

owner does not have two years of acceptable audited financial statements, the institution must provide financial protection in the form of a letter of credit or cash to the Secretary in the amount of 25 percent of the Title IV HEA program funds received by the institution during its most recently completed fiscal year, or if the institution's new owner has one year of acceptable financial statements, the institution must provide financial protection in the form of a letter of credit to the Secretary in the amount of 10 percent of the Title IV HEA program funds received by the institution during its most recently completed fiscal year. I just want to clarify here when we say the institution must, we are referring here to the the new owner's institution, not the existing, not the institution being acquired. So we do need to make a clarification there which we will do. But I wanted to point that out before we move through this. So the institution must meet the financial responsibility requirements in general. The Secretary considers the institution to be financially responsible only if. for a for-profit institution, has not had an operating loss. Has not had operating losses in either or both of its two latest fiscal years that in some result in a decrease in tangible net worth in excess of 10 percent

of the institution's tangible net worth at the beginning of the year of the two-year period. The Secretary may calculate an operating loss for an institution by excluding prior period adjustment and cumulative effect of changes in accounting principles. For purposes of this section, the calculation of tangible net worth must exclude all related party accounts receivable, other assets and all assets defined as intangible in accordance with the composite score. Second it has, for its two most recent fiscal years, had a positive, tangible net worth in applying this standard. A positive, tangible net worth which occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth excludes all related party receivables and other assets and assets all assets rather classified as intangible in accordance with the composite score or has a passing composite score and meets the other financial requirements of 34 CFR 668 subpart L for its most recently completed years. I want to stop here for a moment and and draw everyone's attention to the way the regulation is written here, that what we just discussed in 668.176 (b)(3). Where we have in (3)(i) rather where we have in (3)(i)(A) where we say that it's these the first two or the third, and whether the Department would entertain comments as to

whether or not it should remain or leaving it to be any one of these or whether all three should be required. So I'll open the floor for comments about everything we've discussed thus far and ask for specific comments related to 668.176(b)(3)(i)(A).

MS. JEFFRIES: Okay. Greg, Steve has his hand up.

MR. FINLEY: Yeah, I just I want to add to what Greg was saying in his explanation. So this is the Department's long-promised move to take elements that had been in 668.15, update them to incorporate concepts related to the composite score analysis and then move them into subpart L of the financial responsibility regs. So that's what you see playing out here, where especially in this section where we've identified three conditions that the the new ownership and the institution must meet. You'll see that we've got concepts that weren't in 668.15, but they now include references to adjustments that are routinely made under the composite score. And that would be to remove related party transactions and intangibles from the analysis as well and and including a reference to the composite score calculation itself.

MS. JEFFRIES: Thank you, Steve. Barmak, before I get to you, I want to mention that

Johnson Tyler has come to the table for legal aid in place of Jessica Ranucci. So with that, Barmak.

MR. NASSIRIAN: So two comments, one general and then second, one more specific about the section. In the abstract, I don't have an issue with what the Department has put on the table here, but the analysis strikes me as a very static one. You know, instead of analyzing the change in ownership in motion and understanding that there is a dynamic process by which the nature of the acquiring entity may not fully reflect its superficial markings is important. It's insufficient to take a snapshot of their past conduct and then assume straight line future behavior on that basis, because by the very act of the acquisition, they may well be in the process of morphing into something quite other than what they've been. So I do think that that the best way probably to get at that would be to, this is kind of a blunt instrument, but I think it works would be to essentially prohibit the completely debt financed acquisitions, essentially leveraged buyouts and arrangements by which the acquisition is really masking a revenue sharing arrangement. It's called an acquisition, but it's not an acquisition, it's really a contract for revenue sharing because there are significant financial constraints imposed on the

acquiring entity in the guise of a transfer of ownership. I think that would address that dynamic issue. The more specific comment I want to make is that this language basically lets the publics off the hook. Because of the inadequacy, again, the language would have been quite adequate in the olden days where we kind of knew what a public entity is, but now that we have these public entities acquiring various other subsidiaries, some of them quite problematic for-profits, it seems to me that you need a whole lot more to ensure that an acquisition by a public entity doesn't end up being nothing but a rescaling of practices that would otherwise be subject to much different oversight by the Department.

MS. JEFFRIES: Thank you, Barmak. I would encourage you to put any or all of that into the chat or if you have text to submit it. Greg, I don't see any other hands, so I think we can, Brad.

MR. ADAMS: You know, this is obviously a lot. I respect that we're still reviewing it and may have changes prior to the week two session. I did just want to clarify two things because it was the suggestion for change and I think the wording in (b)(3) that is it going to be the acquiring institution must be one, two or three, not the combined entity?

MR. MARTIN: Yes, it's the acquiring institution.

MR. ADAMS: Alright, so it will insert the word acquiring. Thank you. And then the other thing I just want to clarify , when we're talking about the timeframe of the materially complete application, I just want to make sure that we understand that the change of ownership that materially improve the institution's financial conditions, we want this to occur if it saves students and save jobs, again, I understand the intent here, we'll get back to you on comments, but the main comment is we want good students and good people to emerge when it makes sense.

MS. JEFFRIES: Thank you, Brad. Okay, I don't see any other hands, Greg.

MR. MARTIN: Okay, so we're going to move. So we're talking about, you know, meeting the financial responsibility requirements in general and we just discussed what they are for a for-profit institution in 668.176(b)(3)(A) and then (B) is for nonprofit institutions, nonprofit accounting has had at the end of its two most recent fiscal years a positive positive net assets without donor restrictions. Secretary will exclude all related party receivables, either assets from net assets without donor restrictions

and all assets classified as intangibles in accordance with the composite score. Has not had an excess of current fund expenditures over current fund revenues over both of its two latest fiscal years that result in the decrease exceeding 10 percent in either the net assets without donor restrictions from the start to the end of the two-year period, or the net assets without donor restrictions in either one of the two years. The Secretary may exclude from that changes in fund balances for the operating loss calculation, prior period adjustments and the cumulative effect of changes in accounting principle. In calculating the net assets without donor restrictions, the Secretary will exclude all related party accounts receivables, other assets and all assets classified as intangible, with the composite score in accordance with the composite score rather and/or has had a passing composite score that meets the other financial requirements of 34 CFR 668 subpart L for its most recently completed fiscal year. And again, we would be asking for any comments on whether currently, as written, it would be one two or three, or whether it should be one, two and three. And finally, or for a public institution has its liabilities backed by the full faith and credit of the state or by an equivalent government entity or for for-profit or nonprofit

institution that is not financially responsible under paragraph (b)(3)(i) of this section, provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year Title IV funding or an amount determined by the Secretary and must follow the zone requirements of 175(d). So I'll stop there and entertain any comments on the requirements for a nonprofit institution.

MS. JEFFRIES: Okay, thank you, Greg. Kelli.

MS. PERRY: I guess just a clarifying question, and I don't know if it's the same or different, but when you say the institution must and we're providing financial statements and recalculating scores, are you looking from a not-for-profit perspective? Are you looking for the combination of the new entity? Because when I when I think about not-for-profits and I think about change of ownership, the biggest thing that comes to mind is the combination of two, right? So you have two not-for-profit institutions and they're going to combine. I think that's what we've seen in some cases in that area. So is the calculation that we're doing here as it relates to this, the then consolidated institution, which would be the two nonprofits together or just simply the one that acquired

the other non-profit?

MR. MARTIN: As it's written, I believe that what's in (b)(3) and that includes both (A) and (B) for not-for-profit and for-profit is applicable to the acquiring entity. But Steve, do you want to clarify that? I believe that's what we discussed, but I want to make certain of that.

MR. FINLEY: That's how it's described. But I think this initial evaluation is going to be on the two years of audits that are provided by the acquiring entity and not the newly merged entity that would be created after the acquisition.

MS. PERRY: Okay, so assuming that the entity that's doing the acquiring is financially responsible, then that's fine.

MR. FINLEY: They should meet this standard, right.

MS. PERRY: Okay. And then for your question as it relates to and/or, I think or would be appropriate.

MS. JEFFRIES: Thank you, Kelli. Johnson.

MR. TYLER: Good afternoon, so this is more of a question than a statement, because, Greg, you keep asking should there be an and or and or, so I'm

wondering whether the acquiring entities usually are passing the composite score and are the other things kind of superfluous? Why do you keep asking about this? I have no background in the finances of colleges in this sort of thing, but I'm curious what your thinking is.

MR. MARTIN: We're trying to get a feel for the way it's written so they have to with the or they have to admit one of the three would be acceptable. [Inaudible] tell you that you know, meet the financial responsibility requirements in general, the Secretary considers the institution to be financially responsible if it is so when you look at one, two or three, there's the option of meeting one, two, or three or if it reads and, then it would be a requirement to meet all three of those. So we just proposed that as a directed question.

MR. TYLER: Can I just ask one follow-up, which is, did the GAO do a whole study of the transformation of for-profits and nonprofits? Were these sorts of accountability issues raised by by them? And did they make some recommendations about greater financial oversight and in terms of the change in ownership related to this provision?

MR. MARTIN: I'm not aware of that, I'm not overly familiar with that GAO report. I don't

know if Steve is. If so, he can comment. If not, we'll have to take that back. But I don't want to speculate on that.

MR. TYLER: Thank you.

MS. JEFFRIES: Thank you, Johnson. Barmak.

MR. NASSIRIAN: I just want to get some clarification in my head. How am I to understand that that the Department does not subject the new entity itself, that emerges as a result of the acquisition to any of these tests? Because you can have you know an entity that has a passing composite score, debt financed a purchase in a way that would put it below that that number, I assume below whatever threshold you pick, no?

MS. JEFFRIES: Okay, Greg, I see Steve has his hand up. Do you want to defer to him?

MR. MARTIN: Yeah, sure. Go ahead, Steve.

MR. FINLEY: So there's two things, right? There's two years of audits from the acquiring entity and those are examined and the audited same-day balance sheet is examined. So, those are all taken into consideration, but probably the better or best measure of the new entity is going to be the audited financial statements of the fiscal year for that combined entity,

and you're not going to see that for a year, probably, right, a year plus six months if it's a six-month submission period. So [interposing] the transaction, you've got the audited same-day balance sheet and you've got the history of the acquiring institution and those are examples.

MR. NASSIRIAN: Is the Department indifferent to the terms of the acquisition itself if it's entirely debt financed, particularly if it's debt financed by the entity being acquired?

MR. FINLEY: I think we would welcome suggestions on that, I know it is a factor that is considered.

MR. NASSIRIAN: I mean, that just blows my mind because you know, I'd be worried, even if it's a third-party financier, debt financing an acquisition to an otherwise passing impoverished but but passing nonprofit. Now we can have a separate conversation about the shenanigans with the publics [phonetic], but particularly when it's sort of like the nonprofit equivalent of a leveraged buyout where you're essentially being extended credit for money you don't really have to theoretically purchase an entity for hundreds of millions of dollars in some cases, as you know,

MR. FINLEY: Basically seller financed transactions, right?

MR. NASSIRIAN: Yeah, I mean, that should be very, I mean, alarm bells should go off all over the Department. I'm really stunned that the Department is willing to tolerate that even for one year in the interest of of getting an audited statement because, you know, on the front end that this thing is a very dangerous financial transaction where a non-profit is basically handing over future revenues in the form of debt payment to somebody who is now in a stronger position because they used to be an equity owner and now they're a creditor.

MS. JEFFRIES: Alright, thank you. Barmak. In the interest of moving us along, I'm going to turn to advisor Dave McClintock, I think he has something he wants to weigh in here. And then we're going to move on.

MR. MCCLINTOCK: Yeah, I just I think I have a clarification question for the timing of what's being outlined here. So, this is part of the application process for the change of ownership, is that a correct statement?

MR. FINLEY: No.

MR. MCCLINTOCK: This is the first

year after the change of ownership?

MR. FINLEY: What what you're seeing is there's a requirement in the regulations the Department be notified of a change of ownership no later than 10 days after the transaction occurs, and there's a materially complete application for approval of the change of ownership that comes in as part of that notification. And then there is a supplement to that application that comes in with the state and accrediting proof within 60 days of that. So we're talking about the evaluation that takes place based on this material that comes in following the change of ownership.

MR. MCCLINTOCK: But before the opening balance sheet would be submitted because you have until the [inaudible]?

MR. FINLEY: Well, that should come in as part of the 60 day timeframe.

MR. MCCLINTOCK: Right, okay. And then maybe this is the same clarification before under (b)(1) here, an institution undergoing a change of ownership that would be the acquiring institution, right? Not the institution being acquired.

MR. FINLEY: Right.

MR. MCCLINTOCK: Is that right? Okay, thank you.

MS. JEFFRIES: Alright. Thank you. So, Greg. You want to move us along here?

MR. MARTIN: Let's go on to, we'll finish, we'll finish 668.176(c), and then we can do a temperature check after the end of (c) when we will have completed 176. Okay, so, moving on to the terms of the extension to meet the requirements for a temporary provisional program participation agreement following a change of ownership, as described in 600.20(h)(3)(i). The institution provides the Secretary with a same-day balance sheet for a proprietary institution or a statement of financial position for a nonprofit institution that shows the financial position of the institution under its new owner as of the day after the change of ownership at the level required by the Secretary. The same day balance sheet or statement of financial position must be prepared in accordance with GAAP published by the Financial Accounting Standards Boards and audited in accordance with GAGAS published by the U.S. General Accounting Office as part of the same-day financial statement, the institution must include a disclosure that includes all related party transactions and such details as would enable the Secretary to identify the related party. Such information may include, but is not limited to, the name, location and

description of the related entity, including the nature and amount of any transaction between the related party and the institution, financial or otherwise, regardless of when it occurred and such financial statement must be a consolidated same-day financial statement at the level of the highest unfractured ownership or at the level determined by the Secretary for an ownership of less than 100 percent. Same-day financial statement must demonstrate an acid test ratio of at least one to one. The acid test ratio must be calculated by adding cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio must exclude all related party receivables, other assets and all assets classified as intangibles in accordance with the composite score.

