

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
INSTITUTIONAL AND PROGRAMMATIC  
ELIGIBILITY COMMITTEE  
SESSION 3, DAY 1, AFTERNOON  
March 14, 2022

On the 14th day of March, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

## 1 PROCEEDINGS

2 MR. ROBERTS: Alright, welcome back. It is 1:02  
3 Eastern. I hope everyone had a good lunch, a couple of things,  
4 just a reminder that public comment for today's session will  
5 begin at 3:30 eastern. Also, Steve Finley has joined us, is in  
6 for the Office of General Counsel and we were going to pick up  
7 where we left off. We had several people with their hands  
8 raised. I have the order of which they raised their hands. So  
9 I'll go ahead and do that and then we'll take it from there.  
10 Okay? Alright. When we last left off, we had Amanda. She had  
11 her hand up first, so Amanda, you have the floor.

12 MS. AMANDA MARTINEZ: Thank you. Just because we  
13 didn't really close out or it didn't feel like there was a  
14 closure to the previous conversation before we left for lunch  
15 on H1 related to the deadline language there, I'm just  
16 wondering if other negotiators, who brought up the issues  
17 related to the concerns of the deadline and incorporating that  
18 language there, was Greg or the Department of Education's  
19 intention behind that language as it relates to federal, you  
20 know, deadlines, hearing that was, did that really subside any  
21 deep concerns or potential scenarios that could you know be  
22 harmful to students or did that hopefully, yeah, address your  
23 concerns? And if it didn't, is there something is there an  
24 example you can help me understand because I suggested this  
25 language to the Department of Education. So I'm just trying to  
26 understand specific examples or scenarios in which that  
27 language would be harmful. Like is it related to potential  
28 passive acceptances of award letters and having a deadline

1 there that you're concerned about? If you could, if anyone  
2 could just please help me understand the real issue here. And  
3 hopefully, the Education Department's original explanation  
4 hopefully subdued any other types of scenarios that you were  
5 concerned about.

6 MR. WAGNER: Okay, Greg, do you have anything on  
7 that?

8 MR. MARTIN: I don't have anything beyond what I said  
9 earlier, we have we could in that in H1, you know, before a  
10 deadline we have, we would suggest instructions and applicable  
11 deadlines for accepting and declining if that would help  
12 assuage people's concerns.

13 MR. WAGNER: Okay, I appreciate that, thank you,  
14 Greg. Also, we have Ashley Schofield in for minority serving  
15 institutions. We'll go to Jamie, you're up next.

16 MS. STUDLEY: Okay. I raised my hand to speak to the  
17 issue of career services about which I feel pretty strongly.  
18 The current language is overbroad as a number of people have  
19 said, and I agree with Barmak that focusing in on number three  
20 would get at the abuses that might be troublesome. So I will  
21 propose that the language be along these lines, focusing on  
22 three, provides career services that it has publicized to  
23 prospective and current students, or consistent with its  
24 claims to prospective and current students. I appreciate,  
25 Greg, your explanation that the Department needs particularly  
26 egregious situations, but that's there's a danger that that  
27 won't be clear to people because there's also language that  
28 says must demonstrate. As a former career services dean, I

1 fear that this language, coupled with that must demonstrate  
2 requirement, could distort the field and worry institutions  
3 that they all have to make or be prepared for the showing  
4 that's based on numbers and non-existent ratios when all the  
5 Department's best thinking and accreditors' best thinking is  
6 moving in the direction of capacity, effectiveness, and  
7 results, and been telling us to think about outcomes. If you  
8 have concerns about capacity, I think you have the tools and  
9 that that language just talking about claims that have been  
10 made for career services would cover the need, which is  
11 understandable and reasonable.

12 MR. MARTIN: Okay, I'll take that back.

13 MS. STUDLEY: If I have a second, I'll say that I  
14 think any deadlines or any applicable deadlines, there's a lot  
15 of voice for that. And on the section afterward about  
16 clinicals, we like the addition of other and think that's a  
17 good change.

18 MR. MARTIN: Thank you.

19 MR. WAGNER: Thank you, Jamie. Barmak, you were in  
20 queue before lunch, so you're up.

21 MR. NASSIRIAN: I'll be very brief. And I've put this  
22 in the chat, I want to echo Jamie's and Brad's comments with  
23 regard to career services. We have all heard the modernist  
24 dictum, less is more. In my experience, less is usually less.  
25 But this is an area where less really is more. Adding fluffy,  
26 unenforceable, vague language to regs as an aspirational sort  
27 of indication of toughness actually discredits the regs.  
28 Because regs ought to be actionable, regs ought to be

1 meaningful to the regulated entities, and the Department has  
2 to realistically have the resources, the capacity, the  
3 experience, the qualifications to act on them. This is just  
4 forgive me for my bluntness, but this is almost like word  
5 salad. I think the single most concerning area of abuse is  
6 where institutions promise lucrative careers that they don't  
7 deliver on. And I think if the Department focused its  
8 resources on where the real problem is, we can come back to  
9 the more grandiose vision down the road. So I would really  
10 encourage the Department to avoid the tendency to just create  
11 more voluminous, meaningless regs. Thank you.

12 MR. MARTIN: Thank you.

13 MR. WAGNER: Thank you, Barmak. Debbie, you're up.

14 MS. COCHRANE: Thank you. I would I too also share  
15 the concerns about ill-defined ratios for institutions not  
16 knowing what it means and not potentially being helpful for  
17 the Department. I will add, though, you know I actually would,  
18 that would take me to a place maybe in a different direction  
19 than Jamie, who kind of talked about leaning into the career  
20 service the institution has publicized to its students. That  
21 one seems to me, certainly, institutions should not be  
22 misrepresenting what services they are offering to students.  
23 That seems very clear. But what they advertise or publicize to  
24 students seems like it actually bears very little resemblance  
25 to the sufficiency of those services from an institution they  
26 don't publicize the availability of services, but they still  
27 don't offer them. That doesn't actually mean that the services  
28 are sufficient, so I would probably take that one out, too,

1 and then try to get at the misrepresentation of career  
2 services in a different group.

3 MR. MARTIN: Thank you.

4 MR. WAGNER: Thank you. Brad, you're up.

5 MR. ADAMS: Yeah, it may make sense to let Jessica  
6 finish out the point here, so I was going to move to my next  
7 point, but if there's still good discussion, which I think I  
8 agree with what Barmak and Jamie have both just said, I'll put  
9 my hand down and come back once we're finished with H and I.

10 MR. WAGNER: Okay, Brad, thanks. In that case, then  
11 Jessica, you have the floor.

12 MS. RANUCCI: Thanks. I just in reflecting on these,  
13 I just I think that there are actually two different types of  
14 representations that a school might make that are relevant to  
15 career services. One is representations about the career  
16 services themselves, something like lifetime job placement  
17 services. And the second are representations about, in fact,  
18 the careers that one obtains that would be impossible to  
19 effectuate without some career services by the school. And I  
20 think maybe separating those could help clarify what exactly,  
21 because I think only the first one of those two categories is  
22 captured in number three, but not the second. And perhaps it's  
23 captured elsewhere and that's fine, but I do think those are  
24 both really important things that need to be considered.

25 MR. WAGNER: Thank you, Jessica. Yeah, I don't see  
26 any other hands. Greg. Oh, sorry, Brad. You had your hand up.

1 MR. ADAMS: Yes, so I'll move down to my next set of  
2 points in K, if that's okay. Have we gotten to K, Greg? I  
3 can't remember where we stopped before lunch, I'm sorry.

4 MR. MARTIN: I'm sorry, I'm on mute. Have we got to,  
5 no, we were with I and J. We we had yet to move on to K.

6 MR. ADAMS: My recommendation, based on all the  
7 commentary on I that the Department considers the proposed  
8 language that either Jamie or myself has made and come back to  
9 us, but we can finish out the rest of the issue paper first on  
10 that day.

11 MR. WAGNER: Jamie, you had your hand up. And you're  
12 on mute.

13 MS. STUDLEY: I think that Debbie and Jessica's  
14 points are well taken and that the combination of both claims  
15 about services, or maybe it's three claims about services,  
16 connections with employers and results are also potential  
17 areas for misrepresentation. So maybe we could marry all of  
18 what Brad, Barmak, Debbie, Jessica and I have been saying to  
19 do something that hinges it to the claim section, but  
20 recognizes the multiple ways that that could happen, either by  
21 making it broad or specifically calling them out. I'd be happy  
22 to work with you offline if that would be helpful in that  
23 drafting. I don't have language right now for the  
24 misrepresentation section.

25 MR. WAGNER: Okay, thank you, Jamie. I don't see any  
26 other hands. Greg, you want to continue?

1 MR. MARTIN: Oh, sure, I didn't, I wanted to make  
2 certain that there were no other points about I before we move  
3 on to K. Brad, you didn't have any comments you wanted to make  
4 about that before we move on to K? I just want to make sure  
5 we-.

6 MR. ADAMS: Not [inaudible]. Thank you for asking.

7 MR. MARTIN: Okay, sure. So in that case, then we're  
8 going to move on to K. Has got that up already. And here we  
9 are at K, disburses funds to students in a timely manner  
10 consistent with the student's needs. And then then we go on to  
11 the Secretary does not consider the manner of disbursement to  
12 be consistent with the students' needs if among other  
13 conditions and we list those conditions below to address  
14 negotiator concerns and clarify our meaning here, we have  
15 further streamlined the language in this section by breaking  
16 out the examples into individual items that you see below. We  
17 have removed the cross reference to 668.164. That seemed to  
18 create some confusion during our last negotiation session, so  
19 you can see we broke all those items down. The Secretary is  
20 aware of multiple relevant student complaints to make it clear  
21 that we don't mean one complaint from a student. The  
22 institution has high rates of withdrawal attributable to  
23 delays and disbursements. The institution has delayed  
24 disbursements until after the withdrawal date requirements in  
25 668.22 B and C or the institution has delayed disbursements  
26 with the effect of ensuring the institution passes the 90/10  
27 ratio. And next, we'll move on to move on to M, we'll do  
28 comments on K and M both. So let's look at M here. This is  
29 this refers to the institution, offers Gainful Employment



1 programs that are subject to subpart Q and at least half of  
2 its total Title IV revenue in the most recent award year is  
3 not from such programs that are failing under subpart Q and at  
4 least half of its full-time equivalent, Title IV a full-time  
5 equivalent, Title IV receiving students are not enrolled in  
6 programs that are failing under subpart Q, and this is  
7 accounting for negotiators' concerns during session two about  
8 the technicalities of how this language would work. We sought  
9 here to clarify that the administrative capability requirement  
10 applies only to the calculation of what percentage of total  
11 students and revenue are affected. So hopefully this clarifies  
12 the calculation somewhat. So before we move on, I'll entertain  
13 the comments related to paragraphs K or M.

14 MR. WAGNER: Thank you, Rene, for sharing. Okay,  
15 Brad, I see your hand, followed by Anne. Brad, go ahead.

16 MR. ADAMS: I'll start with K and, you know, slept  
17 since the second session, so I forgot the concerns what the  
18 concerns were with the reference to 34 CFR 668.164. You know,  
19 I know that section governs student disbursements, and I  
20 thought it did seem relevant here to ensure institutions are  
21 complying with those requirements. So remind me or what the  
22 concerns were from the committee on why we took out the  
23 reference there and then added in the language here.

24 MR. MARTIN: As I recall, back in session two, there  
25 was just some confusion about the reference to 164 and some  
26 because there is in 164 a considerable amount of latitude in  
27 disbursing, if you look at the timeframes for disbursing as  
28 strictly defined in 164, it essentially allows the institution  
29 to disburse any time during the payment period, and that is

1 the overarching requirement. But I think here we're more  
2 concerned with practices that the school's engaging in that  
3 where it is disbursing, not in accordance with student needs  
4 or but with an eye towards delaying disbursements or somehow  
5 manipulating with those disbursants occur for reasons other  
6 than to the benefit of the students. So it we felt it would be  
7 more clear if we just spelled those out here as opposed to a  
8 reference to 164. And of course, 164 stands as it is and still  
9 is, still provides the basic guidelines for disbursing aid.