A proprietary institution's submission must demonstrate a positive, tangible net worth the day after the change in ownership. A positive, tangible net worth occurs when the financial statement statement's tangible assets exceeds liabilities. The calculation of tangible net worth must exclude all related party accounts receivables or other assets and all assets classified as intangible in accordance with the composite score. And a nonprofit institution's submissions must have a positive net assets without

donor restrictions the day after the change in ownership. The calculation of net asset without donor restrictions must exclude all related party accounts receivable, other assets and all assets classified as intangible in accordance with the composite score. If an institution fails to meet the standards of paragraphs (c) (2), (3), or (4) of this section, the institution must provide financial protection in the form of a letter of credit or cash to the Secretary in the amount of at least 25 percent of Title IV HEA program funds received by the institution during its most recently completed fiscal year, or an amount determined by the Secretary, and must follow the zone requirements of 175(d) . A public institution must have its liabilities backed by the full faith and credit of the state or by an equivalent governmental entity, or must follow the requirements of this section for a nonprofit or proprietary institution. And that concludes all the text for 668.176, so we'll open the floor for any comments or discussion before we move on to 167.

MS. JEFFRIES: I just want to remind everyone, the Department has requested that you keep your comments and questions to major points so that we can get through this. We still have several things to do

yet this afternoon. So, Barmak.

MR. NASSIRIAN: Two questions or observations, one, that I certainly understand the notion of a positive net worth without donor restrictions. It is not difficult to envision a way of gaming this through a kind of a phantom sale of an entity to an acquiring institution, say, for a dollar that would have barely any effect on the net worth of the acquiring entity, just a dollar, but then have significant restrictions that encumber future revenues because the sale quote unquote, was in fact a revenue sharing agreement disguised as a sale. So I feel like some language may need to be added there. Donor restriction just hearkens to the standard legitimate nonprofit practice of soliciting donations from philanthropy and otherwise, and you know, somebody into, I don't know, ancient archeology and restricts the donation to those purposes. That's not what we're talking about here. We're talking about revenue sharing agreements that are disguised as as transfers of control. So that's one thing. The other question I had for you has to do with this. And we talked, we touched on this elsewhere. This notion of full faith of credit of a state or by an equivalent government entity, which shall exclude the acquiring entity itself being the

guarantor. But what is this thing about follow the requirements for a nonprofit or proprietary institution? I understand what you're trying to do here again, not citing previous examples, but that's pretty, that's pretty loosey goosey. I think you really need to tighten up the definition of public, not only in terms of finances, but also full applicability of all relevant state laws to the to the entity core [phonetic] public. So, and I will try to produce some language for you between the sessions, but I just wanted to flag that.

MS. JEFFRIES: Thank you, Barmak.

MR. MARTIN: Thank you, Barmak.

MS. JEFFRIES: Kelli.

MS. PERRY: Three questions or comments. First, this concept of same-day financial statements, again, is it the acquiring institution or is it the combined institution?

MR. MARTIN: I believe it's the acquiring, isn't it, Steve, is how it's written?

MR. FINLEY: The same day balance sheet post transaction, there should only be, you know, the acquired institution and the entity acquiring it at that point.

MS. PERRY: Okay. Second thing is in (c)(2), not for-profits, typically do not categorize or

define things as current accounts receivable or current liabilities. So it may just be something to consider based on definition. And then the third thing, (c)(4), where it talks about the fact that the submission they there must be positive net assets without donor restriction. That kind of goes back to the concept that you had asked about, is it an and/or an or as it relates to positive net assets or current fund, in essence, positive operations versus passing composite score. You could have situations where not-for-profits may not have positive net assets without donor restriction as it relates to movements that they had to make as it relates to [inaudible] in different states, however, they do have passing composite scores. So in the first area that we talked about, we're saying it's an or, but then in this section, we're saying that that same-day balance sheet has to have positive, unrestricted or well, sorry without donor restrictions net assets. That may not always be the case.

MS. JEFFRIES: Okay. Thank you, Kelli. If you want to put those questions in the chat so that the Department can look into that for you, I would appreciate it. Greg, we have no further hands up. So are you ready for the temperature check on 668.176 in its entirety?

MR. MARTIN: Yeah. Before we do that, I just want to point out that I'll move on to 177. This is severability. This is an existing section. It just used to be 176 and we moved the appropriate language, applicable language for change of ownership out of 668.15 and moved it into 176, we moved severability to 177. So that's all that's there. I just wanted to point that out. We can go ahead with a temperature check at which point we'll be done with financial responsibility.

MS. JEFFRIES: Okay, so if I could see a show of your thumbs nice and high on the 668.176 change of ownership. Okay, Samantha, I can't see. Oh, okay. Alright, I'm not seeing any thumbs down on this so we can move on. That brings us to getting, starting and hopefully completing change of ownership and starting yet this afternoon, certification procedures. But the Department needs a quick break here to transition from OGC, their OGC people. So why don't we go ahead, what is it, 2:09? Why don't we say? 2:15 we'll be back here, and we'll call that good for our break this afternoon. Okay? So if we could stop the-

MS. JEFFRIES: Welcome back. I want to take note that Donna Mangold is now at the table for OGC. So with that, Greg, I'm going to turn it over to

you to walk us through issue paper five, changes of ownership and changing control.

MR. MARTIN: Thank you, Cindy, and we'll get started with the issue paper on changes of ownership and change in control, and you see the applicable statutory citation and regulatory citation there as well. We'll go into the summary of the issues. We do point out that some of the changes related to changes in ownership are or are not included in this document. We have the financial standards we just went over. So I think they're probably all very fresh in our memories at this point. So a summary of the issues. In recent years, the Department has seen an increase in the number of institutions applying for changes in ownership, many of which result in a change in control. And some of which also seek a conversion from proprietary to nonprofit or public status. These arrangements are often high-risk, as reported by the Government Accountability Office of 59 changes of ownership from a for-profit entity to a nonprofit entity between January 2011 and August 2020, involving 20 separate transactions, one entire chain, including 13 separate institutions closed prior to the Department reaching a decision on whether to approve the requested conversion to nonprofit status. Three-fourths were sold

to a for-profit entity that had not previously operated an institution of higher education, increasing the risk that students may not get the educational experience for which they are paying. One-third had what the GAO termed insider involvement in purchasing the nonprofit organization, that is , someone from the former for-profit owner was involved in the nonprofit purchase as well, suggesting greater risk of impermissible benefits to those insiders. Altogether, those institutions totaled more than $2 billion in a single year. That's award year '18-'19 in taxpayer financed federal student aid. The Department has determined in light of the clear added risk that changes in ownership present that it is necessary to reevaluate the policies and procedures to accommodate growing numbers of changes in ownership, growing complexity of ownership arrangements and increased risk to students and to taxpayers if federal requirements for institutions are not appropriately met. So moving to what we're proposing, the Department proposes to ensure a clearer, more streamlined process for consideration of changes in ownership with more robust procedures for ensuring that such changes ensure compliance with the Higher Education Act and regulation and related regulations. To achieve these broad outcomes, the Department specifically proposes the

following. Under 600.2, to clarify the definitions of an additional location, branch campus, distance education locations, and main campus to address existing confusion. To clarify the definition of a nonprofit institution by specifying non-exhaustive examples of certain types of arrangements that are generally not considered to meet that definition. To include an institution that holds related party financing from a former owner of the institution or an institution that enters into or maintains a revenue-based servicing agreement with a former owner. Under 600.4, institution of higher education proposed to make a technical adjustment to the language that ensures regulatory text is reflective of the statutory language and the definition of an institution by specifying that institutions include public and other not-for-profit institutions. Under 600.20, notice and application procedures for establishing, reestablishing, maintaining or expanding institutional eligibility and certification. Paragaph (g), application for provisional extension of certification. We propose to require that institutions undergoing a change of ownership provide adequate notice to the Secretary by submitting materials at least 90 days prior to the date of the transaction. We would also clarify the Secretary's authority not to

approve the institution's participation in the federal aid programs following the change of ownership. We propose to codify existing practice related to the submission of a new owner's audited financial statements. This provision clarifies existing practice of requiring two years of audited financial statements. If two years is not available, financial surety in the amount of at least 25 percent of Title IV volume, and provides that the Secretary may require additional financial surety as needed in the amount of at least 10 percent of prior year Title IV volume. Moving on to proposed changes to 600.20, notice of application procedures for establishing, reestablishing, maintaining or expanding institutional eligibility certification, paragraph (h), terms of extension. We propose to clarify that the Secretary is not required to rely on the same terms and conditions of the institution's PPA prior to the change of ownership. This would provide the Department with leeway to add additional terms and conditions to the provisional PPA with respect to the change of ownership, regardless of the conditions that were applied to the institution prior to that change. We'd also make technical adjustments to the regulatory language to clarify that following a change in ownership, an institution is placed on a temporary

program participation agreement, (TPPA). This would be a nonsubstantive change designed to better reflect current practice. Under 600.21, updating application information, we would clarify the reporting requirements for change in ownership to better reflect the many types of changes in people or entities that may occur, and that must be reported to the Department, including clarifying when a person, as defined in 600.31, refers to a natural person or an entity. As part of these changes, the Department proposes to increase reporting generally by moving from reporting at a 25 percent change of ownership to a 5 percent change in ownership to ensure the Department has greater visibility into voting blocs, rather in other types of corporate changes that may warrant scrutiny. And under 600.31, change in ownership resulting from resulting in a change of in control for private, nonprofit, private and private, for-profit and public institutions, paragraph (c) , standards for identifying changes of ownership and control. We propose to make technical changes to the definition of ownership or ownership interest already included in the regulations to ensure clear interpretations of when a change in ownership has and has not occurred. We propose to revise the standards for identifying changes of ownership and control for other

entities. Many of the reported changes in ownership of at least 25 percent do not result in a change in control. The Department proposes to instead focus on changes that are historically more closely aligned with changes in control to include changes of at least 50 percent in control or voting interest, changes in a general partner or managing member, and the addition or removal of any person that provides the financial statements to satisfy financial responsibility requirements in the regulations. And finally, to revise excluded transactions language to allow the Department to more easily determine whether a particular type of transaction qualifies as excluded. This paper also refers to changes made in the certification procedures issue paper related to conditions that may be applied to institutions undergoing a change of ownership. So let's start with the actual text, and we're looking at proposed regulations red line for 600.2 and the definitions. So our first change here is a clarification of additional location. And you can see the the clarifying text that has been added. A physical facility that is separate from the main campus of an institution and within the same ownership structure of the institution at which the institution offers at least 50 percent of an educational program. An additional

location participates in the Title IV programs only through the certification of the main campus. We've clarified the definition of a branch campus, a physical facility that is separate from the main campus of the institution is approved by the Secretary as a branch campus and is independent from the main campus, meaning the location is permanent in nature, offers courses in educational programs leading to a degree certificate or other recognized educational credential, has its own faculty and administrative or supervisory organization, and has its own budgetary hiring and hiring authority. Another definition that we are looking at here is distance education, and I do want to note that these changes, while not specific to changes in ownership, add clarity to the definitions of an additional location or branch campus. Specifically, we have added language clarifying an additional location participates in Title IV programs only through the certification of its associated main campus. Under distance education, if we look at that, we see in (6), for an institution that offers on campus programs and distance education programs, the distance education programs are associated with the main campus of the institution. For an institution that only offers distance education programs, the institution is located where its

administrative offices are located and approved by its accrediting agency. This is not explicitly related to changes in ownership, but the language clarifies that distance education programs are associated with the main campus, if the school offers both online and ground-based programs, if it is only online programs, then again, the institution is located where its administrative offices are located. And we have a definition of main campus that we've added here to align with changes that were included above. The main campus is defined as its location is certified by the Department and the accreditor of the college as a main campus. So looking at the actual language, the primary physical facility at which the institution offers eligible programs within the same ownership structure of the institution and certified as the main campus by the Department and the institution's accrediting agency. Also we made some revisions to the definition of a nonprofit institution to clarify in a nonexhaustive list what does not constitute a nonprofit institution. This will mainly address problems the Department has seen in which for-profit institutions seek to convert to nonprofit status, but failed to comply with the statutory restriction that profits cannot inure to any individual. This change clarifies that the Department

will not consider an institution to be a nonprofit for the purpose of the Title IV programs if it maintains related party financing with a former owner of the institution or affiliate of the former owner that is described in (1)(iv)(A) or it maintains a revenue-based servicing agreement with the former owner of the institution or an affiliate of the owner that is described in (B). And we see that reflected in (1)(i)e, a nonprofit institution is owned and operated by one or more nonprofit corporations or associations, and the Secretary has determined that no part of the net earnings of which benefits any private shareholder or individual. And then in (iii) we see is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax deductible in accordance with Section 501(c)(3) of the Internal Revenue Code except that for purposes of participating in the federal student aid programs, a nonprofit institution is generally not an institution that is an obligor either directly or through any entity in its ownership chain on a debt owed to a former owner of the institution or a natural person, or an entity related to or affiliated with the former owner of the institution, or either directly through any entity in its ownership chain enters into or maintains a revenue-based servicing

agreement with a former owner of the institution or a natural person or entity related to or affiliated with a former owner of the institution. And we'll stop there. Those are the changes to the definitions, and we will open the floor for any comments or questions related to the definitions.

MS. JEFFRIES: Kelli.

MS. PERRY: Just a quick question on the first part of the definitions as it relates to branch campus and these changes. Do you anticipate these changes that anyone would have to go back and have a branch campus approved or do these do these changes, would the branch campuses fall within this, I guess?

MR. MARTIN: I'm sorry you're asking whether or not whether we would-

MS. PERRY: We've added to, under branch campus you've now added is approved by the Secretary as a branch campus. Are the changes you're making to this definition something that institutions would then have to go back and reevaluate to see if they have to have a branch campus approved or in most cases would they are to be approved based on the old language?

MR. MARTIN: I'll defer to Donna on that, but I think that currently I don't think we require every school to go back and resubmit. I think

this would certainly be looked at, is always, generally looked at in a recertification process, but I'll defer to Donna on that.

MS. MANGOLD: Yeah, I don't think that there's any intention to to resubmit, and I don't think that this also really reflects a change. It certainly just makes it more specific. But these are the concepts that we've been looking at anyway.

MR. MARTIN: Thank you, Donna.

MS. JEFFRIES: Okay, thank you. Yael.

MS. SHAVIT: Thank you. My comment relates to the definition of nonprofit corporations and is based on experience that our office has had with these types of transactions. I'm hoping to make a couple of suggestions that would just clarify the definition in a couple of instances, I think probably aligned with your intention. So first of all, I would add explicitly the requirement that the nonprofit, a nonprofit corporation is organized for charitable purposes. Second, I would explicitly add that a nonprofit organization must comply with all state and federal transparency and accountability requirements associated with being a charitable organization. And then my my last comment is in addition to the list of exclusions for the purposes of participating in the Federal Student

Loan program that it not include that a nonprofit organization not be one where there was a transfer of ownership from a for-profit, where the new entity continues to have significant contractual or lose significant contractual obligations with the previous entity or any of its owners. So I'll tell you that the context in which I see this. I have seen this regularly in a problematic fashion with long-term leases. And so I think it bears excluding those types of contractual relationships as well.

MR. MARTIN: Yael, do you want to provide any language related to that or just make the-

MS. SHAVIT: I'm happy to work on language to recommend.

MR. MARTIN: Yes. If you have anything, please share with us.

MS. JEFFRIES: Thank you. Carolyn.

MS. FAST: Thank you. Yes, I wanted to say that I agree with Yael's comments completely, and I have a couple of additional thoughts about the definition of nonprofit. I think that is really crucial to this, this regulation, and I think it's a really good thing that the Department is looking at this issue and trying to resolve it. I think it's a very significant. I agree with Yael that there could be some changes to the

section to make the definition of nonprofit work a little bit better here to accomplish what the goal of the regulation is. Most importantly, probably, is that I think that when it's listing the kinds of things that are generally not considered a nonprofit or that would sort of disqualify it from eligibility, that it has to make clear that this is a nonexhaustive list. The issue paper does say that this is supposed to be a nonexhaustive list, but the language of the statute is, sorry, the regulation language is not explicit in that, so that would be my first suggestion is to add on something that explicitly makes it clear that this is not an exhaustive list. And then aside from that, I have a few suggestions that I think we would want to include to make sure that, as Yael said, this is when there is continuing financial contractual relationship that's captured and that can happen in various different ways. So, for example, in (iv)(B), it talks about a servicing agreement, and I would suggest to broaden this so it's not just limited to servicing agreements, but other agreements in which payments from the institution to a former owner are based on revenues of the institution or otherwise comprise a substantial portion of net revenues of the institution and be happy to provide some suggested language. And I can work with Yael or others

who are interested in this section.

MR. MARTIN: Thanks. We'd be interested in seeing any language you you come up with, either in conjunction with somebody else or on your own.

MS. JEFFRIES: Okay. Thank you. Anne.

DR. KRESS: So I just wanted to lift a question that Jamie had in the chat that I had as well, which is in your comments, Greg, you mentioned that section six in the definition of distance education is not directly related to change in ownership. So what is the value of this addition? And is there a motivation on the part of the Department and including this? Is there rationale or some challenges you've seen in the past that would motivate you to put that in this particular document?

MR. MARTIN: Oh, you're talking about six, right?

DR. KRESS: Correct.

MR. MARTIN: Yeah, for an institution that offers on-campus programs and distance education, the distance education programs. Okay. I think this goes beyond a change in ownership. But I think that it's certainly making it clear that increasingly you have a lot of schools that are only distance, that the location of that institution is that it's going to be the

administrative offices and where that location is as approved by the Department and its accrediting agency can come into play with any acquisition, we wanted to make that clear. Beyond that, Donna, do you have any thoughts on that as it relates specifically to change in ownership?

MS. MANGOLD: No, not specifically to changes of ownership, it's just this we because some of the other parts in these definitional changes related specifically to changes of ownership, I think that's why this one got included in this section. It is particularly important to us for purposes of closures if a main campus closes and then there is an online program. You know, how do we deal with those things in the context of closure? So it has other implications, not just changes of ownership.

DR. KRESS: So if I could ask a quick follow up, so are you using this to try to determine where the physical location of the ownership is for that institution?

MS. MANGOLD: No.

DR. KRESS: No?

MS. MANGOLD: No. Because the physical ownership, it's typically ownership is an entity. And so that entity is organized under state laws somewhere. So

and then it has its principal place of business somewhere. So that's what we're looking for in terms of entity ownership. This is more specific to the institution itself. And when these changes were being drafted, this one seemed to be an appropriate thing to put into a definitional change. And we put them in with changes of ownership for convenience. Because most of the other changes in this section do deal with changes of ownership.

MS. JEFFRIES: Thank you. Johnson.

MR. TYLER: Hi, I'd like to just applaud the Department of Education for putting together what clearly you're attempting to remedy a lot of problems we're seeing out here. The specific point I want to talk to has to do with the definition of nonprofit institution in 600.2 specifically in (1)(iv), which has what is not a nonprofit, it talks about essentially the original owner making money off of this, but a lot of these owners turned their entities into corporations. There's one owner of a school who told his shareholders the 80,000 students who enrolled were creating a profit of 34 percent of their operating costs are there, they're making a profit of 34 percent off of them. So I think the structure is a lot more complicated than certainly what someone who's like myself is not

involved in finance in terms of these arrangements. I think you would want to expand this to make sure that the former owner is not just an individual, but a shareholder in corporations that are running the other entity that may be contracting with the new nonprofit.

MS. JEFFRIES: Okay. Thank you, Johnson. Brad.

MR. ADAMS: Yes, I'd like to just add to Anne's comment that many institutions offer distance education programs, so this is [audio] institutions offer distance education programs managed out of additional locations and approved by states other than the state where the main campus is located. Is the Department indicating or requiring now a change that all distance education must be approved and offered from the main campus, even though that may not be the way the institution is currently organized?

MR. MARTIN: Let me take that back again. We'll get a response for you.

MR. ADAMS: If the answer is yes, I just wanted to add what administrative burden that might be to go back to accreditors and states for additional approvals. Anne brought up a great point on that, and I just think it's not the way things are working today, so I just need to understand it.

MS. JEFFRIES: Okay, thanks, Brad. Greg said he'd look at that and get back to you. Barmak.

MR. NASSIRIAN: Yeah, two points. The first one relates to what Brad just mentioned. I don't see why the Department would leave out state authorization from this definition, state authorization is a much more foundational, formative step in an institution becoming an institution before it even gets accredited. So I would suggest you want to approve by its accrediting agency and authorized by its respective state that, you can take that back. I see how it complicates things, even though I think most states now have reciprocity agreements that should take care of the issue of location of additional locations offering distance ed. The second question I had, I like a lot of what I see here, but I'm a little confused and it may become more clear as the conversation goes on. What does it mean that the Department does not view somebody as generally as a nonprofit? Does that mean that if there were to be an acquisition of a for-profit or a nonprofit, that the Department would reject that application? Would it mean that that that the two entities could through some sort of legal mechanism, become one, but would then continue to participate in Title IV in their original form? What does that mean

that the Department doesn't consider somebody that may have nonprofit status under IRS rules from being considered nonprofit for purposes of Title IV? Do they continue to participate separately?

MR. MARTIN: I'm going to refer to Donna on that one.

MS. MANGOLD: They can participate as a proprietary. If we don't approve them for non- profit, they would participate as a proprietary.

MR. NASSIRIAN: Would that take care of all of our concerns? Because as you well know, while some of some of the motivations behind problematic acquisitions may be evasion of certain specific rules that apply to for-profits, the main motivation, I would argue, is the rescaling of a toxic asset under the guise of new ownership. So I don't know that allowing it to participate. I mean, if you detect somebody is actually doing something that is evasive, that has a purpose of evasion at its core, simply treating, allowing it to go through but continue to participate under different regulations may not be an adequate response to that.

MS. JEFFRIES: Donna, do you have anything you want to add?

MS. MANGOLD: Yeah, the issue there is that our regulations allow schools to change ownership.

We don't preclude the change of ownership. So in the context of a change of ownership that is also a request to convert to nonprofit status, we're looking at two things. We're looking at the change of ownership and we're looking at the request to convert to nonprofit status. So we go through a really holistic, thorough examination of both of those aspects. But so long as the school meets the financial responsibility regulationsand the administrative capability regulations.We look at those things to determine whether they can continue to participate. If we have situations that are toxic and we look at whether their conditions that can ameliorate it. But we dolook at things in both aspects. So I used a little shorthand in responding to your question when I said they can participate as proprietary, that would be where they would be left in the proprietary status. But if there are suggestions for other things to be looked at in terms of whether the Secretary should deny a change of ownership as opposed to just the conversion, send them to us.

MS. JEFFRIES: Thank you. I want to make note for the record, that Debbie Cochrane is returning, rejoining the table for state agencies. With that, Debbie you're up next.

MS. COCHRANE: Thank you very much. So

I also share some of the concerns I think that Barmak was getting at with respect to state authorization and would like to get a little clarity on in terms of some of these definitional changes, whether the Department sees those as having a material impact on institutions, main campuses or branch campuses needing state authorization for Title IV, and then secondarily on the definition of nonprofit issue that question. This is something that California has been kind of working through pursuant to some state laws recently. And I think this is a strong start to be looking at some of these issues. I think that the notion that an institution that did not meet these definitions would then be considered a proprietary institution, which I think is what I just heard isn't necessarily clear in the language. And I think some of these definitional changes, they do kind of create these odd situations where you have an institution that is considered a nonprofit pursuant to the IRS, but it doesn't meet this definition of a nonprofit, what is that institution at its core? How do we discuss it? So one way of getting around that might be to think about what are the protections or provisions that are pursuant that are available or applicable to different types of institutions. So if there are particular perceived

benefits of being a nonprofit institution, you know, an institution that's Title IV participating would only qualify for those benefits if they meet the definitions. Just a thought.

MS. JEFFRIES: Thanks for that, Debbie. Brad.

MR. ADAMS: Yes, on nonprofit item four, I understand the Department's intent and several of you know discussions being brought up by this committee on swinging the pendulum back on these nonprofit transactions that have occurred over the past 10 years. With that regard the revised definition of what is not a nonprofit is still missing any kind of materiality threshold. Many, many nonprofit institutions of higher education enter into contracts and partnerships with for-profit companies to provide a wide range of services. For example, rent, construction, marketing, hiring a commercial realtor. You know, the fact that a former owner or affiliate may have a small stake in a for-profit company makes the institution a nonprofit may be problematic. For example, if the former owner owns a single share of stock of a publicly traded OPM, and the OPM has a relationship with the school that was sold, does that qualify as an ownership stake? My opinion there should be some sort of materiality

threshold, a minor obligation of servicing arrangements should not impact a nonprofit status that's been approved by the IRS. Second question, would this be applied retroactively, or applied just going forward?

MS. JEFFRIES: I'd like to encourage you to put ideas of text on the thresholds, please submit them so that the Department can consider them. Jamie.

MS. STUDLEY: I wonder if the Department has in mind or thinks it would be helpful to have any definitions or guidance about what revenue sharing agreements and servicing are so that it captures what you mean, but is not confusing. I don't know that there are everyday versions of those as somebody who's worked [inaudible]. For example, would performance bonuses for exceptional performance above and beyond contract terms be covered? And then going back to the exchange between Barmak and Donna, Donna's comment was very clear if the institution were a separate institution, how these would apply to its not getting the Department's treatment as a nonprofit under the Department's rules. But is it possible for there to be a genuine merger into a nonprofit that met all the tests? Or would that carry the same constraint? And you don't have to answer it now, that's maybe a relatively

technical question. But in general, the direction of the Department being very clear about what its expectations are seems like a positive step.

MS. JEFFRIES: Thank you, Jamie. Donna, I see you're off mute, did you have something you wanted to add or?

MS. MANGOLD: No, I thought there was going to be questions, so I was just getting ready.

MS. STUDLEY: Well [interposing] it was a question about whether there are definitions or what happens if there's a true merger as opposed to a remaining institution that has that kind of agreement?