10 MR. ADAMS: But why would we want it written two  
11 different ways in two different spots? You know?

12 MR. MARTIN: Well, this is not addressing. I mean,  
13 164 simply addresses the mechanics of disbursement. This  
14 addresses disbursing to students in accordance with consistent  
15 with student needs. The two are not necessarily the same, you  
16 know 164 provides the limits, but this addresses and remember  
17 here we're talking about administrative capability, assessing  
18 an institution's administrative capability and as part of  
19 that, looking at the way in which the institution disburses  
20 and whether or not within the framework of what's provided of  
21 what's allowed for in 164 the institution is disbursing aid in  
22 accordance with student needs, and that's why we've spelled  
23 those out here. For instance, you know, delaying until after  
24 the withdrawal date of students in 668.22 that I don't think  
25 it's a common practice now. It used to be that institutions  
26 that didn't want to do, they weren't necessarily trying to get  
27 out of returning funds, but just didn't want to be bothered  
28 with the calculation. So would wait until after the 60 percent  
29 point had elapsed before they would even disburse funds to

1 students. So things along those lines where clearly the  
2 practice has nothing to do with what is in what is in the  
3 student's benefit, but what the school tried to avoid some  
4 administrative requirement or manipulate disbursements for  
5 some other reason, 90/10. So I think the two are really  
6 different things, Brad.

7 MR. ADAMS: And then I've got a point on item one and  
8 two under K, romanette 1 here, where it says the Secretary is  
9 aware of multiple relevant student complaints. This is a new  
10 add coming into this session, and you know, I of course,  
11 understand that you want to consider complaints, but the word  
12 multiple, I'm not sure how many that means. And the other  
13 concern is just sometimes students don't understand the Title  
14 IV process. And so a complaint about the rules and  
15 institutions **failing** to comply with Title IV should be  
16 considered. So is there Department planning to verify if the  
17 complaints are significant before making any findings here?  
18 And how many does it consider to be multiple? Is that more  
19 than one?

20 MR. MARTIN: Well, we don't have a number that we  
21 place on it. Certainly more, certainly more than one. Well, I  
22 mean, it might be possible that one complaint is of such a  
23 serious nature or as seems to be so to raise concerns  
24 sufficient to have us look into it. But very seldom do we look  
25 at one, we will look at that complaint. I wouldn't say we  
26 don't, not look at a complaint, but we don't view one  
27 complaint as normally as indicative of a pattern of a  
28 difficulty at a school. And yes, we do look into those. We do  
29 look into those complaints even where we get multiple

1 complaints. It could be that the students are not  
2 understanding of just the rules for related to disbursing  
3 funds, but I can say that in most cases, in my experience with  
4 multiple complaints when we've had, you know we've had  
5 institutions that are having difficulties with you know  
6 financial difficulties where they don't have a lot of staff  
7 or, you know, you'll get 30, 40, sometimes more than that  
8 student saying they haven't received their disbursements for a  
9 specific period of time or, say, for the fall semester. And  
10 when we see something like that, we generally will look into  
11 it further, and that would be indicative of conditions where  
12 an institution was not disbursing in a timely manner. I don't  
13 think we can, you can ever really narrow it down to, you know,  
14 would it be three complaints or four complaints? A lot would  
15 depend on the size of the institution. There is a certain  
16 amount of subjectivity involved that I don't think you can,  
17 get out of here. But this does give the Department a valuable  
18 tool to look at instances where schools' practices are, you  
19 know, prejudicial to students and we've seen this before,  
20 where, you know, students can't pay their bills because an  
21 institution is not disbursing in a timely manner, and  
22 sometimes they've had difficulties with turnover or something  
23 along those lines. But all that notwithstanding, it's if some  
24 of these students don't get their aid, they're unable to pay,  
25 you know, to pay their basic expenses. So we feel it's an  
26 important and necessary element for this and tool for the  
27 Secretary to have. But to your point, Brad, I don't know that  
28 I can put a number on it. Is it three or four or five? Well,  
29 that depends on the circumstance. We do look and we do  
30 evaluate. I will just say, we do evaluate those claims and the

1 validity of them. And there've been plenty of times where I've  
2 had to tell students that what they thought was a violation  
3 was simply a misunderstanding of rules.

4 MR. ADAMS: Thank you, Greg. I did propose some  
5 language. I think if we just put a clarifier in there that  
6 basically is adding a few words to the back end of K romanette  
7 one that says the Secretary is aware of multiple relevant  
8 student complaints and this is the insertion and as verified,  
9 the legitimacy of such complaints to consider. And then my  
10 last comment is on K romanette two, and if I run out of time,  
11 I can get back in line. But again, I've mentioned this in the  
12 first two weeks that the Department still has not defined what  
13 a high rate of withdrawals is and even how it could approve  
14 they were attributable, the withdrawals were attributable to  
15 the delays and disbursements. I don't know how in the world  
16 the Department, number one, if we don't know what the high  
17 rates are, we don't know what we're whether or not we're  
18 administratively capable. But number two, how you could then  
19 prove that those high rates were attributable to delays and  
20 disbursements. And so the Department here, can you can you  
21 please help me define what high rates of withdrawal [30  
22 seconds] and how those delays would have been or those  
23 withdrawals are attributable to those delays?

24 MR. MARTIN: Oh, no, we've not given a number here as  
25 to what, again, what is a high rate of withdrawal. And there  
26 is some subjectivity here as well. But whether, I've not, as  
27 far as a situation that would be where withdrawals are  
28 attributable to the high rate to the high withdrawal rates,  
29 I'm sorry where delays in disbursement are attributable to the

1 high withdrawal rate. I'm not certain of exactly what an  
2 example of how that would, how that would work. We have seen  
3 situations where a school was, in the instance I'm thinking  
4 of, just having difficulties financially and administratively  
5 and just wasn't able to get their disbursements done so yeah,  
6 I mean, if you saw students having to withdraw from that, I  
7 don't think you would have, you might not have an official  
8 withdrawal rate associated with that because we'd rather be  
9 tied to that particular term or whatever, but I'll take that  
10 back and see if we have some more clarification on that. But I  
11 do understand your concerns there, Brad.

12 MR. ADAMS: I just struggle that the Department can't  
13 tell us what that means in this session. How can we vote for  
14 language that the Department does not know how it would apply  
15 to us? But thank you for listening.

16 MR. WAGNER: Thanks, Brad. Let's see. Anne, you're  
17 up.

18 DR. KRESS: Sure. I have a quick question and really  
19 probably looking for the Department's thinking on this. So in  
20 both I1 and in M, there's a reference specifically to only  
21 Gainful Employment programs. And certainly you know there are  
22 lots of programs within higher education where students come  
23 to college seeking a career. My first degree is in finance.  
24 So, why is Gainful Employment specifically called out in those  
25 items?

26 MR. MARTIN: Well, yeah, if we look at M, this has to  
27 do with the revenue. The whole concept of failing programs,  
28 failing GE, the failing of GE rate is only associated with

1 Gainful Employment programs, you know, programs to prepare  
2 students for Gainful Employment and recognized occupation,  
3 which would be all programs or proprietary schools and non-  
4 degree programs for the most part at a not for profit, public  
5 and private institutions, so it has to do with the fact that  
6 that's a statutory category, Gainful Employment programs. And  
7 that with this, and when you talk about at least half the  
8 Title IV revenue is from programs, at least half the Title IV  
9 revenue in the most recent year is not from programs that are  
10 failing. The only programs that would be subject to failing or  
11 passing are Gainful Employment programs. Which is not to say  
12 that, I mean, your point being that and in contemporary  
13 education a lot, yes, a lot of programs, certainly that are  
14 not considered Gainful Employment programs, are still  
15 preparing students for in some cases specific fields like  
16 engineering, finance, accounting, nursing. But they're not  
17 they're not, in most cases, Gainful Employment programs under  
18 the statutory definition.

19 DR. KRESS: Okay. Alright. Thanks.

20 MR. WAGNER: Any specific comments on K or M? Okay,  
21 Greg, back to you.

22 MR. MARTIN: Okay, we'll move on to let's move on to  
23 O. This is I'll wait for Rene to pull up the issue paper  
24 again. There we go. Alright. Has not been subject to a  
25 significant negative action by a state or federal agency or an  
26 accrediting agency and has not lost eligibility to participate  
27 in another federal education assistance program due to  
28 administrative action against the institution. And here we  
29 have made a technical change to use, subject to which we

1 believe is more common parlance for state and/or federal  
2 actions. And that's everything for O. And then if we move down  
3 to, let's see. Why don't we move down to Q? And that is not  
4 and does not have any principal or affiliate of the  
5 institution, as those terms are defined in 2 CFR parts 180 and  
6 345. Or any individual who exercises a substantial control as  
7 defined in 668.174 C3. And this is added language that closes  
8 the gap between the existing definition used for principal or  
9 affiliate and the current past performance regulations for an  
10 individual who exercises substantial control by incorporating  
11 both cross references. And continuing, and that was that was  
12 in Q1. And if we, we'll move down to Q3, has been convicted of  
13 or pled nolo contendere or guilty to a crime involving the  
14 acquisition, use or expenditure of federal, state or local  
15 government funds, or has been administratively or judicially  
16 determined to have committed fraud or any other material  
17 violation of the law involving these funds. And here we have  
18 also added an additional provision supported by a negotiator  
19 related to crimes involving federal funds or findings of  
20 fraud. And in 4, a current or former principal or affiliate,  
21 as those terms are defined in 2 CFR parts 180 and 3485 or any  
22 individual who exercises or exercise substantial control as  
23 defined in 668.174 C3 of another institution whose misconduct  
24 or closure, misconduct or closure contributed to liabilities  
25 to the Federal Government in excess of 5 percent of its Title  
26 IV HEA funds. And here we have made several changes to this  
27 item to use existing to use an existing definition of a  
28 principal or affiliate of the institution to clarify that the  
29 individual in question may still be employed by the  
30 institution if the institution is still open, and to clarify



1 that the individual has contributed to liabilities to the  
2 Federal Government. We've also capitalized Federal Government.  
3 And I'll stop there. That would be through, through Q, and  
4 I'll take any comments.

5 MR. WAGNER: Thank you, Rene. Thanks, Greg. Let's  
6 see, I see, Jamie, your hand's up, you're first.

7 MS. STUDLEY: Okay. Mine is pretty simple, it's on O,  
8 and O says has not been subject to a significant negative  
9 action by a federal state agency or an accrediting agency.  
10 There's just a question of time here. There's a danger that  
11 that could be misread to be any time in history. And we this  
12 issue has come up in another location on something similar,  
13 and I suggest that perhaps there be a time horizon or that you  
14 clarify in some way that if there was a negative action that  
15 was resolved in the institution is in full compliance or has  
16 been for whatever period of time the Department wants. It's  
17 just a time saver because I don't think you mean it to be  
18 eternal.

19 MR. MARTIN: No, the intent, the intent here is not  
20 for it to be forever, certainly not if the institution has as  
21 resolved the problem or the whatever the factor was that led  
22 to that significant negative action taken. Did you did you  
23 have any proposed parameters around this or language?

24 MS. STUDLEY: I really was seeking the Department  
25 sense of, I mean, are you looking for is now in compliance or  
26 would you like to see compliance for a certain period of time?  
27 I can try and work up language, but I really think it's  
28 important.

1 MR. MARTIN: I think any significant action,  
2 certainly, I worry about a time limiter here because I think  
3 any significant action taken by any of these entities that is  
4 yet to be resolved is a factor, I think. But rather so bring  
5 some, some timeframe. I wouldn't want to say two years, but it  
6 is resolved and therefore, it would not be considered so.

7 MS. STUDLEY: Yeah, no, I understand that.

8 MR. MARTIN: To the extent it's to the extent that it  
9 to whatever it is that precipitated the action has not been  
10 resolved.

11 MS. STUDLEY: Maybe it's as simple as is not subject  
12 to a significant negative action. If what you mean is not now  
13 under that kind of order. I think the solution is simpler.

14 MR. MARTIN: I'll take that back, I don't know, you  
15 know, whether or not we've and there could be, you know, in  
16 just in thinking this through, there could be situations where  
17 a school maybe has resolved these. But there are ongoing  
18 issues that keep arising where they are subject to these  
19 significant negative actions. And I would ask the committee. I  
20 mean, does anybody have any thoughts about that limiting it if  
21 we were to limit it to those that are outstanding or, you  
22 know, what about the concerns of an institution who may have  
23 resolved some of these but has ongoing issues with negative  
24 actions being taken against them? I just throw that open if  
25 anybody wants to comment on that.