MS. MANGOLD: Jamie, I think that those things as they are now, it's you know the devil's in the detail of a true merger and you know what kind of entanglements remain. And you know, we are looking at these things. We continue to look at them very, very carefully. And so it does [inaudible] necessarily follow? It depends. I guess it's if there are these things that would fall into those categories we need, we would be looking at them. But then what happens if there truly is a merger? Have those problematic areas been resolved? So it's really fact intensive, very fact intensive.

MS. STUDLEY: So, right. So case by

case and you would look at those factors?

MS. MANGOLD: Yeah.

MS. STUDLEY: In the event of a merger into something that had previously been approved as a nonprofit? Okay.

MS. JEFFRIES: Thank you. I know that there have been a number of questions posed in this excellent discussion on definitions, and I know a number of those are in the chat. To the extent that the Department is able to answer the questions at the moment, they will indicate so. Otherwise, those questions are extracted from the chat and they obtain your answers and come back to you. So I just wanted to clarify that. Alright? Carolyn, you are up next.

MS. FAST: Thanks. Two, two quick points. One is that I recognize this is really a useful discussion and raises a lot of good questions for me and I know it could be, this could be a little bit outside of the scope of this, but it occurs to me that one reason that schools do this in a sense, proprietary schools may do this not only to not be subject to particular standards, but also to market themselves as a nonprofit, which they may find as advantageous sort of like for reputational reasons. And I wonder whether there should be some clarity that the Department would

give to schools that do not meet the nonprofit definition for how they can talk about themselves in marketing? And perhaps they should be limited to make sure that there's no confusion there. If they're not a nonprofit for purposes of Title IV, they shouldn't be able to tell people that they're a nonprofit and that people should go there.

MS. MANGOLD: We actually do that.

MS. FAST: That's excellent, I'm glad to hear that. And I don't know if it's something that needs to be explicit in the reg, but that might be helpful as well.

MS. JEFFRIES: Thanks, Carolyn. Okay, Greg, I'm seeing no further hands on section 600.2, definitions. You want a temperature check? Oh, Amanda's got her hand up now.

MS. AMANDA MARTINEZ: It's more of a just a question. I was going to write it in the chat, but I'll just make it go. It'll go faster if I just speak it out loud. For the definition for 600.2 for definition of additional location, I'm not sure if the Education Department cross-reference this new definition to how it would impact a line or match with ongoing negotiations or past regs, or, I mean, new regs related to prison education programs, but just wanted to

highlight you know prison education programs might be impacted by this additional location definition. So just wanted to, hopefully there was some like alignment internally when thinking about this and how it might impact those programs, since there's changes to them with access to federal aid. That's all.

MS. JEFFRIES: Thanks, Amanda. Greg, I see you're off mute, did you have something?

MR. MARTIN: Yeah, I think it generally does align. I'm trying to think back to prison education and I don't see anything that would be at odds with what we discussed there, but I thank you for bringing it up. But we will look into whether there's any inconsistency there.

MS. JEFFRIES: Alright. Thanks. So Greg, do you want a temperature check on 600.2 definitions?

MR. MARTIN: Yes. Why don't we do that? Then we'll move on to 600.4. Thank you.

MS. JEFFRIES: Okay, so if I could please see your thumbs nice and high, I would appreciate it. I am seeing one thumbs down. Brad, anything that you need to add that you haven't stated?

MR. ADAMS: Nothing additional that I haven't already stated.

MS. JEFFRIES: Okay, great, thank you. Alright, Greg, so that brings us to 600.4, institutions of higher education, is that correct?

MR. MARTIN: That's correct.

MS. JEFFRIES: Okay.

MR. MARTIN: We don't have a great number of changes here, in fact, we just have one. You'll note one change here. We have proposed to add the word other to the definition of an institution of higher education. This conforms the regulations to the definition in the Higher Education Act. It also confirms that public and nonprofit institutions are both subject to the restriction that says profits may not [inaudible] to an individual in either case. So that's in 600.4(a) just with the institution of higher education is public, is a public or other private nonprofit educational institution. And that is the only change that we made for 600.4.

MS. JEFFRIES: Okay. Any comments on that of major concerns? Jamie. Jamie, you're on mute.

MS. STUDLEY: The word other is very confusing to say public or other private. I'm sure your purpose is well-intentioned, but I feel it feels like it's in the wrong place or something. Maybe it's not the moment to figure it out, but.

MS. JEFFRIES: Okay, thank you. Greg, did you want to say something?

MR. MARTIN: I'll take that back. Yeah. I see what you're saying. You think the wording is-

MS. STUDLEY: Well, it's [inaudible]. How can it be a public or other private because publics are by definition not private. It's purely grammatical.

MR. MARTIN: Right.

MS. STUDLEY: If I'm the only one who doesn't get it I will defer to-

MR. MARTIN: No, I see what you, Jamie. I see what you're saying.

MS. JEFFRIES: Okay. Alright. So he's going to look into that. Greg, with that, what do you want to do with this section?

MR. MARTIN: I don't think we need a temperature check here, it was just a pretty much of a pro forma change, though the grammatical aspects of it notwithstanding.

MS. JEFFRIES: So how about moving to 600.20?

MR. MARTIN: Yes, let's do that. Okay, we're looking at 600.20, notice and application procedures for establishing, reestablishing, maintaining

or expanding institutional eligibility and certification. So the change that we we're making here requires institutions that are undergoing a change of ownership to notify the Department and submit a complete application at least 90 days prior to the transaction. Often, the Department has received materials at the last minute without adequate time to review the materials or transactions have changed significantly from the version submitted to the Department to how the transaction was actually completed. This will ensure adequate time to assess the change in ownership and determine what financial protections or other provisions may apply to the school following the change. So let's go through that here. Under the application for provisional extension of certification, if a private nonprofit institution, a private for-profit institution or a public institution participating in the HEA Title IV programs undergoes a change of ownership that results in a change of control, as described in 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis. If no later than 90 days prior to the change in ownership, the institution notifies the Secretary of the change when a fully completed form designated by the Secretary and supported by the state authorization and accrediting

documents identified in paragraph (g)(2)(i) and (ii) of the section and supported by copies of the financial statements identified in (g)(2)(iii) and (iv) of this section, and the institution under the new ownership submits a materially complete application that is received by the Secretary no later than 10 business days after the day that change occurs, and notwithstanding the submission of the items required in (g)(1)(i)and (ii) of the section, the Secretary may determine that participation of the institution should not be approved following the change of ownership. Moving on to (g)(2), the purposes of this section, a private nonprofit institution, a private for-profit institution or public institution submits a materially complete application, if it submits a fully completed application form designated by the Secretary, and we've made changes here to some of some of the text to a recently updated copy of the institution state licensure, the remainder of that language remains the same, a recently updated copy of the document from an institution's accrediting association. Under romanette four, we have audited financial statements of the institution’s new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23 or equivalent information for that

owner that is acceptable to the Secretary. Or if at least two years of audited financial statements are not available, financial surety in the amount of at least 25 percent of the institution's prior year volume of Title IV aid as required in 668.176 and, if deemed necessary by the Secretary, financial surety in the amount of at least an additional 10 percent of the institution's prior year volume of Title IV aid or a larger amount as determined by the Secretary. And just to clarify here, this language codifies existing policy, which requires two years of audited financial statements from the new owner of an institution or, if not available, financial protection in the form of new owner LOC of at least 25 percent of the prior year volume. And this conforms to the existing policy, and we're also clarifying the Department's authority to require additional financial protection separate from the new owner LOC, if required. This would be financial protection to reflect the added risk of the institution following the change of ownership. The LOC may be required by the Secretary and may total at least 10 percent of the prior Title IV volume. So, I'll open the floor to any discussions on that.

MS. JEFFRIES: Brad.

MR. ADAMS: Yes. This is just a

general comment. You know, I think the most important item in the change of control process is clarity and predictability. In order to plan accordingly and ensure transactions are successful, parties need to understand what the Department is going to evaluate the thresholds that must be met and the consequences if they're not met. We're generally supportive of efforts to achieve these goals. Second, the parties need the Department to be able to process pre-acquisition reviews as efficiently and timely as possible. The Department lately has been taking a long time, 6 to 12 months, to conduct these reviews. Does the Department have the authority to charge institution fees to get comprehensive reviews conducted on a more expedited timeframe? I think institutions would consider paying reasonable processing fees if the Department in exchange would commit to a complete and comprehensive pre-acquisition review in a quicker, certain time period. And then question two, is the mandatory preclosing filing proposed in 600.20(g)(1)(i) a pre-acquisition review, or does this serve a different purpose? If so, does it fit into the pre-acquisition review process?

MR. MARTIN: Do you want to address that, Donna?

MS. MANGOLD: I'll address the last

question, which is what function does romanette i serve? The purpose for that is oftentimes schools go through with changes of ownership and or go through with transactions that they believe are either excluded or don't constitute a change of control. And then we're caught in a situation where they notify us of a change and haven't met the requirements of materially complete application in 10 business days. So this kind of change would need to be reported to us 90 days in advance. The other issue is that oftentimes these require a new owner letter of credit, and we're finding situations where schools change ownership, a new owner letter of credit is required and either the school or its council doesn't realize that. And so this gives a chance to get ahead of fire drill situations where schools actually could lose eligibility because if a school changes ownership, it loses eligibility under 600.31. It can continue participating if it complies with G. And then later on, we'll get to H. But there are situations where schools are not prepared to comply with G, and therefore they lose eligibility. This is what we're trying to avoid, we're trying to get ahead of it. So this is not married to a pre-acquisition review.

MR. ADAMS: Okay, it's not tied in the pre-acquisition review. Thank you. And then on the

processing fees, have you had a chance to think about whether or not the Department has that ability to charge fees in exchange for more timely reviews?

MS. MANGOLD: That is something that we have begun to look into and we would be happy to entertain any ideas that any of you would have about what might be appropriate there.

MS. JEFFRIES: Okay. Barmak.

MR. NASSIRIAN: A couple of questions, one of which has to do with whether 90 days is adequate notice, given some of the complexities here. The Department, for example, gives itself, I think, 180 days to review Borrower Defense applications. These transactions are probably vastly more complicated than and consequential than Borrower Defense applications. So whether 90 days is enough, I don't know. I just want to make sure that it is. It sounds to me like the Department is facing a too big to fail phenomenon where you know it's confronted by facts on the ground that it has to accommodate because the deed is done and the Department is placed in this impossible conundrum of either cutting off the school and creating disruptions or taking the blame for them. So you may want to give yourself more latitude on that front, and I'm concerned with this notion of 10 business days after substantial

changes may occur. I mean, you know, it could be done 10 days before the acquisition. The terms of the deal could be significantly different from the terms you reviewed and the acquisition could go through nevertheless. It seems to me like there ought to be a reset if there is a significant enough change that would alter the criteria on the basis of which you may have reviewed an entity. And then with regard to letters of credit, is the dollar amount of the letter of credit tied to the acquiring entities prior year? Because the thing of course we are all worried about is the tiny little fish illegitimately swallowing a big fish. It's a tiny, little fake nonprofit, acquiring a very large for-profit business to evade bad publicity or reputational damage or regulation. So tying it to the prior years, I hope it's the combined Title IV funds for the two institutions, not just the acquiring institution, because the acquiring institution could be an impoverished little college that has really no legitimate way of acquiring the bigger entity on the up and up.

MS. JEFFRIES: Quick announcements. Emmanual is coming to the table as well as Jaylon Herbin, so welcome. Jamie. You're on mute, Jamie.

MS. STUDLEY: I thought Emmanual was ahead of me, but your call.

MS. JEFFRIES: Well, yeah, he's just joining now, so he'll get in queue.

MS. STUDLEY: It would help me and maybe others if Donna could explain the relationship of the at least 90 days in advance notification of a change in ownership that's planned and to romanette two, the accrediting associations copy of the document about accreditation. Are you asking at what, and I realize only a little of this is new, but the 90 days is a change. What is it that you are expecting from the accrediting agency at that point that the transaction is approved by us or that this institution is accredited now and then separately, that the transaction will be reviewed? Why do those two relate?

MS. MANGOLD: Okay. Romanette one, the 90-day requirement is not a review of the transaction. It simply, think of it as an early alert. Many schools give us lots of heads ups. They say, we're going to do this. These are the new owners. They want some sort of a pre-acquisition review. We send out an exhaustive document request letter, they comply, we review. It's a very complex process. This is a heads up. We're going to change ownership. There will be a form to give us sort of basic information because what we're trying to avoid there is a situation where you need a new owner, LOC

potentially, and you've changed your, you've gone through your transaction and you're prepared to get a new owner LOC. And then the requirement for the accrediting agency, Jamie, is it marries the G requirements, which are not the approval of the change of ownership, but simply that you are accredited and you have state authorization, so that we know you at least meet the initial requirements that you're going to have to meet 10 business days after you change.

MS. STUDLEY: So you would know the accreditation status, and that would also give you a chance if there were a concern or a sanction to get a fresh indication of that while you're looking at the heads up.

MS. MANGOLD: Yeah.

MS. STUDLEY: Okay.

MS. MANGOLD: But this is basicallyan early alert, we're going to do this because we find out about things after it happened and then it's trouble.

MS. JEFFRIES: Thank you, Jamie and Donna. Jaylon.

MR. HERBIN: Thank you. So my question really is, Donna just alluded to that this is sort of like a warning pretty much for the institution to get to Department of Education. But going back to Barmak's

question, I still don't believe 90 days is enough time. If you think about the student protection, what takes place when they're trying to protect the students during the change in ownership before and after? So what happens if you know something falls through the cracks and they don't meet that requirement or the change of ownership, then how are the students going to be protected by the Department of Education during this time? And so I think I would like to keep that as a focal point as well.