26 MR. WAGNER: Carolyn, is that specifically on that  
27 question?

1 MS. FAST: Yeah, I just, I'm not sure that resolved  
2 necessarily would work here because, for example, you could  
3 get, a state or a federal agency could get a judgment against  
4 a school of finding misconduct and that that would be a  
5 resolved situation. I think the Department might want to have  
6 be able to consider like in other words, that a court case  
7 could end and be resolved.

8 MR. MARTIN: Yeah, and I think this does give us, you  
9 know, the way it's written gives us that sufficient latitude  
10 for that. I mean, if the concern is, I mean I could say that  
11 we certainly wouldn't look at an institution had a negative  
12 action taken 10 years ago and significantly resolved and  
13 sufficiently resolved that. Would we say that school is  
14 administratively incapable, going forward forever? No, Iwe  
15 would not do that, but I don't, I'm just not sure how, and to  
16 your point, how we could put language in here that would give  
17 us the latitude that we need, not just limited to those that  
18 have not been resolved, but yet make it clear that we don't  
19 mean forever. I can just say that the Department's intent is  
20 not going to be forever. I don't want to say anything limiting  
21 the Department to not being able to look at this merely  
22 because something has been resolved. I mean, the resolution  
23 could be very important. We always want to see things  
24 resolved. But again, there could be an ongoing pattern of  
25 problems that, for whatever reason, the institution is able to  
26 resolve to the satisfaction of one of these entities, but  
27 still indicates the institution that we have a lot of concerns  
28 about the institution. So I will, we'll look at that.

1 MS. STUDLEY: And I would just suggest that if there  
2 are other concerns, they should be at a level that they are  
3 covered by something else so that there is notice. So I think  
4 that is not subject to a significant negative action is one  
5 way to go if you want to be able to continue to look at the  
6 basis for that, I understand, then I think some way of  
7 assuring that it's not, the Department would follow the  
8 negative action to its conclusion if there were resolution,  
9 but I'm not trying to add a lot of words.

10 MR. MARTIN: No, I see what I see what you're saying.  
11 You have concerns about it being in perpetuity. You know that  
12 if somebody resolves, if the institution resolves something in  
13 you know, 2022 that in 2035, the Department would say, oh, but  
14 you know, you had this-

15 MS. STUDLEY: You once had this problem.

16 MR. MARTIN: You once had this problem if you're not  
17 administratively capable. I can say we wouldn't do that. But  
18 if we're looking for something, you know, more assurances in  
19 the language, I'm not 100 percent certain what that would be,  
20 but it's a good point.

21 MR. WAGNER: Okay, thank you. Thank you, Jamie. Do  
22 you have anything else to add? Okay, thanks. Thanks for your  
23 patience. Brad, you're next.

24 MR. ADAMS: And I think Jamie's proposed language is  
25 better than currently written. I do think some sort of  
26 resolution is important here. I like the word unresolved. I  
27 don't, I'm not a lawyer here, but I'm not sure how you could  
28 resolve something and the Department still think it's

1 significant, but I've obviously never seen an instance of  
2 that. So but I do think there's some language there that needs  
3 to be added and potentially maybe something in P romanette one  
4 could be utilized here, but I'd like to go to new N romanette  
5 two. I'm sorry, romanette, or no, I apologize. Just N, new N  
6 under misrepresentations and aggressive recruiting. I'll let  
7 you get there, Greg.

8 MR. MARTIN: I see where you were.

9 MR. ADAMS: Okay. As you know, the Department's  
10 proposal here allows for it to find an institution  
11 administratively not to be administratively capable if it  
12 engages in these misrepresentations and aggressive  
13 recruitment. And as I mentioned in the previous two sessions,  
14 you know, we still don't have a definition for aggressive  
15 recruitment, and we're still not including anything in front  
16 of misrepresentation, which I've proposed the word significant  
17 misrepresentation. But given we've had a lot of back and forth  
18 on that, I'm wondering now why we're including the word,  
19 including twice here. Are there any instances that the  
20 Department is referencing here where an institution is in  
21 compliance with subpart F and subpart R, but is somehow not  
22 compliant with this subsection N? Are there other types of  
23 misrepresentation aggressive recruiting that violate this  
24 section but do not violate subpart F and subpart R?

25 MR. MARTIN: So you're asking does not engage in  
26 representations of misrepresentations as defined in subpart F  
27 of this or of this part or aggressive recruitment as defined  
28 in subpart R. So you're saying, is there, I'm not sure I  
29 understand your question, Brad. Are you you're saying, is

1 there some way that they could not be engaging in  
2 misrepresentation as defined in subpart F, but still be  
3 violating subpart R?

4 MR. ADAMS: No, what I'm saying is we've added the  
5 word including here twice now from week two to week three. And  
6 so I'm asking why we're doing that and could you be in  
7 compliance with subpart R and subpart F under these two as  
8 described in those subparts, but not be in compliance with  
9 this in an administrative capability? Is there a reason why  
10 we're adding the word including in two parts right here?

11 MR. MARTIN: I see what you're saying, does not  
12 engage in misrepresentations, including those defined in  
13 subpart F or so you're saying, would it be possible for  
14 someone for a school to be in compliance with the letter of  
15 subpart F and subpart R, but still run afoul of N in that it's  
16 because it's does not engage in misrepresentations, including  
17 those?

18 MR. ADAMS: Yes.

19 MR. MARTIN: Does this extend to misrepresentations  
20 beyond what is defined in subpart F and subpart R? Yeah, it  
21 does give the Department flex. Well, it does give the  
22 Department the latitude beyond you know what is what is  
23 defined in the subparts. Because as it's written, it does  
24 engage in misrepresentation, does not engage in  
25 misrepresentation, including those, I would imagine that most  
26 of those would be covered under subpart F or subpart R, but it  
27 does leave the possibility for the Department to view

1 something as a misrepresentation that is that is not strictly  
2 defined in the subparts as written.

3 MR. ADAMS: To me, I would think being administrative  
4 capable is a, you know, a level above those other subparts.  
5 And to me, I would think if you're I'd be surprised that you  
6 could get past the definitions in subpart F and subpart R and  
7 not being administratively capable, so.

8 MR. MARTIN: Well, you wouldn't be if you were to run  
9 afoul of those, you wouldn't be administratively capable. But  
10 this says does not engage in misrepresentations, including  
11 those. So those are definitely stated, but it would be  
12 possible for there to be a type of misrepresentation that is  
13 technically not included in subparts F or R. So I mean, I  
14 know, there would be no way of not being compliant with or  
15 running afoul of misrepresentations in subpart F, for  
16 instance, and still being compliant with within.

17 MR. ADAMS: Well, in addition to the comment not  
18 included, I don't want to forget my first comment that the  
19 fact that we're not saying a misrepresentation has to be  
20 significant to be administratively capable is extremely  
21 important, in my opinion. And again, we are defining  
22 aggressive recruitment that is yet to be defined or  
23 referencing a definition that has yet to be defined in  
24 administrative capability. So I have a real problem with that  
25 as well. Thank you.

26 MR. MARTIN: Thank you.

27 MR. WAGNER: Thank you, Brad. Let's see, Barmak,  
28 you're up.

1 MR. NASSIRIAN: Yeah, my comment is on O, but I want  
2 to echo Brad's concern about the use of the word including  
3 because it expands the universe of potential trip wires here  
4 and they're not articulated anywhere else except in in the  
5 citation. So I would I would advocate deleting including so  
6 that subparts F and R basically articulate what the issues  
7 are. I don't agree. I'm not that worried about the fact that  
8 we don't have a regulatory definition of them that is outside  
9 the scope, whatever it is, that's that has gone through its  
10 own process and we need to treat it as a black box  
11 unfortunately. I just wanted to flag on O, and I've said this  
12 when the issue has arisen in financial responsibility  
13 triggers. Remember that I do not believe any other agency  
14 well, some other consumer protection agencies might, but  
15 federal agencies, particularly the VA and the DOD, do not deal  
16 with the entire institution and their judgments. They deal  
17 with programs offered by institutions so an institution could  
18 actually run afoul of VA rules and lose eligibility for three  
19 of its programs while retaining eligibility for three others.  
20 So you may want to consider, I realize this is maybe  
21 nitpicking, but you may want to consider changing the opening  
22 of subpart A by saying, you know, up top, you have an  
23 institution you could start O by saying or any of its programs  
24 have not been subject because the judgment would typically in  
25 the case of VA and DOD with regard to programs, not with  
26 regard to the institution as a whole. Thank you.

27 MR. MARTIN: Thank you, Barmak. We do consider that  
28 we have authority under this this rule, retain the ability to  
29 apply the finding if a sanction or action is applied to a  
30 program within an institution. So we have looked at this and



1 conclude that we and consider rather that we do have such  
2 authority, but you don't think that this is strong enough  
3 language?

4 MR. NASSIRIAN: I defer to your judgment. If you  
5 think you have the authority, then that's fine. Let's not  
6 complicate it.

7 MR. MARTIN: We do, we have checked with counsel and  
8 we do believe that this does [interposing]

9 MR. NASSIRIAN: Good enough for me.

10 MR. WAGNER: Thank you, Barmak. Let's see, Ashley,  
11 you're next.

12 MS. SCHOFIELD: Yes, I just wanted to echo my support  
13 for what Jamie's comments were earlier related to  
14 discrimination. HBCUs in particular have experienced systemic  
15 offenders [ph], particularly sex. And so just making sure that  
16 there is clarification regarding the language as it relates to  
17 including the words that Jamie mentioned earlier, excluding  
18 the words and so just wanted to just echo Jamie's sentiments  
19 related to discrimination and the encounters that HBCUs and  
20 MSIs in particular have had with their accreditors.

21 MR. MARTIN: Thank you.

22 MR. WAGNER: Thank you, Ashley. Carolyn, you're next.

23 MS. FAST: I just wanted to express support for the  
24 inclusion of the language in N that relates to  
25 misrepresentations, including the including language. The  
26 reason why I think that is actually helpful here is that there

1 are relevant state laws on misrepresentation and aggressive  
2 recruiting that are or may be broader than what's in the  
3 what's going to be in the federal regs. We don't know what's  
4 going to be in the definition yet, but we have some idea based  
5 on the negotiated rulemaking. And it seems to me that that  
6 language could be potentially the proposed or whatever came  
7 out of the rulemaking language is narrower than some state  
8 laws that might define aggressive recruiting, more potentially  
9 more broadly. So that's a situation where, you know, even  
10 under there could be relevant Borrower Defense claims that  
11 referenced the violation of state law and misrepresentations,  
12 and that is a relevant consideration for administrative  
13 capability. So my suggestion would be that it would be  
14 meaningful to leave the language that is current is currently  
15 proposed about misrepresentations and aggressive recruiting  
16 for that purpose.

17 MR. MARTIN: So you're saying you would favor  
18 retaining where we say including as defined in subpart F and  
19 R, but not absolutely limiting the Department to those to  
20 those to what is defined in those subparts, correct?

21 MS. FAST: That's right, because I think that there  
22 is a purpose for that which would be to make sure that if  
23 there are broader state laws that are violated, those are  
24 captured as well here because it seems like that would be  
25 relevant if a state law was violated too.

26 MR. MARTIN: Right, thank you.

27 MR. WAGNER: Jessica, you're next.

1 MS. RANUCCI: Thanks. I was going to make the same  
2 point as Carolyn, but perhaps in a less sophisticated way,  
3 which is just, I think that we would all agree that an  
4 administratively capable school does not engage in  
5 misrepresentations. Period. And if that's true, then I think  
6 that including language is the correct language to be there,  
7 which is we can give examples of the types of  
8 misrepresentations that that school does not engage in, but  
9 that the higher level principle stands. And then separately, I  
10 just wanted to make a quick note on O, which is I'm not sure  
11 if this would assuage Jamie's concerns or anyone else. But  
12 this provision, as I read it, just says it administratively  
13 capable school has not been subject to negative action in  
14 these various ways. And I think that is different. Like what  
15 this isn't saying is a school is administratively incapable if  
16 these actions have happened, and I'm not sure if the daylight  
17 between those two things would maybe help your concerns, but I  
18 just wanted to point it out.

19 MR. MARTIN: Thank you.

20 MR. WAGNER: Yeah, I don't see any other hands for O  
21 or Q. Greg, you want to continue?

22 MR. MARTIN: Sure. Let's move on to, I just want to  
23 make sure I get all my all my letters correct here. We're  
24 moving on to V. I'll wait for Rene to pull that up. I think  
25 all of us are going to be seeing crossed out letters in our  
26 sleep, trying to determine which paragraph it is. Okay, so  
27 here we are in V. And this is, no, we don't, let's see if we  
28 have any changes here. I don't believe we have... no we don't  
29 have any. There are no changes for V, I don't believe. So, I'm

1 going to move on. I thought there was a change in V, but no.  
2 And oh yeah, we are staying in, yes, there is. I just was in  
3 the wrong place, so we were going to V, V2, that's where I  
4 want to be. I was in the wrong part of V. So this is a, there  
5 it is, thanks, Rene, I'm sorry for the for my confusion. So in  
6 V2, a high school diploma is not valid if, it does not meet  
7 the requirements established by the appropriate state agency  
8 in which the state where the high school is located has been  
9 determined to be invalid by the Department, the appropriate  
10 state agency in which the high school was located or through a  
11 court proceeding, was obtained from an entity that requires  
12 little or no secondary instruction or coursework to obtain a  
13 high school diploma, including through a test that does not  
14 meet the requirements for a recognized equivalent to a high  
15 school diploma in 34 CFR 600.2 or was obtained from an entity  
16 that maintains a business relationship or otherwise affiliated  
17 with the eligible institution at which the student is enrolled  
18 and is not accredited. So we are aware that some states do not  
19 regulate public, nonpublic high schools, and so there could be  
20 a concern that such diplomas are not recognized. So what we  
21 have done here is to put in some suggested language that  
22 indicates that diplomas are invalidated if they do not meet  
23 the requirements that are established by the state. If the  
24 state does not establish such requirements, including for  
25 nonpublic high schools, then we would generally not apply this  
26 requirement, absent other indications of fraud. So I'll stop  
27 there because that is the last section in admin capability we  
28 have to discuss, and I'll open the floor.

29 MR. WAGNER: Thanks, Greg. Kelli, you're up.

1 MS. PERRY: Thanks. I put in the chat some additional  
2 proposed language as it relates to the concern from private  
3 high schools, then the concerns that they have as it relates  
4 to not necessarily being regulated by states and all the  
5 different states having different rules for consideration  
6 because I think the original proposal that we had submitted  
7 was not accepted. So this is kind of a compromise between the  
8 two.

9 MR. MARTIN: And do you have any further comments on  
10 the, on the nature of these changes?

11 MS. PERRY: Well, I think, I mean, I don't know if  
12 you can open the Word document, but in one romanette two, it  
13 the recommendation would be to take out if the high school is  
14 regulated by the **overseas** state agency and just say confirming  
15 where the receiving documentation from a state agency that was  
16 registered or meets requirements established by that state  
17 agency and then changes in two romanette one and two, where  
18 romanette one would just say is not valid if was obtained from  
19 an entity that does not meet one romanette two as opposed to  
20 the language that's there. And then the second one romanette  
21 two has been determined to be invalid by the Department and  
22 strike the appropriate state agency from that language.

23 MR. MARTIN: Okay. Any comments on that?

24 MR. WAGNER: Thank you, Kelli. Let's see, Brad,  
25 you're up.

26 MR. ADAMS: Thank you. I have a question on the V1  
27 romanette one, and it's, you know, a question that has been  
28 raised several times throughout this rulemaking, and I don't

1 believe it's been answered yet, so I'll try and ask it as  
2 directly as I can. How can an institution verify a high school  
3 diploma by contacting the high school if the high school has  
4 closed? It's an important part of a problem that the  
5 Department has yet to answer and are we supposed to deny all  
6 such students' admission from closed high schools no matter  
7 what? It's not clear to me how we go about getting one of the  
8 three items in romanette one A, B, and C if there's no one  
9 there to send it.

10 MR. MARTIN: You know, I can address that. We,  
11 remember here that we're only we're requiring the institution  
12 to have to develop adequate procedures to determine the  
13 validity of a high school diploma. And we don't believe that  
14 the occasional individual whose diploma cannot be verified  
15 will fall out of compliance with this requirement because we  
16 certainly understand that may well be the case. So we, you  
17 know, we're not going to say that where schools closed in an  
18 instance where the school's unable to do that, that that means  
19 you've run afoul of the regulation as long as you have put  
20 into place adequate procedures to determine the validity of  
21 these diplomas. We do think it's critical to hold institutions  
22 to a higher bar for regular procedures in the event that the  
23 school or Department believes the diploma to be invalid and  
24 require the institution to exhaust those procedures to the  
25 extent that is practicable in these cases. So obviously,  
26 there's always the possibility that a student's school is  
27 closed and that you will not be able to obtain that  
28 information from that closed entity. But we but we still feel  
29 that the regulation is written is necessary to hold schools to  
30 the standard. But again, we want to reiterate that the

1 inability to do that for the odd student's whose school is  
2 closed is not a violation here. We expect that would happen.

3 MR. ADAMS: And, you know, I proposed adding a  
4 romanette three. It basically said if the high school the  
5 student attended is no longer open, the institution must take  
6 other reasonable steps to verify the validity of the diploma,  
7 such as contacting the entity that may serve as a repository  
8 for the closed high schools critical records, if applicable.  
9 But the student is not barred from participating in Title IV  
10 HEA programs solely based on the high school is no longer  
11 open. So again, I think it's the, Greg, this actually says  
12 kind of what you just verbally replied with and would be  
13 important to add for students or schools to know what to  
14 follow.

15 MR. MARTIN: Thank you, Brad.

16 MR. WAGNER: Thanks, Brad. Barmak, you're up.

17 MR. NASSIRIAN: Yeah, a couple of concerns. One of  
18 which has to do with the high likelihood that the kind of  
19 diploma mill you may be most concerned about could be an  
20 online high school that is that has methodically sought out  
21 the least rigorous place it be recognized and then reaches out  
22 and touches people across the country. So as a general  
23 practice, it may be better to index the state recognition  
24 process. Not so much to the location of the high school, but  
25 to the location of the students when they enroll. Because it's  
26 really the satisfaction of the secondary educational  
27 requirements for the student where that student is, that  
28 creates a meaningful high school diploma. So you may want to

1 change that language where you refer to the location of the  
2 high school by indexing the location to where the student is.  
3 Now, if a student from Bethesda, Maryland, goes to a private  
4 institution in the district, the student is located in the  
5 district for purposes of this language. So we're not talking  
6 about the residence state of residence, but where the student  
7 is receiving the instructions. We have kind of parallel  
8 language down the road that that I'll send around for higher  
9 education distance programs. But in this case, I really think  
10 the area of greatest concern would be online high schools. So  
11 I think indexing the state recognition process to the location  
12 of the students would be pretty meaningful. And also, I am  
13 aware of a of a legal memo that our friends at [inaudible]  
14 circulated, and I think Kelli is sort of partially attempting  
15 to encapsulate some of that memo's ideas into her language. I  
16 worry about that because again, here we have just the  
17 recognition of a state as the metric. And I don't know that  
18 what the least rigorous state may approve is necessarily  
19 appropriate for a student somewhere else. So, so I have some  
20 reservations about that. I understand the concern that that  
21 private high schools have, but we also have to concede that  
22 that the likely area of fraud, unfortunately, really, [30  
23 seconds] you know, it's not going to be in the publics, it's  
24 going to be within the private secondary system. It'll be an  
25 entity that purports to be a private nonprofit. So, you know,  
26 I think this language we have is generally reasonable, but I'm  
27 happy to hear any counterarguments if anybody wants to offer  
28 them.

29 MR. WAGNER: Thank you, Barmak. Anyone else have any  
30 comments or questions on V2? Yes, Jessica.



1 MS. RANUCCI: I just wonder if this, again, is a  
2 place where the word applicable might be some of the work that  
3 we're concerned about, rather than be requirements of  
4 applicable requirements, because I understand, maybe I'm  
5 misunderstanding Kelli, but I understand the largest concern  
6 is that in the absence of applicable requirements, what  
7 happens?

8 MR. MARTIN: Exactly where would that be, Jessica?  
9 Would you consider-

10 MS. RANUCCI: Sure, I was thinking of it in B two  
11 romanette one.

12 MR. MARTIN: B two romanette one? Does not meet the  
13 requirements established by the appropriate state agency, of  
14 which the appropriate the appropriate state agency or the  
15 state that the high school is located. Is that what you're  
16 talking to there?

17 MS. RANUCCI: Yes.

18 MR. MARTIN: Addressing rather. So you say it does  
19 not meet the applicable requirements?

20 MS. RANUCCI: It's just a sugges- the concern. It's  
21 just a language suggestion for concerns that weren't mine. So  
22 I'll let someone else speak to that. I don't know if that  
23 would address the concerns, but as I understand it, it might.

24 MR. MARTIN: Then I go back to again, you know, we're  
25 looking at, let's see what we're trying to address here. These  
26 are situations where the institution of Secretary has a reason

1 to believe the high school diploma is not valid, so we're not,  
2 you know, we're not we're not talking here about assessing the  
3 quality of high schools overall or even the quality of those  
4 online or, it's a matter of where there's reason to believe  
5 that the that the high school where you have reason to believe  
6 that it wasn't that it wasn't valid and it makes it, I think,  
7 puts the burden on institutions to look you know where they're  
8 aware that there is a diploma that seems spurious or certainly  
9 where institutions are knowingly and willfully engaging in a  
10 practice of contracting with high school degree mills. And  
11 we've seen a lot of that out there. This gives us what we need  
12 to do to go after that. If there are no other comments, we've  
13 had a lot of, there have been a lot of suggestions here and I  
14 am assuming some of these things you want to see addressed  
15 before a before a consensus vote. So if it pleases the  
16 facilitator, I would I would like to take, I would like to  
17 adjourn for approximately, let's call it till 2:30 and have a  
18 discussion, internal discussion and come back with a reaction  
19 to some of the language that's been proposed here since this  
20 is our last this is our, you know, sort of our, not our  
21 absolute last shot at it, but we are going to take a consensus  
22 for it. So I'd like to I'd like to have some discussions  
23 before we come back and do that if that's, if everybody seems  
24 amenable to that.

25 MR. WAGNER: Sure, sure. But we have Kelli's hand up.  
26 Do you want to go to-

27 MR. MARTIN: Oh, sure. Yeah. And take everybody's  
28 comments first. Yes. I didn't mean to suggest we're cutting

1 off. I'm not cutting off discussion at all. I didn't see  
2 anybody else's hand up, my mistake.

3 MR. WAGNER: I see, okay, so I see two hands up, that  
4 first would be Kelli. And then let's see Sam. Go ahead, Kelli,  
5 you're up.

6 MS. PERRY: Yeah, no. I just wanted to address what  
7 Jessica just said was the thought process of maybe adding the  
8 word applicable because that may work because I think the  
9 concern is that you know when we talk about not meeting the  
10 requirements established by the appropriate state agency, some  
11 of these privates are not required. There are no requirements  
12 for a state agency, so if in fact, depending upon the state  
13 they were in, if the said potentially, you know, requirements,  
14 if applicable, established by the appropriate state, that  
15 might get there because that way it kind of pulls out the ones  
16 that don't have those requirements.

17 MR. MARTIN: Okay, that's noted. Thank you.

18 MR. WAGNER: Thank you, Kelli. Sam, you're on mute.

19 MS. VEEDER: Apologies. Sorry about that. I just  
20 wanted to go back again to section each one before you break,  
21 before the Department breaks for discussion and again say that  
22 on behalf of the Financial Aid Administrators Group, there's  
23 significant concern about the words and deadlines in H1 and  
24 support Kelli's proposal to just strike those as they don't,  
25 they don't add value. They create a perception that deadlines  
26 are required so students might or schools might manufacture  
27 deadlines that aren't necessary, and then that students  
28 particularly low income and first generation students who

1 already struggle to meet and understand deadlines might miss  
2 those deadlines and lose access. It just creates more  
3 obstacles all the way around and doesn't add value in the  
4 context here.