MS. JEFFRIES: Great. Thank you. Brad.

MR. ADAMS: Thank you. Just going back to romanette one here, which looks like now may mandate pre-acquisition reviews. I know in the past pre-acquisition reviews have always been advisable, generally recommended for all the reasons Donna Mangold just suggested. But based on Section 498 of the HEA, where is the authority to mandate a pre-acquisition review in all situations?

MS. MANGOLD: It really-

MR. ADAMS: The risk of not submitting a materially complete change of ownership application within 10 days is on the institution. We support the Department making the risk of failing to do a pre-acquisition review better known to all institutions,

particularly private nonprofits that may not be familiar with those requirements.

MS. MANGOLD: This is not a mandatory pre-acquisition review. It's just not. We want to make sure you are accredited. We want to make sure you have state authorization and we want to make sure that we know enough about this transaction to let you know if you need a letter of credit. You know, the alternative is we end eligibility for schools who walk into a trap in terms of not having proper advice, just not knowing and they change ownership and 10 days goes by and they cannot meet those requirements. So this is not a mandatory pre-acquisition review. At least that's certainly not the intent of this.

MR. ADAMS: Thank you.

MS. JEFFRIES: Thank you. I want to make note that Kelli Perry is back at the table for private nonprofits. Welcome back, Kelli. Greg, I'm not seeing, oh, Brad's got his hand up again.

MR. ADAMS: Yes, ma'am. Sorry, I didn't intend to go back to back, but I did want to [inaudible[romanette i believe it is, although it's marked out, the additional 10 percent financial surety. The question to the Department would be, what criteria would the Secretary use to determine if a financial

security or letter of credit that is larger than an additional 10 percent of Title IV is needed? It seems to be intentionally open-ended to give the Department maximum flexibility. And could it be capped at 75 percent to 100 percent? You know, I'd like to have the Department have some justification bullets as to actions that would impose a surety above 10 percent, to give the institution an opportunity to respond before it becomes effective.

MR. MARTIN: Thank you.

MS. JEFFRIES: Alright. Thanks, Brad. Alright, I'm not seeing any more hands, Greg. Did you want a temperature check on 600.20(g)?

MR. MARTIN: Yeah, let's take a temperature check on (g).

MS. JEFFRIES: Okay. Alright. So 600.20, could we, on paragraph(g), if we could see your thumbs, please? Okay, I see one thumbs down, anything to be added? Okay. Alright, Greg, you want to move on to Section-

MR. MARTIN: (h).

MS. JEFFRIES: (h).

MR. MARTIN: So moving on to paragraph (h), terms of exclusion. And the first change there is in (h)(1). If the Secretary approves the

institution's materially complete application, the Secretary provides the institution with a temporary provisional program participation agreement, or TPPPA. The change there conforms the references to the PPA to instead refer to the temporary provisional PPA, which is what the Department currently offers to institutions following a change of ownership. So this recognizes current practice. The next change there is in (h)(2), the TPPPA expires on the earlier of the last day of the month following the month in which the change of ownership occurred unless the provisions of paragraph (h)(3) of the section apply, the date on which the Secretary notifies the institution that its application is denied, or the date on which the Secretary cosigned a new provisional participation agreement or PPA. And this language simply flips the order of one and three to reflect the chronology of these events. Moving on to (h)(3). The TPPPA will expire under the provisions of paragraph (h)(2)(iii) of this section. The Secretary extends the provisional TPPPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(iii) of this section, if prior to that expiration date, the institution provides the Secretary with the financial aid information required in 34 CFR 668.176. That's in the financial responsibility section we just

reviewed. And because of that cross reference, the text in romanette is no longer deemed necessary, and those are the changes for (h)and the entirety of 600.20. So we'll open the floor for discussion on that before we move to 600.21.

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

MS. FAST: Just wanted to offer some support for the change that the Department is making to omit language that would have required the Department to apply the same terms and conditions to a provisional PPA. That doesn't make sense. The change makes sense, and we are supportive of it to permit the Department to impose conditions where it's necessary to protect taxpayers.

MS. JEFFRIES: Thank you, Carolyn. Kelli.

MS. PERRY: In three, should the reference to paragraph (h)(2)(iii) be (i) because you made the switch? Or is that still appropriate the way that that reads?

MS. MANGOLD: You are correct. We'll make a note of that.

MR. MARTIN: We need to change that.

MS. JEFFRIES: Thank you, Kelli. Anne.

DR. KRESS: Just another sort of language question. In two three, it goes back to saying provisional rather than temporary provisional. So should it say until another temporary provisional is assigned? Or what's the distinction between temporary and temporary provisional if it's really supposed to be two different things?

MR. MARTIN: Can you address that, Donna?

MS. MANGOLD: Sure. When the institution changes ownership after, assuming they comply with the 10-day requirement of a materially complete application, we can issue them, we typically issue a temporary provisional program participation agreement. Then as long as they meet (h), the agreement continues month to month. When we actually approve the change of ownership and impose any conditions, we then issue a provisional program participation agreement. Those provisional PPAs, following a change of ownership, are governed by 668.13. So the regulations, as currently written, refer to both of both kinds of participation agreements as provisional program participation agreements. But the piece of paper that schools actually get following a change of ownership and that continues them in participation until we actually approve or

disapprove, is a temporary provisional program participation agreement. So that distinction there, using temporary and then not using temporary is correct and intentional.

DR. KRESS: Okay.

MS. JEFFRIES: I'm sorry. Greg, I don't see any further hands. Do you want a temperature check on (h)? Oh, Barmak. Barmak's hand's up now. Barmak.

MR. NASSIRIAN: Sorry, I did it. I did it behind your back, Cindy. Tried to get one past the goalie. So I just want to point out that part of the challenge here is that the Department is attempting to sort of like landing a 747 and a Cessna 152 at the same airport. I think 90 days may be perfectly reasonable for pre-acquisition review. The Department may be able to very quickly take care of it and be done. I worry that that that could be entirely inadequate for purposes of satisfying a proper review of complex ownership changes--the ones that we should all worry about that as a consequence of which they could comply with the 90-day provision of information. Things could change very substantially in the interim. They can even comply with that, and we would end up with this month-to-month TPPA for a fairly extensive period of time before the

Department could really decide that the acquisition should not be approved if continued participation should not have and would not have been approved had it had enough time to review the terms of any arrangement. So I don't know what the solution is, but it seems to me that we're sort of writing one size fits all here that you may want to mandate a longer period of notice or additional conditions associated with more significant dollar amounts at risk.

MS. JEFFRIES: Thank you, Barmak. Greg, are we okay to do the temperature check on 600.2(h)?

MR. MARTIN: Yes.

MS. JEFFRIES: Okay, let's see your thumbs, please, on 600.20(h). Ashley, I can't see yours. Oh, there you are. Alright, it looks like there are no thumbs down, so that's a good thing, so we're going to now move into 600.21. I want to note to the committee that we have approximately one-half hour before public comment. And I would encourage you to get through the rest of this issue paper, 600.21 and 31 because you are going to have a full agenda tomorrow between certification procedures and 90/10. So with that, Greg, you want to move us into 600.21?

MR. MARTIN: Sure. So we're looking at

updating application information here, reporting requirements, except that's provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs of any of the following. And then we move down to where the changes are here. We have throughout the section added language to clarify when a person refers to a natural person versus a legal entity. Since both are currently included in the definition of a person in the regulations in 34 CFR 600.31. So starting with (a)(6), a natural person or legal entity's ability to affect substantially the actions of the institution if that natural person or legal entity did not previously have this ability. The Secretary considers a natural person or legal entity to have this ability if the natural person acquires alone or together with another member or members of his or her of their family, at least a 25 percent ownership or voting interest in the institution, direct or indirect, as defined in 600.31(b), the entity acquires alone or together with an affiliated natural person or entity, at least a 25 percent ownership or controlling interest in the institution, direct or indirect, as defined in 600.31(b), the natural person or entity acquires either alone or together with another natural person or entity

under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent ownership or controlling interest in the institution, direct or indirect. Or the natural person becomes a general partner, managing member. chief executive officer, or chief financial officer of the institution or of an entity which has at least a 25 percent ownership or controlling interest in the institution, direct or indirect, as defined in 600.31(b) or the entity becomes a general partner or managing member of an entity which has at least a 25 percent ownership or controlling interest in the institution, direct or indirect, as defined in 600.31(b). Then we move on to changes in (a)(14). In addition to the reporting required by paragraphs (a)(6) and (b) of this section, any change in the ownership of the institution that does not result in a change of ownership as described in 600.31 and subject to the requirements of 600.20(g) and (h), including the addition or elimination of any entities in the ownership structure, a change of entity from one type of business structure to another, and any excluded transactions under 600.31(e) and this provision adds that the institutions must report any change in ownership that does not result in a change in control, such as changes in the ownership structure or the entities involved or

excluded transactions. Then in (a)(15), in addition to the reporting required by paragraphs (a)(6),(a)(14) and (b) of this section, any changes in the ownership of the institution, any change in the ownership of the institution, rather, that does not result in a change of control, as described in 600.31 and subject to the requirements of 600.20(g) and (h), whereby a natural person or entity acquires at least a 5 percent ownership interest, direct or indirect in the institution. And this provision lowers the threshold for reporting new acquisitions in ownership from 25 percent to 5 percent ownership interest in the institution. This allows for greater Department insight into the changes in ownership that may be occurring and will allow the Department to assess whether changes in combination or rather changes in combinations of owners may constitute a change in control. So we'll leave it there and open the floor for comments.

MS. JEFFRIES: Anyone care to comment? Barmak.

MR. NASSIRIAN: So a couple of thoughts. One of which again, I understand the 25 percent threshold in the case of small businesses. It is entirely inadequate for purposes of understanding who controls a publicly traded corporation. A beneficial

ownership is threshold under SEC rules that is set at 5 percent. Insiders are defined as folks who own 10 percent of shares, so you may want to separate that because that's a fairly high threshold for the vast majority of corporations. There are very few publicly traded corporations in this space where any one entity owns 25 percent of the shares. What is lacking here, just again addressing past abuses, is creditors. What do you do when somebody has extended so much credit to an entity that without necessarily being on the board or being an officer or director of the entity, they can basically call the shots as privileged creditors of that entity. It seems to me like you need to do something with regard to that and also ensuring that you don't end up with fractured ownership where friends and family together, each of them below the threshold, but together actually exceed the threshold.

MR. MARTIN: Thank you, Barmak.

MS. JEFFRIES: Thanks, Barmak. Johnson.

MR. TYLER: Yeah, I would just like to add, I once had to study a case involving a for-profit in our city in New York and basically four people in the company sold a lot of stock to investors and then sold it like three days later and made a huge profit. The

case ended up in federal court, that's how I learned about it. So I want to echo what Barmak said that there are a lot of people involved and more than simply family members who may be the shareholders here who need to be scrutinized. So I appreciate the goal here. I feel like you need lawyers who specialize in this sort of insider dealing to really understand all the permutations of it to make sure we're covering everyone.

MS. JEFFRIES: Thank you, Johnson. Greg, did you have something to say? Okay.

MR. MARTIN: Oh, no.

MS. JEFFRIES: Alright, great. Anyone else? If not, I think we can move to temperature check on 600.21. Can I please see your thumbs? Amanda, I can't see yours. Thank you. Alright, there are no thumbs down. Thank you. Thanks, Greg, you want to move us into 600.31?