5 MR. MARTIN: I'm trying, and I don't I guess I'm just  
6 trying to be to understand this fully. So you're talking  
7 about, going back to H1. But if the institute-

8 MS. VEEDER: It's a deadline reference because-

9 MR. MARTIN: A deadline reference.

10 MS. VEEDER: Deadlines, yeah, because I think it  
11 creates an incorrect perception that deadlines are required  
12 and need to be addressed and then schools who might not need  
13 deadlines or have them currently might feel like they have to  
14 add them. And then students will miss them and not understand.  
15 It will delay disbursing of aid and processing of aid. And  
16 particularly because we find that the students who are  
17 historically late when we do have application deadlines in  
18 place are low income and first generation students.

19 MR. MARTIN: Okay, I'll take that, I do want to  
20 clarify, though, that the Department is not, this is not  
21 imposing any deadlines. If an institution's policy was that  
22 they had no deadlines to disclose then or to assist in the  
23 disclosure requirement to provide in providing adequate  
24 counseling that they have, you know, that there are no  
25 deadlines, we're not. I can see your point that maybe an  
26 institution could, could you know, take this to mean that  
27 there needs to be deadlines, but-

1 MS. VEEDER: Right. All the more reason to take it  
2 out if you're not suggesting, you know.

3 MR. MARTIN: But to, let me just ask this question.  
4 But to the extent that an institution does have deadlines, we  
5 know some do, many do, should those not be, should students  
6 not be made aware of those?

7 MS. VEEDER: Absolutely, they should. We, we have,  
8 deadlines typically apply to applications that need to be  
9 completed for FAFSA. Other applications-

10 MR. MARTIN: Right.

11 MS. VEEDER: -labeling, but not deadlines for  
12 accepting, declining or adjusting award amounts. Those are-

13 MR. MARTIN: Okay, I see what you're saying. So the  
14 reference here to whether the deadlines are the deadlines as  
15 applicable to the acceptance or decline or [interposing]

16 MS. VEEDER: Applicable works, but I just don't think  
17 there's a reason to have it at all. It still creates  
18 unnecessary confusion, even when I read it the first time at  
19 the end of last week, it, it made me think, oh my gosh, I, you  
20 know, we don't have deadlines for accepting awards, and now  
21 what? It just-

22 MR. MARTIN: Okay, alright, I'll take that back.

23 MR. WAGNER: Okay, thank you. We have Kelli and then  
24 Marvin. So, Kelli you're up.

1 MS. PERRY: Yeah, and I just want to add on to what  
2 Sam just said and go back to the whole concept of that. If  
3 there are deadlines as it relates for accepting, declining or  
4 adjusting, it's going, those are going to be in the  
5 instructions. So we don't need to say instructions and  
6 deadlines because that will be in the instructions for  
7 accepting, declining, and adjusting award amounts.

8 MR. WAGNER: Okay, thank you Kelli. Marvin.

9 MR. SMITH: Yeah, kind of to both their points that,  
10 you know, applicable deadlines should be part of any  
11 communication from financial aid, not just about accepting,  
12 declining, or adjusting awards, it's about completing  
13 verification, it's about applying for aid. It's about  
14 completing promissory notes. So it just, I totally agree with  
15 Sam. It just adds more confusion and maybe sets up a scenario  
16 where a school says, nope, we didn't hear from you, and we're  
17 going to cancel all your aid, and I don't think that's what  
18 you intend. So I think deleting deadlines and it's going to be  
19 in our instructions fixes this issue.

20 MR. MARTIN: Thank you.

21 MR. WAGNER: Thank you, Marvin. Adam, you had your  
22 hand up.

23 MR. WELLE: Hi, so I was looking at number two on the  
24 validity of the high school diploma and what, I just want to  
25 confirm, I think the intent is that if there was a concern  
26 raised before about high schools that have closed, so I just  
27 wanted to confirm I think the Department would consider the  
28 degree valid if the student, you know, obviously the school

1 was open at the time, the student got their degree but has  
2 since closed. So if I could get confirmation that's the intent  
3 here that if a school has closed, the degree is still valid,  
4 but if so, I just maybe it could be phrased to make that  
5 clear. Like saying that doesn't you know meet the requirements  
6 established. I'm sorry if the degree was valid at the time the  
7 student completed their degree, so putting some sort of time  
8 descriptor in there, so it's clear that if the school is now  
9 closed, the degree is still valid.

10 MR. MARTIN: I mean, it certainly the degree being  
11 the school being closed would not in and of itself invalidate  
12 the degree. I don't know that we would want to say that if the  
13 schools closed, it necessarily will be out of compliance, it  
14 necessarily is valid. So I think that is a something we have  
15 to consider. So you would want something that would say if the  
16 institution is confirmed to be closed, that it would  
17 automatically be a valid degree or that the institution, the  
18 institution would have been considered to have exercised its  
19 adequate procedures to make that determination?

20 MR. WELLE: Just that the validity of the degree is  
21 based on the recognition of the school at the time they  
22 obtained the degree. So I guess I'm not sure on the exact  
23 language to best achieve that, but just to make that  
24 clarification somewhere within two.

25 MR. MARTIN: Okay.

26 MR. WAGNER: Thank you, Adam. And it's a little after  
27 the fact but just wanted to announce for everyone that Adam

1 was in for state attorneys general. Going back to the queue,  
2 we have Jessica.

3 MS. RANUCCI: Thanks. If I just if I understand what  
4 Adam's saying correctly, it's that under two, V2 romanette  
5 two, three, and four in past tense, but romanette one is a  
6 present tense. And I think what Adam is saying it or what I  
7 understand, Adam, I'm sorry, I don't mean to put words in your  
8 mouth, is that perhaps two romanette one needs to be tied to  
9 the time period at which the student attended the school so  
10 that it would be something like did not meet the requirements  
11 applicable requirements established by the appropriate state  
12 agency at the time of attendance or at the time, I don't know.  
13 It's outside my area of expertise, but that just makes sense  
14 to me from a common sense perspective.

15 MR. WAGNER: [Inaudible]

16 MR. MARTIN: Oh, sorry. No, I just wanted to say I  
17 saw where she was.

18 MR. WELLE: I was just going to say, sorry, yeah,  
19 Jessica, I think that's correct, I think maybe within two  
20 romanette one saying did not meet, so as opposed to does not  
21 mine accomplish the concern or address the concern.

22 MR. WAGNER: Thank you, Adam, for the clarification.  
23 I don't see any other hand. Before we pause a live feed, Greg,  
24 I know you were looking at about a 30 minute break and it's  
25 about 2:19. Is that what you're still proposing?

26 MR. MARTIN: Yeah, I think we need a little bit time  
27 to review all of this. It's a lot. I want to make sure we give



1 everything due consideration. Yeah, so. I'll leave it to the  
2 facilitators to do the math.

3 MR. WAGNER: Yeah, it's 20 after, 2:50 by my count.  
4 So why don't we pause the live feed until 2:50 and then we can  
5 come back. Welcome back, everyone. We're back from our break.  
6 It is 2:52 Eastern, I'll go ahead and turn it back over to  
7 Greg.

8 MR. MARTIN: Hello, everyone, and thank you for  
9 bearing with us in the last 20 minutes or so. Before we have a  
10 vote on consensus here, we're going to pull up some revised  
11 text and just take a look at some of the revisions we've made  
12 here to address the comments we've had, I'll explain where we  
13 are with these, the first the place we'll start with is H1.  
14 And you can see here that we have made the we've retained the  
15 nature of the aid and the applicable deadlines. We've added  
16 applicable deadlines for accepting, declining, and adjusting  
17 award amounts. Our reasoning here is first of all, this was  
18 largely language from advocates that are concerned about  
19 students having all information that is that is necessary for  
20 them if there are applicable deadlines. And I want to  
21 reiterate that there may not be applicable deadlines. It does  
22 not this does not in any way obligate the school to impose  
23 deadlines of any sort. This is the admin capability provision.  
24 So it's not in the you know operational language in 668.164  
25 for example, that's pertinent to disbursements or 165 to  
26 notice as an authorization. So it is here as a measure of  
27 admin capability that to the extent that there are those  
28 deadlines and they are applicable, that they should be,  
29 conveyed to students through the provision of adequate

1 counseling. And want to make sure I hit everything, so the  
2 next place we're going to move to would be, I think. Okay. If  
3 I'm not mistaken, might have to rely upon Rene to steer me in  
4 the right direction here, yes, in K, here we have a revision.  
5 This is disburse funds to students in a timely manner  
6 consistent with student's needs. The Secretary does not  
7 consider the manner of disbursements to be consistent with the  
8 student's needs if, among other conditions, the Secretary is  
9 aware of multiple and verified relevant student complaints. So  
10 we have made an adjustment there to indicate that the  
11 complaints would have to be multiple in nature and have been  
12 verified. So that is a change there. And then if we go down to  
13 I believe N, does not engage in, right, if I'm not mistaken,  
14 right? We, elected not to make any changes here in N, just to  
15 review this. The does not engage in misrepresentations,  
16 including as defined in subpart F or aggressive recruitment,  
17 including as defined in subpart R. We did not want to limit  
18 the Department to, although we believe that the majority of  
19 misrepresentations or aggressive recruiting would indeed be  
20 covered in subpart F or subpart R respectively, we didn't want  
21 to limit the Department to that because there could be other  
22 areas of misrepresentation that perhaps would be relevant  
23 state law and we want to retain our authority there. And with  
24 respect to misrepresentation itself, it is our belief that any  
25 misrepresentation is not a good thing. I mean, certainly there  
26 is more significant misrepresentations than others. However,  
27 unlike I think you can easily make a case. If we were talking  
28 about, for instance, you know, I don't know, I'm trying to  
29 think of something that would be, you know. R2T4 calculations,  
30 the institution did you know 200 of them correctly and one

1 incorrectly. That's an error that obviously thresholds apply  
2 there and should. With respect to misrepresentation there,  
3 that is generally something done with an intent to deceive. We  
4 determined not to make gradations there about what type of  
5 misrepresentation that would be. Moving on to the next thing  
6 one [inaudible] changes. I think we're at, in V if I'm not  
7 mistaken. Right, and this just hold on a minute here, I want  
8 to make sure we didn't have any, I didn't miss anything else,  
9 I'm trying to go back and, oh, Rene, can we go back to O? I  
10 don't think, I'm not sure we did O. I'm going to apologize to  
11 everybody. Yeah, thank you very much, and I'm sorry I missed  
12 this one. This is another revision we have made here. Has not  
13 been subject to significant negative action by a state or  
14 federal agency or an accrediting agency where the basis of the  
15 action is repeated or unresolved and has not lost eligibility  
16 to participate in another federal education assistance program  
17 due to an administrative action against the institution. So  
18 here we have to address those concerns about where there may  
19 have been an action in the past that has now been resolved. We  
20 have added that it would be where the basis of that action is  
21 repeated or unresolved so that if it's unresolved, obviously.  
22 But if it's a pattern of negative actions taken where even if  
23 the institution is resolving those in some way that we still  
24 have the ability to look at that if it is repeated. There  
25 could be situations, for example, where you know an  
26 institution just agrees to pay a liability without any  
27 admission of wrongdoing or something, but where there could  
28 obviously be something there that we are concerned about. So  
29 we think this covers all those bases. Okay, Rene, then we can  
30 move on to let's go back to V. And here you see a revision to

1 high school diploma being valid. High school diploma is not  
2 valid if it does not meet the applicable requirements  
3 established by the appropriate state in which this agency in  
4 the state where the high school with a high school and the  
5 student is located. So we did make a we did make a revision  
6 there. And I don't think we have any, I think that is it.  
7 That's correct. So with that, I will. Those are the, you know,  
8 we went, I took it back. We did have a discussion amongst the  
9 Department staff and those are where the Department feels it  
10 has to be at this point. So I would I guess we could move for  
11 a vote on consensus unless anybody has any final comments  
12 before we do that. I'll turn it back over to the facilitator.

13 MR. WAGNER: Thank you, Greg. There are, let's see,  
14 there's one hand, I think it's Barmak, oh two hands, Barmak  
15 and Jamie before we take a consensus check. Go ahead, Barmak,  
16 you're up.

17 MR. NASSIRIAN: Jamie was ahead of me.

18 MR. WAGNER: Oh, her hand went down. Okay, Jamie, go  
19 ahead. Take it away.

20 MS. STUDLEY: I'm not going to play jockey if we were  
21 in person, we would see the hands. First, Greg, I just want to  
22 be sure that you didn't skip over a change to little (i) and  
23 the career services issue. Is the Department saying there's  
24 nothing you concede or approve that one? For example, even  
25 dropping the number and distribution of career services staff.

26 MR. MARTIN: Yeah, in other career services, we this  
27 on, let me see back there. Yeah, provides adequate that's  
28 provided adequate career service to eligible students who

1 receive program assistance in determining whether an  
2 institution provides adequate career services, Department  
3 considers, and then the following. In this case, the  
4 Department elected to make no changes to that. We feel that  
5 it's that we don't want to limit our ability to look at this  
6 to those services specifically expressed by the institution  
7 that are offered because it limits our, it limits us in  
8 addressing institutions that offer you know negligible or no  
9 or no such services.

10 MS. STUDLEY: I think it's a, has been all along,  
11 we've said right from the beginning that it seems an  
12 inappropriate weighting of the Department into a program  
13 quality issue, and I'm surprised that the Department doesn't  
14 want to move in the direction it urges all the rest of us to  
15 move in about thinking about outcomes and not inputs like the  
16 number and distribution of career staff. I understand you're  
17 trying to get at a problem that could be serious, and I think  
18 we, having sat through three weeks, understand what  
19 administrative capability means, but I fear that there will be  
20 behavior out there in which institutions think that they have  
21 to design career services to meet this and nose counting as  
22 opposed to letting services be reviewed alongside all of the  
23 other student and academic services by the institution and  
24 their accreditor. So I respect the concern, but I think it is  
25 a serious one, and I'm surprised that you can't move in the  
26 direction of at least dropping the item number two. But I'll  
27 step back and listen to others other comments before I decide  
28 how to vote.

29 MR. MARTIN: Thank you.

1 MR. WAGNER: Thank you, Jamie. Barmak.

2 MR. NASSIRIAN: Yes, I wanted to go back to section V  
3 and the change you made to the location language. I really  
4 don't think you want to have you don't want to limit it to  
5 only those cases where the high school and the student are  
6 located in the same place. Far from it, the concern is where  
7 the high school is in one place and the student somewhere  
8 else. So it really has to be pegged to the location of the  
9 student. This handles face to face even when it's across state  
10 lines, because the student is located in the same state as the  
11 high school when the student goes there. But specifically with  
12 distance ed, you really want the laws of the state where the  
13 student is located to be satisfied that the high school is  
14 legitimate so that that conjunction has to go. I would suggest  
15 deleting high school and simply indexing the issue to the  
16 location of the student.

17 MR. MARTIN: Can you pull that back up again, Rene?  
18 Okay, so we're looking at it, high school is not valid if it,  
19 is not valid, if it does not meet the applicable requirements  
20 established by the appropriate state appropriate state agency  
21 rather in the state where the high school-

22 MR. NASSIRIAN: Where the student is located.

23 MR. MARTIN: And so you would want in the state where  
24 the student is, in the state-

25 MR. NASSIRIAN: Just for clarification, this is sort  
26 of jumping the gun. But between the two sessions, Carolyn and  
27 I were schooled by our friends at WICHE and WCET on the issue  
28 of pegging of requirements to students and that language we

1 will bring forward for you. But they really convinced me that  
2 the proper way of controlling for these things is to focus on  
3 the location of the student.

4 MR. MARTIN: I'm just trying to play that out, so if  
5 in a traditional situation where a student was attending a  
6 traditional high school brick and mortar, then the location of  
7 the students would necessarily be where the school is located,  
8 right? But it would-

9 MR. NASSIRIAN: By definition, yes. When you're, it's  
10 either within the jurisdiction or the state. As in this area,  
11 somebody may be leaving Maryland to go to D.C. to high school.  
12 And in that case, the location of the student is D.C., even  
13 though their residence may be Maryland. But if a student is  
14 taking an online high school and the high school is in  
15 Wyoming, then the student's location in that Wyoming school  
16 has to satisfy Maryland requirements. And that's the right way  
17 because the student is, you know, we have a compulsory  
18 secondary education law in the state of Maryland, and high  
19 schools have to satisfy that. The student is not leaving the  
20 jurisdiction, as would be, if the student wanted to move to  
21 Wyoming, that'd be fine. But if you're sitting in Wyoming  
22 delivering programs in Maryland, the approval has to be pegged  
23 to the state of Maryland's standard.

24 MR. MARTIN: I am concerned about the burden for  
25 institutions on this, do you see any additional in determining  
26 whether the high school meets the requirements of the state  
27 that the student's actually from?

1 MR. NASSIRIAN: We're not talking about where the  
2 student is from. We're talking about where the student is  
3 located.

4 MR. MARTIN: Where student is located rather, right.

5 MR. NASSIRIAN: No. Because then if that student is  
6 not attending a real high school, in the case of somebody  
7 who's younger than 18, they're subject to state truancy laws  
8 because they're not attending a high school that the state  
9 recognizes. Our population we're concerned about are probably  
10 not below 18. But that's a really nice way of thinking about  
11 what constitutes an acceptable high school. If it's not good  
12 enough for people below the age of 18 who are subject to  
13 compulsory secondary education should not be good enough for  
14 the Department.

15 MR. MARTIN: Okay, so. Hold on a second. Alright, let  
16 me pull that back up again. Bear with me. Okay, applicable, so  
17 right now we have, so you want to pull out the state- you want  
18 to delete state where the agency in the state where the high  
19 school and just take that out and the state where the and just  
20 have it be the state where the student is located. Correct?

21 MR. NASSIRIAN: Yes, sir.

22 MR. MARTIN: Is that what you want?

23 MR. NASSIRIAN: Yes.

24 MR. MARTIN: Any other any other comments on that  
25 from anybody? Okay. Alright, I think we can I think we can  
26 agree to that, Barmak.



1 MR. NASSIRIAN: Thank you. You won't regret it, I  
2 hope.

3 MR. MARTIN: Alright. Any other comments?

4 MR. WAGNER: I see Kelli's hand up. You're up.

5 MS. PERRY: Yeah, actually, Emmanuel is going to step  
6 in, he wants to add something to this diploma conversation.

7 MR. WAGNER: Okay, Emmanuel is in for Kelli.

8 MR. GUILLORY: So we heard from a lot of our members  
9 that are smaller than the requirement to basically validate  
10 the high school diploma and have to meet multiple and have to  
11 basically determine whether or not based on multiple state  
12 requirements, that that high school diploma is valid does  
13 present a challenge in the ability with the capacity to be  
14 able to successfully do that. So I do understand what my  
15 colleague, Barmak is saying, I understand where he's coming  
16 from. I just wanted to share just what we're hearing from a  
17 lot of our members that are pretty much, they're smaller in  
18 size. And so we've been trying to figure out you know a way we  
19 could work on compromise language and that can maybe resolve  
20 the issue, which is why we had introduced, I guess, the  
21 compromise to what we had originally proposed today. We're  
22 happy that the Department came back with us with some  
23 revisions with the applicable language. So thank you so much  
24 for doing that. We're very happy about that piece, but there  
25 still remains this concern that we're hearing from our members  
26 regarding the ability to realistically and successfully  
27 validate that diploma if there are multiple state agency  
28 requirements just across states. And how do you do that

1 realistically? So I'll be remiss if I did not share that on  
2 behalf of the members that I've been in communication with  
3 about the issue.

4 MR. MARTIN: Thank you.

5 MR. WAGNER: Thank you, Emmanuel. Jessica.

6 MS. RANUCCI: Thanks. I just wanted to speak briefly  
7 in support of the Department on both of these points. And just  
8 to encourage people to not let the perfect be enemy of the  
9 good here. I think on the high school diploma piece again,  
10 this is just if the institution or Secretary has a reason to  
11 believe that the high school diploma is not valid. So I think  
12 it is far from imposing a wide-ranging requirement that would  
13 apply to every student. And I think you know as the career  
14 services, I think that the theme, what this prohibits by its  
15 language is what it requires is adequate career services and  
16 that the in the specific are points that the Secretary can  
17 consider and what determines adequate career services. I don't  
18 think that the high level point is controversial. I think  
19 there's largely agreement here, and I'm not even sure that  
20 there's disagreement that the sub bullets are somewhat  
21 rational, the Department still consider them. I think the  
22 disagreement perhaps goes further down the line in terms of  
23 how people might perceive those requirements to apply.

24 MR. MARTIN: Thank you.

25 MR. WAGNER: Thanks, Jessica. Okay, any other  
26 comments? Okay, I don't see any. So just a reminder we're  
27 going to, does it make sense at this point, let's say to take  
28 a consensus check? And if so, let's see, everyone as a

1 reminder, make sure that you hold your thumbs up high so we  
2 can see them either up, you can live with it, or down. And  
3 then just as another reminder, if you do vote down, you know  
4 if you could identify what is a deal breaker, how you change  
5 it. And also, is there any specific language that you could  
6 propose to try to reach a consensus? So that being said, if  
7 you could please hold your thumbs up so we can all see them,  
8 I'll go through a roll call just based on who I can see. And  
9 if I miss someone, please let me know. Okay, I see Marvin  
10 Smith is okay. Jamie, do you have your- okay, was it Greg's?

11 MS. STUDLEY: [Inaudible]

12 MR. WAGNER: Okay, thank you. Sorry about that, let's  
13 see. Anne can live with the consensus. Barmak is up. Adam is  
14 up, Ashley to the side. Debbie is up. Carolyn is up. Ernest is  
15 up. Jessica is up, Amanda is up. [Inaudible Kelli?] to the  
16 side. Sam is to the side. Brad is voting against, and Jamie is  
17 to the side. Are we, based on what I see, we do not have  
18 consensus on this issue, so Brad, do you have deal breakers or  
19 is there specific language you'd like to propose?

20 MR. ADAMS: You know, based on all the feedback, I'm  
21 surprised I'm the only one that was a no, but it was three  
22 things for me, career services not defining that, not defining  
23 high dropout rates and no change to the misrepresentation  
24 piece of. So, but those were clearly spelled out in my  
25 comments over the last three sessions and have been consistent  
26 on that every week. So no, no real change in theory in week  
27 three.

1 MR. WAGNER: Okay, thank you, Brad. Okay, since we  
2 don't have consensus on administrative capability, I'll turn  
3 it back over to Greg. Would you like to start with the Gainful  
4 Employment?

5 MR. MARTIN: Just give me a second to pull that up.

6 MR. WAGNER: Yeah. And just while you're doing that,  
7 just so everyone has a time check, it is 3:16 Eastern. We have  
8 14 minutes before public comment starts.

9 MR. MARTIN: So before we get into Gainful  
10 Employment, yes, you know, obviously we only have 15 minutes,  
11 remember that tomorrow I'll just introduce maybe to a couple  
12 things here. Tomorrow we have the presentation on data from  
13 Mr. Looney will be joining us again. Always good to hear from  
14 him, and he's got a great amount of expertise on those issues.  
15 So like the rest of you, I'll be excited to hear from him.  
16 Before we get into Gainful Employment, I want to remind this  
17 is not so much for the negotiators as it is the public in  
18 general. We've been receiving a number of comments, many  
19 emailed to me or to the negotiation site with respect to a  
20 couple of issues. But I just want to reiterate that the  
21 Department cannot take comments in that way at this time. So  
22 currently, the only mechanism for making comments is through  
23 the public comment period and then comments will be solicited  
24 once we publish a Notice of Proposed Rulemaking and there'll  
25 be at least 30 days for individuals to make comments, the only  
26 the other way to express your opinions would be to let one of  
27 the negotiators whose constituency you share know your  
28 feelings on that so that they could convey it. But you know,  
29 when we get the comments, there's really nothing we can do