MR. MARTIN: Sure. So we're moving on to 600.31, change in ownership, resulting in a change of control for private, nonprofit, private for-profit and public institutions. So our first change here comes under (b) definitions, the following definitions apply to terms used in this section. And see here under a closely held corporation, including the term close Corporation, means a corporation that qualifies under

the law of the state of its incorporation or organization as a statutory close corporation or if the state of incorporation or organization has no close corporation provision, a corporation, the stock of which is held by no more than 30 persons and has been and is not planned to be publicly offered. We move down to a change in in two. We proposed this change simply to clarify the language, rather an interpretation of determining whether changes in ownership have occurred. This clarifies that changes at the top of the entity constitute a change in ownership. For purposes of determining whether a change in ownership has occurred, changes in ownership of the following are not included, so just changing what's in two and retaining what is what is below that. And we clarify here the language determining, again, whether those changes have occurred and clarifying the changes at the top may constitute a change in ownership rather than acquiring one of these examples. Moving on. There are changes in other entities. Three other entities, the Department has proposed changes in this section to what we consider a change in ownership to also result in a change of control, while the current threshold is 25 percent, the Department's experience is that most changes in control occur at or above 50 percent. Accordingly, we have

deemed a change in ownership to result in a change of control, if the change is at least 50 percent control interest in the institution. Coupled with the above reporting requirements that have lowered the reporting threshold from 25 percent to 5 percent ownership interest. We believe this will allow the Department to focus its resources on institutions that require the greatest attention. Without sacrificing a review of institutions that fall below that level. So we'll look at the actual changes there in three. The term other entities means an entity which is not closely held or required to be registered with the SEC and includes limited liability companies, limited liability partnerships, limited partnerships and similar types of entities. The Secretary deems the following changes to constitute a change in ownership, resulting in a change of control of such an entity, a person or combination of persons requires at least 50 percent of the total outstanding voting interests in the entity or otherwise acquires a 50 percent control. A person or combination of persons who holds less than 50 percent voting interest in the entity acquires at least 50 percent of the outstanding voting interest in the entity or otherwise acquires 50 percent control. A person or combination of persons who holds at least 50 percent of

the voting interests in the entity ceases to hold at least 50 percent voting interest in the entity or otherwise ceases to hold 50 percent control. A partner in a general partnership requires or ceases to own at least 50 percent of voting interest in the general partnership or otherwise acquires or ceases to hold 50 percent control. Any change of a general partner of a limited partnership or similar entity if that general partner also holds an equity interest. Any change in a managing member of a limited liability company or similar entity if that managing member also loses an equity interest, a person acquires or ceases to hold 100 percent or equivalent direct or indirect interest in the institution or the addition or removal of any person that provides or will provide the financial statements to meet any of the requirements of 34 CFR 600.20(g)(h), subpart L of 668. And the Secretary deems the following interests to satisfy the 50 percent threshold described above, and this section further clarifies that control does not need to be through a single individual or entity, but can occur in certain combinations of individuals. So looking at this. The combination of persons, although each with less than 50 percent voting or controlling interest in the entity, hold a combined voting interest of at least 50 percent as a result of

proxy agreements, voting agreements or other agreements, or by operation of state law. A combination of persons, although each with less than 50 percent voting or controlling interest in an entity holding combined voting or controlling interest of at least 50 percent as a result of common management and control of that entity, either directly or indirectly, or a combination of individuals or family members, as defined in 600.21, although each with less than 50 percent voting or controlling interest in an entity holds a combined voting or controlling interest of at least 50 percent. And notwithstanding the foregoing, if a person alone or in combination with other persons, as described in paragraph (c)(3)(i) through (iii) of the section has less than a 50 percent voting or controlling interest in an entity, the Secretary may determine that the person, either alone or in combination with other persons, has actual control over that entity and is subject to the requirements of this section. Any person alone or in combination with other persons has the right to appoint a majority of any class or board members or an entity or an institution is deemed to have control. This language adds that the Secretary may deem change in control to occur below 50 percent if he or she determines that another individual with less than a 50 percent interest

in the institution does have control over the institution or an individual or combination of individuals has the right to appoint most of the board members of the institution and has control of the institution. See language eliminated below that. We have eliminated this language because we do not believe it necessary, given the changes above. The additions reflect these situations. And that covers it for (c), so I'll open the floor for discussion or comments related to paragraph (c).

MS. JEFFRIES: Okay. Brad.

MR. ADAMS: Yes. So this comment's in other entities, romanette two, just want to state for the record, that this, I'm not a corporate lawyer and these are some complex things here. So we're still thinking about this and if I have any language changes, we'll send them to you. I did want to ask Donna, the Department on (c)(3)(ii)(G), I thought I remember there being a threshold in the past, around 100 percent owner not, maybe it was 5 percent, maybe 25, I'm forgetting, but not requiring a change of ownership. Is there any thought around (G)? Is it if a person goes from 100 percent owner to 99 percent under, that's a notification. Am I reading that correctly?

MR. MARTIN: I'll let Donna respond to

that.

MS. MANGOLD: Let me take a look. Maybe we need to look at the language. We're really focusing on someone who, an entity, a person who acquires 100 percent interests. For example, like a sole member of an entity or then relinquishes that, a lot of these provisions here are to sort of avoid some of the debate back and forth as to control, not control that these are presumptions about control. But no, we're not talking about 100 to 97. So we probably have to take a look at the language.

MR. ADAMS: I read it anything other than 100 required notification. Thank you.

MS. MANGOLD: It's not in the notification provision. Right now, we're actually in what is a change of ownership resulting in the change of control. So that's what we're talking about here.

MS. JEFFRIES: Okay, Greg, I don't see, oh Barmak.

MR. NASSIRIAN: Making sure you're paying attention, Cindy. So honestly, my eyes glazed over when I saw this language and I don't know that I know. I think I know less now than I did before this explanation. I'm struggling to understand where in this section we define which specific combination of natural

persons. We are talking about when there is a shift above that threshold of 50 percent. Because I mean, ownership can change, and there is always a subgroup of the of the 100 percent of equity in any corporation, some subgroup will own half of it. Is it any random pair, in other words, is the combination of any random grouping? Are we attempting to identify a group that have a business affiliation with each other, who then together cross that threshold?

MS. MANGOLD: That's correct. And the other thing-.

MR. NASSIRIAN: Where does it define what that relationship is?

MS. MANGOLD: Well, we say it pretty broadly. We talk about voting agreements, we talk about family relationships, we talk about proxies. And you know, it would be a person or combination. Let me take a look again. Over in (3), where we, in (ii) we talk about a combination. And then in (iii) , we try to explain what a combination might look like. And so it would be proxy agreements, voting agreements, other agreements so that it's not just random groups of people that you have 50 percent leaving at some point. That 50 percent would have had to be in control, and now they are no longer in control.

MR. NASSIRIAN: So if there is a gentleman's nod to work together without signing an actual agreement, are we letting them off the hook?

MS. MANGOLD: We have to do these things based on documents and evidence. And in terms of the amount of time it takes us to do this, the amount of resources it takes to do it. Getting behind a gentleman's nod would be tough. You know, sometimes we can find out because we do our research of other relationships. You know, there may not be a signed paper, but we know people have been in business before. So we ask a lot of questions. And this, you know, every gentleman's nod, person's nod, we may not catch. We probably won't catch most of them. But, you know, to the extent that we know of schools and we know people who have been involved in schools before and we know those relationships we can look at, we will be look at those things.

MR. NASSIRIAN: I appreciate that answer, and I understand it, certainly, but I would encourage the Department to think creatively about putting some catchall somewhere at least post facto because I understand you can't go investigating everybody on the front end to see who knows who. But there ought to be something post facto that that allows

the Department to constructively suggest that people were acting in concert with each other despite the absence of any written agreement. And the reason is that in the worst possible cases, fraudsters generally don't execute formal contracts with each other, and that's the danger we're attempting to fend off here, at least again on the back end.

MS. JEFFRIES: Thank you, Barmak. Brad, your next. Emmanual Guillory is coming to the table with a question. And then after those two, I think I'm going to ask Greg to walk through the very last change for this, and I would like to get to a temperature check on this document to complete this issue for today, clearing your path for tomorrow. Okay?

MR. MARTIN: Thank you.

MS. JEFFRIES: Brad.

MR. ADAMS: Thank you, Cindy. Just another quick clarifying question for Donna. Do the standards that we're talking about here apply equally to private nonprofits and controlling organizations? For example, would a religious order or nonprofit foundation that operates a college be subject to the same test?

MS. MANGOLD: There is no distinction here to the to the status of proprietary or nonprofit.

MS. JEFFRIES: Thank you. Emmanual.

MR. GUILLORY: I had a quick question as it relates to nonprofit governance and our board structure, and so it kind of builds on what Barmak was asking. It comes down to the combination of persons, and so I appreciate the answer that you gave on page 12 and kind of pointed us to in (iii) and how you're defining, in some ways, the combination of persons. But at the same time, like on a on a board of 12 people per say, I guess that combination of persons would be, we don't know the the exact number. It would have to just kind of correlate to what you have outlined here, which could be the result of proxy agreements, voting agreements, other agreements or the result of common management and control of that entity. I just think for us, we just want to be able to understand a little bit better. And then the other thing on page 12 is in (h). Could that be a CFO being removed from an institution? Does that qualify since you have here the additional removal of any person that provides or will provide the financial statements to meet any other requirements? So I guess some clarification [inaudible].

MS. MANGOLD: And you know, part of this is that we don't have the entire regulation printed out here. So in 600.31, thedefinition of the word person means both a natural person and the legal entity. So

this regulation, 31 is a little bit different that's why we had to specify it in 21, this does not mean the additional removal of a CFO. This means the addition or removal of the entity at which level the financial statements are provided. The level that the entity that provides the financial statements. And then as to your other question about changes in board membership, we're not talking about changes in board membership because those don't constitute a change of ownership, the threshold here is a change of ownership that results in a change of control. So movements among boards, whether they stay the same or whether there is movement is not what we're looking at here.

MR. GUILLORY: Okay, thank you.

MS. JEFFRIES: Thank you. Okay, Greg, can you walk the committee through that very last change?

MR. MARTIN: Certainly, I'd be glad to. So we're looking at (d), Covered transactions. I'm sorry, there are no changes there. We're moving on to (e), Excluded transactions. We aremaking the point here in (e)(3) that we've revised this language to provide clarity to the field and to the Department, while retirement can sometimes be difficult for the Department to assess, resignation and transfer is a more

straightforward concept to implement. We do not believe this makes any substantive change to the meaning of this language, so I'll just read it here. So it's upon the resignation from the operation of the institution by an individual owner who has been involved in the management of the institution for at least two years preceding the transfer, and who has established and retained the ownership interest for at least two years prior to the transfer to another individual owner with direct or indirect ownership interest in the institution who has been involved in the management of the institution for at least two years preceding the transfer, and who has established and retained the ownership interest for at least two years prior to the transfer.

MS. JEFFRIES: Okay. So with that, any comments on that? Can we stop sharing? Thanks. Barmak.

MR. NASSIRIAN: Yeah, under covered transactions, you may want to take another look at the most current practices that ought to be alarming to all of us, so I would I would consider something along the lines, it's not, transfer of assets is one thing, but transfer a significant or commitment of significant future revenues should be another covered transaction that, for all intents and purposes, could in fact be equivalent to a change of ownership. If you're

encumbering, you know, 50 percent of your future revenues pursuant to an agreement with an outside party, you may well have handed control of the institution to that party. It's not just transfer of assets.

MS. JEFFRIES: Thank you, Barmak. I want to note that Kelli Perry has rejoined the table. Greg, did you have something, are you good?

MR. MARTIN: No, I'm good.

MS. JEFFRIES: Okay, Jamie.

MS. STUDLEY: Yes. Can you explain the relevance of the two-year issue in number three?

MR. MARTIN: I'll turn that one to Donna if she can-

MS. STUDLEY: She gets all the hard ones, always.

MR. MARTIN: Oh yeah, she does. When it comes to this topic, yes.

MS. JEFFRIES: I do want to remind you, we're two minutes from public comment.

MS. MANGOLD: Two minutes, two years. Jamie, that was in the original language. It had to do with the retirement of a person. And you can see in the text that hasn't been changed, it talks about two years of the person who had been involved. So is your question whether we wanted to make sure that there was at least

some investment in management of the person who's transferring stock? So for that reason, we put it at two years, maybe it's five years, maybe it's 10 years, it was just matching the language as to the person who would be acquiring the stock or the interest. So if there are suggestions for maybe making that period different, we'd be open to look at that.

MS. STUDLEY: I'll do it in writing.

MS. JEFFRIES: Great. Thank you. Alright. With that, I would like to see your show of thumbs on a temperature check on 600.31, the entire document. Alright, I'm not seeing any thumbs down. Great job today, committee.

MR. MARTIN: Thank you, everyone.

MS. JEFFRIES: Alright, with that, Brady, can you start letting in our public commenters, please?

MR. ROBERTS: Yes, ma'am. I just admitted our first speaker, who is Mr. Sean Braunstein, who's a veteran representing themselves.

MS. JEFFRIES: Hi, Mr. Braunstein. You will have three minutes to speak and that three minutes will start when you start speaking. Welcome.

MR. BRAUNSTEIN: Thank you. Good afternoon, my name is Shawn Braunstein. I'm an Army

veteran and recipient of educational benefits that I earned while serving our country on active duty. I'm here to tell my story in the hope that you can you ensure that other veterans and students do not experience what happened to me at Hesser College. After I left service, I was immediately bombarded with advertisements, mail and phone calls from colleges. I wanted to use my GI Bill benefits to pursue a career in the medical fields. One of the schools was Hesser College, which was owned by Kaplan. This school interests me because it was nearby, offered a medical assisting program and promise me that I could use my GI Bill benefits for my education. They recruited me hard by continuing to call me until I agreed to meet with them. When I met with them, I didn't even fill out an application. They admitted me on the spot. The admissions rep told me that classes would start the following week, and if I didn't sign up that day, they would fill up and I would miss out. The rep also guaranteed that based on my experience and my new degree that I would earn, that I would get a job after graduation. Facing life as a civilian with a mountain of medical issues, including a traumatic brain injury I sustained, I felt lost in a world of unknowns. I felt a lot of pressure to start right away and was promised

that the school had high quality programs that will lead to great jobs for veterans like me. Most importantly to me, the admission rep promised that the GI Bill would cover everything. I believed what they told me, so I signed up that day. Then the problems started. The financial aid office told me that the GI Bill took too long to come in, and I would have to take out loans to cover tuition or risk being dropped from all classes. They also told me that my benefits did not cover all the tuition and books and extra loans were required. That didn't make sense, but I trusted them. I wasn't learning much, and when they made promises to me to accept credits and work experience I had earned, but then didn't deliver it, I switched my degree major to criminal justice. I worked hard and graduated with my bachelor's degree, but could not find a job in criminal justice. The school never provided job placement services, resume critiquing and despite promising a guaranteed job after graduation, I again was lost. But at that point I had $50,000 in student loan debt despite being told that the GI Bill would cover everything, my degree from Hesser was completely worthless and the loans dragged me down for years. I even went into default at one point because I didn't have a job and could not afford the payments. Years later and a ball of

red tape, I was able to have my loans canceled through total and permanent discharge disability. This discharge that was given to me actually hurt me, and as it counted as significant income on my taxes and eliminated a tax refund that I desperately needed and counted on. To add insult to injury, while reviewing the documents and preparing for my testimony today, I discovered not only did the school receive my GI Bill benefits for my attendance, but they double dipped by receiving and keeping additional federal dollars and the student loans I was forced to take out. I'm here today to ask you to protect all students and veterans from targeting their GI Bill benefits and to stop schools from offering programs that leave students with nothing but a mountain of debt and a worthless degree. Thank you for your time.