1 with them when they're simply emailed to us. So I just want to  
2 point that out. Okay. That said, we're moving on to issue  
3 paper number three. And even if we don't get very much into  
4 this, we at least have raised the issue today and will be  
5 ready to go on it tomorrow. So this is this is Gainful  
6 Employment and a couple of changes here we'll be talking  
7 about. So I would like to move into, hold on a second here, I  
8 want to see if I'm, right, okay, let's move on to 668, in  
9 subpart Q, we'll go to 668.402 in the definitions. And here we  
10 are addressing the classification of instructional program or  
11 CIP code, and just as a review taxonomy of instructional  
12 program classifications and descriptions developed by the U.S.  
13 Department of Education's National Center for Education  
14 Statistics. Specific programs offered by institutions are  
15 classified using a six-digit CIP code. However, for the  
16 purposes of this subpart, the Secretary uses the first four  
17 digits of the CIP to identify Gainful Employment programs. And  
18 for simplicity, we have deleted some of the extraneous  
19 language here. You can see that we have that comparable in  
20 content objectives and just simplified that language. Staying  
21 in 402, and moving over to the cohort period that is looking  
22 at one for the two-year cohort period. And I'll just review  
23 that. For the two-year cohort period, well actually before we  
24 get to the third and fourth years prior to the year for which  
25 the most recent data are available from the federal agency  
26 with earnings data at the time, the D/E rates and earnings  
27 threshold measures are calculated pursuant to 668.44 and  
28 668.405. For example, given current data production schedules,  
29 D/E rates and earnings threshold measures are calculated to  
30 assess programmatic eligibility in award year 2022-2023 would

1 be calculated in 2015 and 2016, and earnings data would be  
2 measured, would be measured for the calendar years 2018 and  
3 2019. And then you can see in romanette two for programs whose  
4 student are required to complete a medical or dental  
5 internship residency the sixth and seventh award years prior  
6 to the year for which the most recent data are available from  
7 the federal agency with earnings data at the time, the D/E  
8 rates and earnings threshold measures are calculated. For  
9 example, given the current data production schedule, D/E rates  
10 and the earnings threshold measure calculated to assess  
11 programmatic eligibility in the award year '22-'23 would be  
12 calculated in 2021. The two-year cohort period is award years  
13 2010, 2011, 2012, and 2012-2013. So just some background here.  
14 We've updated the text here to ensure the timing of the  
15 metrics and the years in which the cohorts are measured are  
16 accurate. Note that the rates will be calculated using  
17 earnings data from three years out, rather than two years out  
18 from which the students graduate from the institution. And I  
19 will leave it there and open the floor for discussion on that  
20 topic, since it's a little bit, was a little bit of substance  
21 there, so will entertain any comments at this time.

22 MR. WAGNER: Thank you. Trying to get my computer to  
23 show me who's next, I'm sorry. Hold on. Anne, you're up.

24 DR. KRESS: I was just seeking some clarification, I  
25 know when the data came yesterday, along with some of the data  
26 definitions, we were advised that there would be a  
27 presentation that we would receive on the new earnings  
28 threshold and other aspects before we went into the revised  
29 language. So is that not going to happen?

1 MR. MARTIN: Yes, that will happen tomorrow morning.  
2 First thing tomorrow morning.

3 DR. KRESS: Okay.

4 MR. MARTIN: So we will have that presentation on  
5 data at that at that time. I just wanted to get a heads up on  
6 this and introduce some of this and see if we have any. But  
7 no, I'm not precluding the data presentation which you will  
8 get, you will get first thing tomorrow morning.

9 MR. WAGNER: Thank you.

10 MR. MARTIN: I will say, let me just throw this out.  
11 If people, if it's the consensus, let's not use the word  
12 consensus, if it's the opinion of the group, that it would be  
13 better to wait for that presentation before we have any  
14 discussion about this. I'm willing to do that. We're  
15 approximately seven minutes away from public comments, we can  
16 take a brief break until that point. Is that, does anybody  
17 object to that? Let me put it that way. Okay, I'll just make a  
18 decision. I'll ask, let me ask the facilitator how they feel  
19 about it.

20 MR. WAGNER: It's fine. I was just, yeah, that's we  
21 have what looks like it's 3:24 Eastern. We have public comment  
22 in about six minutes. If you want to hold off and start fresh  
23 with that presentation in the morning after roll call, seems  
24 like a logical point.

25 MR. MARTIN: Yeah, I think that might be best and in  
26 view of the comments. So I thank the commenter for sort of  
27 insinuating that and we'll perhaps wait for that presentation

1 tomorrow morning. I think that would be a better, a better  
2 segue into our discussion.

3 MR. WAGNER: Okay, we still have three hands up. Are  
4 those hands related to that particular issue, is there  
5 something else that would like to be [inaudible]? And before I  
6 get to any of you just so you know, Emmanuel is joining us for  
7 private nonprofits, and Travis has stepped in for service  
8 members and vets. So-

9 MS. JEFFRIES: I just want to make sure, can you hear  
10 me because I switched to my headset?

11 MR. MARTIN: Yeah, we can hear you, Cynthia.

12 MS. JEFFRIES: Okay. I would just pose the question.  
13 We only have just a couple of minutes, six minutes before  
14 public comment. Emmanuel, Marvin, you had your hands up. Is  
15 there something you'd like to say? Because I'd like to give  
16 you that opportunity prior closing off today, I see Marvin  
17 shaking his head and Emmanuel. It's up to you Emmanuel, you're  
18 up first, but I do want to give them the opportunity if they  
19 would like to take the time.

20 MR. MARTIN: Thanks, Cynthia.

21 MR. GUILLORY: So my comments are substantive to the  
22 changes, so I'm happy to wait until tomorrow when we have that  
23 substantive conversation as long as I can still be in the  
24 queue. So.

25 MR. MARTIN: No way, you can't be in the queue. Yeah,  
26 absolutely you'll be in the queue.



1 MR. GUILLORY: Okay, thanks.

2 MR. WAGNER: You'll be listed first.

3 MS. JEFFRIES: Right. Okay. And then Marvin you were  
4 indicating, yes, you wanted to speak.

5 MR. SMITH: Yeah. I don't know if it's possible for  
6 tomorrow's presentation, but I'm really interested in small  
7 program rate data and how that's going to be shared with  
8 institutions and what we can do with that information. And if  
9 there's ever any chance that we can get at more specific small  
10 program data because you know, the Department's the only one  
11 with that information. And so we're kind of in the dark about  
12 what that small program rate means for institutions and the  
13 same for students. I think they'll be in the dark. So I don't  
14 know if that's on your radar to talk about or if NCES could  
15 talk about it, but I just throw that out as a suggestion.

16 MR. MARTIN: We can certainly bring it up tomorrow.  
17 You know, after the presentation, the data presentation's  
18 over, we can certainly address that.

19 MR. SMITH: Thank you.

20 MR. WAGNER: Okay, we have about three minutes, and I  
21 see, let's see Jamie and Amanda, if you keep your comments  
22 brief, it'd be appreciated. And I also see before we get  
23 started, Jamie, that Brad also would like to have his comments  
24 be deferred till tomorrow. So, Jamie, take it away.

25 MS. STUDLEY: Okay. Real quickly, because maybe  
26 somebody wants to be thinking about this. We, the, this is a

1 definitional issue not related to the data presentation. We  
2 now have regulations that address medical and dental programs  
3 that require residencies or internships following the  
4 education portion and relate to the timing of salary  
5 information. I have learned that there are other programs that  
6 for which a person cannot be licensed until they have  
7 completed those residency and other training programs that  
8 would like to be included in that provision so that their  
9 salary period runs from the time that the person is actually  
10 has actually completed the necessary elements for being a full  
11 scale professional in that field. I'll follow up with that  
12 tomorrow.

13 MR. MARTIN: Okay, if you have a specifics tomorrow,  
14 please bring those to our attention.

15 MR. WAGNER: Thank you, Jamie, and Amanda, go ahead.

16 MS. AMANDA MARTINEZ: Yeah, I included my request in  
17 the chat, but just to have it out loud for the public. The  
18 data we received last night had designations and control for  
19 HBCUs and tribal colleges and universities, but did not have a  
20 designation or control for institutions designated as HSIs. So  
21 it would be helpful to also see the earnings threshold and  
22 other impacts of the GE rule on each HSIs.

23 MR. MARTIN: Thank you, Amanda.

24 MR. WAGNER: Thank you, Amanda. And we have less than  
25 one minute until public comment. I guess we can wait for about  
26 30 seconds.

1 MS. JEFFRIES: Kevin, I would suggest you go ahead  
2 and start with the public comment.

3 MR. WAGNER: Okay, sure, sure.

4 MR. ROBERTS: We have folks in the waiting room so I  
5 can start admitting them.

6 MR. WAGNER: Go ahead. Who do we have up, Brady?

7 MR. ROBERTS: I'm first admitting Christopher Barto,  
8 who is the vice president of government relations and  
9 community affairs at LIM College.

10 MR. WAGNER: Thank you, Brady. Christopher, can you  
11 hear us?

12 MR. BARTO: Yes, I can.

13 MR. WAGNER: Wonderful. You have three minutes for  
14 your public comment, which will begin when you start speaking,  
15 you have the floor. Go ahead.

16 MR. BARTO: Okay, thank you. Thank you to the  
17 Department and negotiators for the opportunity to provide  
18 testimony today. My name is Christopher Barto, vice president  
19 of government relations and community affairs at LIM College.  
20 LIM College is a third generation family owned and women led  
21 institution founded in Manhattan in 1939. The college is well  
22 known as a pipeline of top talent for the fashion industry and  
23 has a long history of successfully educating students and  
24 preparing them to become gainfully employed in the business of  
25 fashion and its related industries, offering a wide range of  
26 innovative bachelor's and master's degree programs. The

1 college has been accredited for over 40 years by the Middle  
2 States Commission. For 16 years, the Princeton Review has  
3 named LIM to their best in the Northeast list of colleges.  
4 Earlier this year, a Georgetown study focusing on the ROI for  
5 low income students highlighted that LIM College's 40-year net  
6 present value of \$975,000 dollars is higher than the median  
7 MPV for low income students across all sectors of higher ed.  
8 LIM College alumni number over 10,000, over 90 percent are  
9 women and almost 50 percent are alumni of color. Most have  
10 gone on to build successful careers in middle and senior  
11 management at well-known fashion and related companies. Our  
12 history of strong career outcomes and earnings provides a  
13 perfect example of the inherent flaw of the GE regulations.  
14 Looking at recent College Scorecard data for our most popular  
15 degree program, a bachelor's degree in fashion merchandizing,  
16 we see that LIM's program has the fifth highest earnings of 51  
17 similar degree programs. Based on the 2014 metric and the  
18 Scorecard data, this would have a D/E rate of 5 percent, while  
19 similar degrees at Eastern Michigan and Immaculata would have  
20 rates above 8 percent, with program debt almost equal in  
21 median earnings. But the Department's current proposal to  
22 lower the failing D/E threshold from 12 to 8 percent would  
23 leave students in these underperforming programs unprotected.  
24 On every objective measure of Gainful Employment, LIM's degree  
25 programs are succeeding. But when you then factor in the  
26 cumulative effect of other changes to the D/E calculation  
27 currently being proposed, including counting student debt  
28 above the previous tuition, fees and books and supplies limit  
29 and co-mingling Parent PLUS Loan debt with student loans is  
30 much higher median debt amount that includes borrowing for

1 living expenses will have a disproportionate impact on  
2 colleges and higher cost urban or suburban areas and those  
3 with significant resident student populations. And we estimate  
4 that this piling on of new debt, in spite of LIM's strong  
5 earnings and employment outcomes, will have the net effect of  
6 causing most, if not all, of our degree programs to fail GE  
7 and that most bachelor's, master's, doctorate or professional  
8 degrees across all proprietary colleges will also fail. This  
9 is going too far. What are the Department's intentions here?  
10 If the strongest programs are successful can't pass, what is  
11 being proposed, what is progressive about this policy? If it  
12 could eliminate high quality programs that are serving well  
13 the very students [30 seconds] who are presumably trying to  
14 help. The vast majority of college students attend a public or  
15 private nonprofit college and intend for their education to  
16 lead to jobs. To purposely exclude these institutions,  
17 indicates that lower outcomes and poorer returns on education  
18 investment are unimportant for students in the same type of  
19 degree programs at public and private nonprofits.

20 MS. JEFFRIES: I'm sorry, Christopher, your time is  
21 up.

22 MR. BARTO: Thank you very much. Appreciate it.

23 MR. WAGNER: Thank you. Okay, Brady, who do we have  
24 next?

25 MR. ROBERTS: Alright. I just admitted Steve  
26 Patterson, who is here representing the Veterans Education  
27 Project.

28 MR. WAGNER: Welcome, Steve, can you hear me?

1 MR. PATTERSON: I can, yes.

2 MR. MARTIN: Okay, you have three minutes for your  
3 public comment, which will begin when you start speaking. You  
4 have the floor.