MS. JEFFRIES: Sean, I want to thank you very much for your comment and thank you for your service.

MR. BRAUNSTEIN: Thank you, sure.

MS. JEFFRIES: Okay, Brady, who do we have next?

MR. ROBERTS: I'm admitting Giulio, the owner of Paul Mitchell Cosmetology School. And if you wouldn't mind muting your live stream, I think

that's probably the background noise that we're getting.

MS. JEFFRIES: No, not your microphone for this meeting, the live stream that you have going in the background needs to be muted. If you're live streaming, the mute, where did he go? Can I get someone? Can you? Okay. Can you unmute yourself, please?

MR. VEGLIO: There we go. Sorry about that.

MS. JEFFRIES: Okay, appreciate it. You will have three minutes to speak and that begins when you start speaking, and welcome.

MR. VEGLIO: Okay, thank you. Well, good afternoon. My name is Giulio Veglio, and I'm a graduate from public high school with a learning disability that made everything about learning hard and challenging. I failed at traditional college and ended up pursuing a career in beauty school. The hands-on education was a perfect fit for my style of learning, and the small, positive vocational program became a catalyst for my life. Today, I am proud to be a cosmetology alumnus, a highly accomplished world travelled hairstylist and privileged owner of cosmetology schools. To clarify my position, I am for regulations to make sure we use taxpayer funded programs wisely. So let's make rules that tighten the loopholes,

but let's make sure the rules are smart and simple. On gainful employment, if the goal of the Department is to make sure the tuition charged by the schools or the debt acquired by the student has a justified outcome in terms of salary, great, set the parameters in definite terms. Every year, the Department should use the national medium published by the Bureau of Labor and cap the tuition amount to a one-year salary potential of the student by the SOC code. Simple and straight [phonetic], if my certificate or degree pays an annual medium of 32,000 dollars, then the tuition for the entire program of the study leading to that should not exceed what I make in a year. Tuition then justifies the established outcome. If I go to a college and pay $160,000 in tuition but have an annual earning potential of only $45,000, should the college charge me $160,000? Absolutely not. In that case, I should not pay more than $45,000, a fair and justified tuition amount. Keep metrics simple. Use standard, published and annual learning potentials, put guardrails to ensure schools don't charge tuition that students have no capability of paying back. If the mission of the Department of Education is to provide equal access to education, have an educated and productive workforce, then let's not limit the work of the sector does to raise the bar in

vocational education. Thank you for your time.

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

MR. ROBERTS: Cindy, I'm admitting. Dr. Jay Seller, who's here representing themselves.

MS. JEFFRIES: Good afternoon, Dr. Seller, you, welcome to the public comment. You will have three minutes to speak, commencing at the onset of your talk.

DR. SELLER: Good afternoon, everyone. My name is Dr. Jay Seller, and I want to thank you for allowing me to be here today. I want to take this opportunity to share my point of view on higher education and more specifically, my experience attending a for-profit University. After completing two years of undergraduate work in Minnesota, I transferred to the University of Colorado to continue my undergraduate education, seeking a bachelor's degree in business administration. I quickly learned that CU would not accept all of my undergraduate transfer credits, even though the coursework was in my major, my intended major. This was a major setback to my graduation timetable and considerable financial burden. I searched for an alternative institution that would recognize my coursework and maintain my graduation timetable. I

discovered the University of Phoenix and what they had to offer. I was persistent and I persevered. The University of Phoenix seamlessly transferred my credits and I was able to begin my program immediately. I graduated with a bachelor's degree in business administration and management, and I graduated with no debt. I attended classes three nights a week for two years to complete my degree with the University of Phoenix, all while working full-time. I've been very successfully employed for the last 40 years with academic institutions and more recently as an executive director for a nonprofit in the California health sector. I absolutely loved my experience at Phoenix. It only encouraged my passion to get more education, and thus I have my master's and my Ph.D.. The idea that institutions need to prepare students for gainful employment and a recognized occupation needs to be more clearly defined and it needs to consider all types of students from various backgrounds. I've attended both for-profit and nonprofit schools and believe that Phoenix provides a rigorous degree program, a challenging course load and is overly dedicated to helping to prepare their students for the job field. I appreciate your time today and work that you're doing on these uncertain times, but feel free to reach out to me

at any time. I'm happy to share more about my life experiences, thanks to the University of Phoenix.

MS. JEFFRIES: Thank you, Dr. Sellers. Brady, who do we have coming in next?

MR. ROBERTS: I am admitting Luis Vazquez Contes, who is the national commander of the American GI Forum.

MS. JEFFRIES: We're not seeing him.

MR. ROBERTS: Let me, he might have logged in twice. Give me one second.

MS. JEFFRIES: Okay, maybe. They're both. Looks like somebody is coming. Hello, is this some Luis Vazquez Contes?

MR. VAZQUEZ CONTES: Yes, ma'am.

MS. JEFFRIES: Well, good afternoon, you, welcome to public comment. You will have three minutes to speak and that three minute time period starts whenever you begin to speak. So whenever you're ready.

MR. VAZQUEZ CONTES: Well, good afternoon to the leader and staff members of the Department of Education. My name is Luis Vazquez Contes, and I have served and honored in many capacities through American GI Forum, which today I am the national commander. The American GI Form was founded after World

War II in 1948, when many Hispanic service members returned home to find that many opportunities were not there for them. Our model since the beginning has been education is our freedom and our future and should be everybody’s business. So you can see why this topic is so important to us. This past fall, we testified to the Department of the importance of the veteran community during the process. So today we are here again to call for closing the 90/10 loophole appropriately. It's a good law. And many veteran organizations found it very hard to stop this loophole. In coordination with the Congress, the White House and many others, it was important forthe long-term effort. We were very concerned of any effort to undermine this law. Our members deserved the best education they can get, and we can start with the country for the better on this. Unfortunate Veterans Service members and their families will target and some school for another two years because closing the loophole does not apply right away to them. Because this delay already billion, we opposed to any attempt to undercut the implementation of this law. I want the committee to take that serious. Delayed implementation for two years means they are a [inaudible] bill to the process [inaudible] school can adjust it if they need to. For many, [inaudible] that

Higher Education will present opportunity improved the veteran’s life and the life offamily members. Education is the top reason why many people join the military service, they serve the country, they get a chance to go to school and it's a big accomplishment. I was one of them. Unfortunately, many people would like to take advantage of veterans and the GI Bill. This is not what we want. We hope that you do the right thing for them. I have said before, but I feel it's important that I will say it again. [Audio] When you hear loud and clear from me and [inaudible]. The veterans deserve the best education the GI Bill benefits can give. They should receive a full value or nothing less to earn their right by serving our country. [Audio] we have studied this issue with great care. We remain committed to do the right thing for veterans, and I hope you do so too. Thank you for the time today, and we look forward to supporting this process however we can. I'm very appreciative of your time.

MS. JEFFRIES: Thank you very much for your comments and for your service.

MR. VAZQUEZ CONTES: Thank you.

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

MR. ROBERTS: Cindy, I just admitted

Chassy Blumer, who is representing themselves. Looks like we're just waiting for them to turn on their audio. She's connected.

MS. JEFFRIES: Yup. Thanks. Good afternoon, Chassy. I hope the afternoon has found you well. Welcome to public comment. You will have three minutes to speak and whenever you're ready, your three minutes will begin.

MS. BLUMER: Okay, thank you so much. I will be looking down because I wanted to write what I said, but I'm [inaudible] apologize for my lack of eye contact.

MS. JEFFRIES: No problem.

MS. BLUMER: Thank you. Hello. My name is Chassy Blumer. I requested to speak today in hopes that sharing my story will provide understanding and what it's like to be an adult student. I grew up on welfare to a single mother with a mental illness. I was constantly put down by my mother and my peers, told I wasn't good enough and would end up like my mother. I grew up seeing the welfare system through the eyes of the child, which means waiting in long lines at the welfare office and on Medi-Cal, which includes doctors offices that don't take appointments, which meant sitting on a dirty floor with sick people who were all

waiting to be seen and taking their turn as well. This all taught me that I needed to get to work as soon as possible. After high school, I started college with a lot of help from the government, and had I known what I know now, I would have stayed, but I didn't know what I had. I was a kid trying to navigate the fact that I needed money as soon as possible. I no longer had welfare. I didn't have family support and I didn't have a clue where to start. Being a female, I couldn't just put on work boots and go work in the oil fields full-time. I often worked two jobs at a time just to make enough money to help support myself. I wasn't asking for handouts or welfare. I was working every single day. Fast forward, I finally get a full-time job working for State Farm here in California. There I was told once again that if I wanted to make more money and promote, I needed a degree. It didn't matter that I was doing the job well and fixing errors of those promoted ahead of me. I didn't have a degree, and that's where I was stopped dead in my tracks. I made the choice to give myself opportunities while working full-time and being a single mother and then a wife. I went to school full-time on top of my work and home responsibilities. The University of Phoenix made me feel great and told me that they would help me get a job with a company that

would make the loans worth it and easily payable. I was told those loans were affordable and would take into account my personal life basic bills, mortgage, car, food, health insurance, nothing more. My husband has an MBA and earned his BS and MBA from University of Phoenix, so I felt this school would be the best option for me because I have someone at home to help me navigate the online school and allow me to continue working. So I began busting my tail, earning my associates and bachelors, even taking some classes and tests to accelerate my degree. I took minimal breaks only to have my son and get married. I didn't delay. I worked extremely hard for work and lack of sleep, but I did it. October 31, 2017 [audio]. Oh, thank you. What happens next is not what I just told. My loans and my husband's loans were not considered against the other. Our mortgage was not considered against our loans. Our student loans don't care that our spouse has a loan. Our student loans don't care that we have a mortgage and kids. They care about our gross income, which is what most would consider an amount to be proud of. Our success is surface owing. The government has shown that the best way is to work the system, which is just to qualify for free and not to try to promote your work. Don't get married, qualify for low income housing,

welfare and Medi-Cal is the only way to go if going to get out of college without an excruciating amount of debt. Otherwise you'll drop. Your drive of sense of responsibility and accomplishment.

MR. ROBERTS: That's three minutes. I apologize.

MS. BLUMER: Okay, no worries. I tried. Thank you.

MS. JEFFRIES: No, you did a great job, Chassy. Thank you very much.

MS. BLUMER: Thank you for your time. I appreciate it.

MS. JEFFRIES: Okay, Brady, who's next?

MR. ROBERTS: I just admitted Ronald Michel, who is representing themselves.

MR. MICHEL: Can you hear me?

MS. JEFFRIES: I can hear you, I can't see you, but that's okay if you-

MR. MICHEL: Would you like me to, I don't know how to-

MS. JEFFRIES: That's fine. That's fine. It's totally up to you, Ronald, if you want to turn your camera on or not, as long as the committee can hear you, that's what's important, okay?

MR. MICHEL: Alright.

MS. JEFFRIES: So welcome to public comment. You will have three minutes to address the committee and that three minutes begins whenever you're ready to start speaking.

MR. MICHEL: I'm ready immediately, and I definitely appreciate the moments. My daughter was a Brooks Institute student from 2004 to 2007. We were told that Brooks was alleged to be a very highly regarded photography institute and that instruction was wonderful. She entered Brooks and graduated after three years. Prior to this entry, we met with Brooks's financial advisors and loans were offered, but only the smaller loans would be offered to the students. The Parent PLUS Loans needed to be held by the parents, to get the children, to get my daughter into the school. There was no way that she could afford to go to the school without the Parent PLUS Loans, and so we entered into that agreement with Brooks. We were told that Brooks indicated that many jobs would be afforded to these students upon their graduation and that Brooks had a 90 to 93 percent placement rate after their graduation. We were not told that at that time that Brooks was owned by a for-profit company, Career Education Corporation. We understood that Brooks was an

educational institute with the children's best interests at heart. Interest rates, we thought, were very high. I think they were set at 7-1/2 percent. We borrowed over three years, we borrowed about 72,000 dollars and we were told that a forbearance would allow the student to graduate and get out into the world for a year and to get a job that would assist in paying back these loans. But there were no jobs. Brooks lied to us where they gave us false information with regards to the actual jobs that were going to be available. We chose to defer and go into the forbearance period. Again, we were not told by Brooks and we were not told by any of the lending institutions that that the interest would accrue and compound, and that 72,000 dollars grew to over 135,000 thousand dollars in just a very short period of time. Again, this took us completely by surprise. I paid over $80,000 back on this loan. I borrowed, I think I was advised that the origination loan was $72,000. I've paid over $80,000 back and I still owe 130,000 dollars. I think that I, I place a lot of the problems at Brooks's feet, but I know that the Department of Education, I think that they let us down also with no due diligence with regards to the for-profit companies and for-profit institutions. I'm 71 years old and my wife and I are retired. I was advised many years later

that many of these loans are being repaid by seniors and that many of these seniors are retired.

MR. ROBERTS: That's three minutes, I'm sorry.

MR. MICHEL: Is that, it goes quick. Okay, well-

MS. JEFFRIES: It sure does, thank you very much for your comments today.

MR. MICHEL: Thank you.

MS. JEFFRIES: Alright, Brady, who do we have next?

MR. ROBERTS: I'm admitting Kristin Anderson, who is representing themselves.

MS. JEFFRIES: Good afternoon, Kristin. [Inaudible] for audio. Good afternoon, Kristin, can you hear me?

MS. ANDERSON: Yes, I can.

MS. JEFFRIES: Okay, wonderful. Welcome to the public comment section today. You will have three minutes to speak and that three minutes begins whenever you're ready to start talking.

MS. ANDERSON: Okay, thanks very much. I hope the information is helpful. My name's Kristin. I'm going to speak to you about [audio] seeking gainful employment. I'm a first generation college graduate. I

graduated in 2008, but the story goes like this. In 1994, I was 26 years old. Our kids were three and four years old, so I have that. I enrolled in community college. Then I set out to find some work. I got a call from a company. The company promised me a paralegal job for one year of training. I almost left, but I accepted. I accepted the enrollment work full-time, attended full-time school. My husband cared for the kids while he worked from home. I completed the program with perfect attendance. It was a one-year program, 1994 to 1995. I started to get duplicate bills. They were always in two envelopes. Calling the lender didn't help. In the end, the final bill turned out to be $13,700. That's $10,700 for the award year, 1994 to 1995 with a $3,000 Pell Grant. I appeared before a federal magistrate in 1996 asking for forgiveness. She requested I go ahead and pay that, it wasn't very much money. After the program, I had no units. The program doesn't award credit hours. My earnings for 1998 was 3,000 dollars for a going rate of five dollars per hour, which was a decrease in the income I was making as a temporary hire. In the meantime, unable to pay for child care, transportation costs and student loan bills, my husband and I went bankrupt in 2003. I believe I was lied to and tricked, and in the end, I'm not a paralegal. Paralegal requires

an AA degree. There's no way to benefit from the program. I paid 18,000 dollars, so the Department doesn't have a lender record of this before 2011. We're continuing to pay on that. So this is the collection of a debt for award year 1994 to 1995. The loan became 26 years old this year. I became gainfully employed in 2008. I went to the community college in my local community and immediately the next year, 2009, I made, excuse me, 37,000 dollars. So there was definitely a benefit. So the program was a proprietor for a for-profit corporation operating a subsidiary that administered the program that I attended. I do see the information on the NSLDS. The OPEID program is listed in the NSLDS. The school I attended is not listed on the [inaudible]. When completing the education requirements, federal jobs have education requirements. A degree must be accredited. [Audio] Thank you. That's 30 seconds. So I've made, I've paid 18K so far, 126 payments reported since 2011, 137 payments, a total count on my credit report for the life of the loan. That's it for me. Thank you.

MR. ROBERTS: Cindy, I think you're muted, but I'm now admitting Tristen Bonacci, who's speaking on behalf of the University of Phoenix.

MS. JEFFRIES: Okay. Good afternoon,

Tristen, can you hear me?

MS. BONACCI: Yes, I can, hi.

MS. JEFFRIES: Okay. You have three minutes to speak and that begins whenever you're ready.

MS. BONACCI: Okay, great. So my name is Tristen Bonacci. Thank you for the opportunity to share today. I graduated in 2004 from the University of Phoenix with my master's in teaching and education. And at the time I was based in Colorado, I now teach in New Mexico. The reason I chose University of Phoenix was because at the time I was newly divorced, I needed to support myself and I needed to work and get a career. But I couldn't do that at a normal school because I had to work. So I was able to go to two lengthy evening classes per week and then work my way through. So I graduated in 2004. So I've used this education as a teacher now for 19 years, and I apply those skills every day. So as you guys are continuing to debate and implement regulations that affect higher education, I would like you guys to consider students like myself that are nontraditional learners and that nontraditional higher education represents a lot of students in the United States right now. My question is that why doesn't the Department of Education have a seat at the table for people like me who are really concerned with

undergraduates who are nontraditional students going there, but there's so many people who are needing to go back to school and change careers like that. So I'm hoping that you can appoint someone like myself to represent older working adults who are nontraditional students. I know that without this education, working as a teacher with just the undergraduate degree, there's no way I could support myself. So I had to go back to school. I had to do something to figure this out, so I hope that you could listen to this experience that we can create equal opportunity and access for all students, regardless of their background or their status as a traditional student or not. Thank you.

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

MR. ROBERTS: Alright, our final speaker for today is Mr. David Reyes Bautista, who is a veteran representing themselves. [Inaudible]

MR. ROBERTS: Would you mind pausing, if you're watching the live stream, I think we're getting a bit of an echo.

MR. REYES BAUTISTA: Okay. [Inaudible].

MS. JEFFRIES: If you could just, David, just mute your live stream.

MR. REYES BAUTISTA: Okay.

MS. JEFFRIES: And then you won't get the feedback. Now, no, don't move yourself here. No, don't mute yourself here. Do you have that live stream playing in the background?

MR. REYES BAUTISTA: No.

MS. JEFFRIES: Okay, [Inaudible] Alright, we're all set, David. You have three minutes. And welcome this afternoon. We appreciate you coming in. You have three minutes and that three minutes, David, will start whenever you're ready.

MR. REYES BAUTISTA: Roger that. Thank you. Good afternoon. My name is David Reyes Bautista and I am a Marine Corps veteran, and I'm here to tell you my story in hopes that you make sure that others do not experience what happened to me at Wyo Tech. I attended Wyo Tech auto mechanic school in Long Beach between 2011 and 2012. I learned about them through a TV show that featured veterans wearing their uniforms and who landed really good auto mechanic jobs. The advertisements depicted state of the art equipment and teachers who were industry experts. But in reality, Wyo Tech provided unserviceable tools. Teachers were not interested in teaching and only cared about collecting paychecks. At some point, some were even clearly drunk

in the classroom. [Inaudible] recruiters promised me that my GI Bill would cover the full cost of my education. This was a big factor in my decision to enroll because there's no way I could come up with the money and you know fall on any shortfalls. Shortly before I graduated, though, I was told I was [inaudible] off and I was told that I had to take oot student loans in order to finish my schooling because I was then told that my GI Bill only covered 70 percent of the cost and that I had to make a choice in either take these loans or get kicked out of school. Which I made, I had made the conscious choice to take the loans. My education counselor who was aware of my difficulties in my personal life, asked me what my kids would think if I didn't finish school. She said if I would be a failure if I didn't sign the loan documents. Wyo Tech also failed to deliver the career services promised. [Inaudible] told me the school would help me with the resume writing and the job search, but the careers service staff at Wyo Tech did nothing except tell me to bring my resume to businesses. I did that. There were several businesses that would laugh me to the door and say that would be basically a $30,000 piece of worthless paper. I was unable to find work at that time and had trouble since. Since graduating, I have $3,400 in

student loans and I struggle to make payments for years. It wasn't until a decade after I graduated that I learned about the Borrower Defense and got my loans discharged. I shouldn't have had to go through that. I should never have been allowed to go through what I’ve gone through and have them not do what they promised. My experiences are not unique because many other veterans' lives were ruined by [audio] profits for schools like Wyo Tech. I don't have my GI bill left, even though my loans were forgiven, my bill, I still can't take the opportunity to better myself. You know, I had kids that love me and they support me, but they see me struggling with this because I shouldn't have gone through what I went through and not be able to at least get my GI bill back knowing that they took my life's troubles and used it to their advantage to coax me into taking the loans and doing what I did and come to find out, nothing mattered. It's still tough right now, still. And I've had trouble since.

MS. JEFFRIES: Alright. Thank you, David, for sharing with the committee and thank you for your service.

MR. REYES BAUTISTA: Thank you again. Thank you for your time. I really appreciate you guys.

MS. JEFFRIES: Okay. Okay, that

concludes all the public commenters today, and we are at a little bit over 4:33. I just want to take a quick opportunity to thank this committee for their very hard work today. I do appreciate it. We will see you all in the morning.

Appendix
Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 1, Day 3, Afternoon, January 20, 2021

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

For the record. My last no vote was in reference to the lawsuits being reported within 10 days had no materiality threshold. The 10 day reporting timeframe if we agree on materiality of the lawsuits was not an issue with me.

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

We will provide language for consideration of adding an appeals process for failing composite scores for inclusion in (f)(3). There is currently language for considerations of the triggers but not the composite calculation.

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Barmak, that makes sense; the entity itself should be explicitly excluded from being the "other government entity"

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

+1 to Barmak's comment

From Dave McClintock (Advisor) auditor to Everyone:

+1 Steve's explanation that wording change to (h) in line with changes to accounting standards

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

David Socolow will be coming to the table to represent state agencies.

From David Socolow to Everyone:

+1 to Barmak's point about holding individuals personally accountable. This should mirror the Sarbanes-Oxley requirements for corporate CEOs and CFOs to personally certify the accuracy of the information contained in financial reports, confirm that controls and procedures were in place to assess and verify that accuracy, and personally confirm that they are in compliance with SEC regs, with personal liability for fines and prison terms.

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

In 668.175(c) you may want to consider changing the going concern disclosure language to match the language in (h) audit opinions and disclosures

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

+1

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

Johnson is going to come to the table for legal aid.

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

Is the proposed change by the department to the wording in 3 saying the new combined institution must referencing must meet the three financial conditions together?

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

A suggestion for improvement in 668.176 (b)(3)(i): include an "and" instead of "or."

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

for subpart (A)

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

668.176 b 1 comment that would be nice to clarify with Steve:

The audited financial statements required for a materially complete application should be the two most recent fiscal years for which audits are available, which had been Department practice for decades, and not require the literal two most recent years if the most recent fiscal year audit is not yet available (which the Department has recently mandated). The latter will create significant problems for institutions that, for any number of sensible accounting reasons, seek to consummate a merger on the first day of a new fiscal year, and essentially require those transactions to be delayed, which may create unwarranted instability. That is particularly true in the nonprofit merger context where institutions generally seek to combine on a fiscal year cut-over rather than during the fiscal year.

From Jamie Studley (P) Accrediting agencies to Everyone:

In determining if each category offers 3 alternative ways to establish financial responsibility, or 1+2 OR 3, what was ED's proposal/recommendation ?

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

Is C missing the term balance sheet to align to points to A &B?

From Jamie Studley (P) Accrediting agencies to Everyone:

what are the DE clarifications in 6 meant to improve, allow or fix?

From Anne Kress (P) Comm Colleges to Everyone:

+1 to @Jamie’s question, especially as statement was

that this is not directly related to change of ownership

From Sam (P) Fin Aid Admin to Everyone:

or grandfathered into their currently approved status

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

+1 that "non-exhaustive" should be stated explicitly

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

Carolyn, happy to work with you on this.

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

+1 to Anne's question

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

FYI I am rejoining the table for state agencies.

From Johnson Tyler, Brooklyn Legal Services to Everyone:

In response to Barmak's question, Grand Canyon University was approved as non-profit by US Treasury/IRS but is still being treated by US DOE as a for-profit.

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

Could I please get a response to my clarifying question around state authorization and whether the Department sees any of these changes as impacting institutions' need to be authorized by the states in which they are operating?

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

Re Brad's point: Ownership of shares in publicly traded entities that a school may have a revenue-sharing agreement can be handled with "beneficial ownership" (5%) and "insider" (10%) definitions of the SEC

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

Good point Barmak

From Jamie Studley (P) Accrediting agencies to Everyone:

is Barmak's Q about state auth already covered by existing 600.4(a)(3) or is more needed?

From Jamie Studley (P) Accrediting agencies to Everyone:

that word "other" is very confusing

From Emmanual Guillory (A)-PNPs to Everyone:

+1 Jaime

From Emmanual Guillory (A)-PNPs to Everyone:

i have a question here

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

Emmanual Guillory will be coming to the table temporarily to ask a question.

From Jamie Studley (P) Accrediting agencies to Everyone:

To ED re fees for reviews: FDA may offer an agency example--it charges fees for new drug application reviews with a fee structure

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

Jaylon Herbin is joining the table.

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

I will be returning to the table. Emmanual's question was answered.

From Anne Kress (P) Comm Colleges to Everyone:

Should 2.iii say “temporary provisional …” rather than “provisional”?

From Anne Kress (P) Comm Colleges to Everyone:

If not, why not?

From Jamie Studley (P) Accrediting agencies to Everyone:

re Barmak's last comment -- perhaps the 90 days more like the air traffic controller determining which runway the plane should be on, so that it allow it to account for degree of complexity

From Jamie Studley (P) Accrediting agencies to Everyone:

+ 1 to Barmak asking whether 25 v 5% threshold might be different depending on situation and nature (e.g. publicly traded),

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

Submitting a question for the record on a previous discussion. Under 600.20(g)(i), Donna said that this is not a mandatory pre-acquisition review requirement. So is this new requirement under 600.20(g)(i) separate from pre-acquisition review? If the purpose of this requirement is to put an institution on notice that it needs to post a LOC, that seems very similar to the current expediated pre-acquisition review at the Department. Would this new process have to be completed before the optional pre-acquisition review process, which is already taking 6-12 months in advance?

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

Emmanual Guillory will be coming to the table temporarily to ask a question.

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

like the Dream Center?

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

I thought board members have voting rights?

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

I will be returning to the table.

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

I will defer to Emmanual on the change of Board members that having voting rights would cause a change of control. Accreditors have a different set of rules on change of control

From Emmanual Guillory (A)-PNPs to Everyone:

board members do have voting rights but no board member has a majority of the vote

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

Thanks for clarifying Emmanual

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

Jamie your hand is raised and you are off mute