5 MR. PATTERSON: Good afternoon, my name is Steve  
6 Patterson. I'm a veteran of the Air Force and served as a  
7 military police officer, I'm also the executive director of  
8 the Veterans Education Project. Thank you for the opportunity  
9 to speak today. We've heard from veterans, policy experts,  
10 organizations about how restrictions on veterans education  
11 benefits will hurt individual veterans, their families, their  
12 future earning potential and military morale, recruitment  
13 retention throughout our armed forces. We echo those concerns,  
14 as well as calls for more representation from impacted  
15 constituencies like current student veterans. Ever since we  
16 participated as negotiators in the last neg reg, we've called  
17 upon the Department to include student veterans themselves in  
18 these discussions and are dismayed that their voices are only  
19 heard through public comments and not at the table directly.  
20 We'd like to see more representation of student veterans. I'd  
21 like to, however, use my few minutes to share our concern  
22 about the continued vilification of schools many servicemen  
23 and women are proud to attend, as well as call upon the  
24 implementation of data-driven policy that is equitable to  
25 veterans students at all institutions of higher education.  
26 Student veterans choose to go to schools that are committed to  
27 serving their unique needs, not because of a school's tax  
28 status. While we commend the spirit of accountability, it's  
29 frustrating to try and understand how policy makers so easily

1 look past the great number of underperforming public schools,  
2 the institutions that veterans overwhelmingly enroll in, and  
3 not hold those schools to the same standards as private  
4 institutions. This is especially concerning as changing the  
5 90/10 rule will force a significant number of veteran students  
6 to be limited to nonprofit and public institutions that have  
7 far less federal oversight. We're committed to data-driven  
8 policy and the further accessibility of data relevant to  
9 student outcomes at all institutions. Part of the problem with  
10 focusing so much on 90/10 is that it evaluates nontraditional  
11 schools, not by student outcomes, but by revenue sources. A  
12 more effective policy would be to assess student outcomes  
13 directly, which is why we urge the implementation of waiver  
14 pathways for schools with good student outcomes so that  
15 student, veteran students are not collateral damage of the  
16 90/10 rule. A better path forward for veteran students is to  
17 make the Gainful Employment data of all institutions more  
18 transparent and easily accessible for prospective veteran  
19 students. This transparency would empower veterans to make an  
20 informed decision on where to use their earned benefits and  
21 help answer the concern that prospective students are  
22 disadvantaged consumers. This kind of change in transparency  
23 would remain relevant and beneficial for years, even with  
24 changes and innovations within higher education that  
25 regulations struggle to keep up with. The best protection for  
26 student veterans is to provide good information so they can be  
27 empowered [30 seconds] based on its real-world merits. Thanks  
28 for the time to speak with all of you today, and we hope to  
29 continue this conversation.

1 MR. WAGNER: Thank you, Steve. Alright, Brady, who do  
2 we have next?

3 MR. ROBERTS: I just admitted Ryan Ziegler, who's  
4 here on behalf of the Special Operations Association of  
5 America.

6 MR. WAGNER: Thank you, Brady. It looks like he's  
7 logged in, but he's still getting audio, etcetera. Do you want  
8 me to move on to the next speaker and I can message him?

9 MR. WAGNER: Sure.

10 MR. ROBERTS: Okay. Next up, we have Dr. Sara  
11 Partridge, who's here on behalf of the Payne Center for Social  
12 Justice at the Thurgood Marshall College Fund.

13 MR. ZIEGLER: How's it going, guys?

14 MR. WAGNER: Hello, Ryan.

15 MR. ZIEGLER: Yes.

16 MR. WAGNER: Let's see. Okay, you can hear me good.  
17 You have three minutes for public comment, which will begin  
18 when you start speaking. Take it away.

19 MR. ZIEGLER: Okay. My name is Ryan Ziegler. I'm a  
20 member and board member of the Special Operations Association  
21 of America. Thank you for the opportunity to speak before you,  
22 before you today. I'm a physician assistant, a former Special  
23 Forces Green Beret. I hold a master's degree obtained using  
24 the VA's vocational rehabilitation program and have utilized  
25 both the Montgomery GI Bill and the post-9/11 GI Bill for my



1 undergraduate degrees. There have been concerning discussions  
2 regarding the regulation of veterans' earned benefits. Looking  
3 at the student outcomes of the affected schools where these  
4 veteran students enroll and the data indicate that changes to  
5 the 90/10 rule will likely hurt veteran students and their  
6 families as the student outcomes at these private universities  
7 and schools are either on par or better than their public  
8 school peers. But the 90/10 rule doesn't care about student  
9 outcomes, in our view that means it doesn't care about student  
10 veterans. Waiver pathways must be implemented that take into  
11 account a school's student outcomes or else these changes will  
12 only end up restricting where veteran students can use their  
13 earned education benefits, eliminating the School of Choice  
14 and narrowing their options of where they can obtain an  
15 education with their earned benefits. I want to focus,  
16 however, on how the vilification of these private schools  
17 hurts veteran students. The word predatory is thrown around  
18 without any clear definition, and when we look at the student  
19 outcomes of these private schools and universities and compare  
20 them with less regulated public institutions, we see not only  
21 acceptable institutions, but institutions that are serving  
22 veteran students quite well. The continued slander of this  
23 entire sector is an attack on veterans' education, not only in  
24 the eyes of the Department, but most importantly in the eyes  
25 of their potential employers. Veterans deserve to pursue their  
26 first choice in education at schools with good student  
27 outcomes and whose who have made the effort to adapt to the  
28 needs of nontraditional students like veteran students. As  
29 veterans enroll in all sectors of education, we would want to  
30 see data-driven policy that regulates all of higher education.

1 One of the many drawbacks of the 90/10 rule is that it only  
2 regulates one sector of higher education. Public and nonprofit  
3 institutions are not being held to the same standards and are  
4 clearly exempt from some standards altogether. It is time to  
5 care about all veterans in the sector of higher education and  
6 ensure quality education for veterans in all sectors. Now,  
7 there have been discussions that we think are promising and  
8 continuing those discussions would greatly benefit veteran  
9 students in all institutions. For example, simply publishing  
10 the Gainful Employment data of all institutions at the  
11 programmatic level [30 seconds] would greatly improve  
12 transparency for disadvantaged consumers and would allow  
13 veterans to pursue programs based on real merit. I just have a  
14 little bit longer. We listen to data when it comes to policy  
15 and support greater accessibility of data relevant to student  
16 outcomes at all institutions. As already mentioned, one of the  
17 problems inherent to the 90/10 rule is that for-profit schools  
18 are not evaluated by their student outcomes, but by buckets of  
19 money. The ratio of these buckets is supposed to be a proxy  
20 for quality when much more nuanced, equitable [inaudible]  
21 policy should be able to be assessed outcomes greatly.

22 MR. WAGNER: Alright, Brady.

23 MR. ROBERTS: I believe Dr. Partridge is ready to go.

24 MR. WAGNER: Can you hear me?

25 DR. PARTRIDGE: Yeah, and thanks.

26 MR. WAGNER: You have three minutes for public  
27 comment and that will begin when you start speaking. Take it  
28 away.

1 DR. PARTRIDGE: Thank you for the opportunity to  
2 address the committee today. My name is Dr. Sara Partridge and  
3 I'm a research fellow with the Payne Center for Social Justice  
4 at the Thurgood Marshall College Fund. We at the Payne Center  
5 applaud the proposed rule changes that would go far to protect  
6 students and borrowers, including reinstating, reinstating the  
7 Gainful Employment rule and closing the 90/10 loophole. We  
8 would like to add to the discussion around financial aid award  
9 letters and cohort default rates. Choosing to attend a  
10 postsecondary program will be the biggest financial decision  
11 many people make in their entire lives. The student loan  
12 crisis today shows that borrowers overwhelmingly struggle to  
13 pay back their loans. We believe that the current proposed  
14 language around financial aid letters is not nearly specific  
15 or detailed enough to fully inform borrowers of the terms of  
16 their awards. We recommend that the concerns raised by Amanda  
17 Martinez of Unidos be more fully addressed. In addition, we  
18 propose the following mandatory disclosures to financial aid  
19 letters. First, a standard set of definitions of financial aid  
20 terms and the accurate categorization of each type of award or  
21 loan. Second, key information such as the total cost of  
22 attendance, a breakdown of direct and indirect costs, and the  
23 net cost to the student. Finally, directions to access the  
24 College Scorecard, Data Navigator, and the Federal Student Aid  
25 Loan Simulator. These important soft accountability mechanisms  
26 will only have an impact if students are made aware of them  
27 and the financial aid letter is the most relevant opportunity  
28 to do so. Next, there is evidence that the way the cohort  
29 default rate is calculated can incentivize forbearance  
30 steering. A loan may be put in forbearance for up to three

1 one-year periods, a timeline that could potentially push  
2 defaults past the three-year period of oversight.  
3 Inappropriate use of forbearances is extremely harmful and  
4 expensive for borrowers, will pay more over the life of their  
5 loan for forego time on the path to IDR forgiveness and lose  
6 the opportunity to use these pauses in a case of future  
7 hardship. Loan servicers offer CDR management plans to  
8 schools, which may allow for collaboration, which runs counter  
9 to borrowers' interests. A 2018 GAO report showed that it was  
10 also a common practice for schools to hire CDR management  
11 consultants, and there were instances where these third  
12 parties encouraged abusive forbearance patterns. With this in  
13 mind, we propose the following changes. First, targeting  
14 program reviews, for institutions-

15 MS. JEFFRIES: 30 seconds, Dr. Partridge.

16 DR. PARTRIDGE: Program reviews for institutions that  
17 have high rates of extended and serial forbearances during the  
18 first three years or high rates of default in the fourth or  
19 fifth years. Second, requiring schools to disclose their  
20 default management plan contracts with loan servicers and  
21 third party consultants. This issue further points to the need  
22 for an Income Driven Repayment waiver similar to the PSLF  
23 waiver, which would help rectify the financial impacts of a  
24 system that steers borrowers towards harmful forbearance  
25 patterns in multiple ways. Thank you.

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

1 MR. ROBERTS: Alright, I just admitted Joan Hannant,  
2 who is the founder and president of the Soma Institute.

3 MS. HANNANT: Hello.

4 MR. WAGNER: Hello, Joan. Can you hear me?

5 MS. HANNANT: Yeah, I can hear you.

6 MR. WAGNER: Great. You have three minutes for your  
7 public comment, which will begin after you start speaking. You  
8 have the floor.

9 MS. HANNANT: Good afternoon and thank you for giving  
10 me the opportunity to speak today. My name is Joan Hannant and  
11 I'm the founder and president of the Soma Institute, a private  
12 vocational school located in downtown Chicago. Soma  
13 specializes in alternative health care training with a focus  
14 on clinical massage therapy. Students graduate from Soma with  
15 an average median debt of \$7,900 dollars and earn an average  
16 of \$40 an hour. Our on-time graduation rate is currently 79  
17 percent. Focused, inclusive and supportive for-profit  
18 education can work. We believe all higher education  
19 institutions should be subject to strict performance metrics,  
20 and we agree that quality assurance metrics such as Gainful  
21 Employment should be applied on a program by program basis  
22 using their six digit CIP code. This will ensure that each  
23 training program is evaluated separately and not grouped  
24 together with other programs in related but distinct fields.  
25 The current proposed Gainful Employment metrics of debt-to-  
26 earnings and discretionary income are arbitrarily low and  
27 unnecessarily complex. As we understand it, the aim of Gainful  
28 Employment regulations is twofold. One, to ensure that

1 students are not saddled with heavy debt repayment obligations  
2 relative to their earning potential, and two, to ensure that  
3 Title IV funds are not being wasted on certificate programs  
4 that do not lead to Gainful Employment. Perhaps a better way  
5 to achieve these goals would be to establish caps on the total  
6 amount of debt financing that a school can provide to a  
7 student based on their program of training. Reasonable Gainful  
8 Employment metrics such as the debt-to-earnings ratio could be  
9 used to set the cap. We also believe that adding a second  
10 metric of an earnings threshold, such as the average earnings  
11 of a high school graduate, is not appropriate. The use of such  
12 a metric would eliminate vocational program choices available  
13 to students and limit their career options. The biggest  
14 problem with the proposed Gainful Employment regulations is  
15 that they are selectively applied and targeted at for profit  
16 institutions. All higher education institutions, regardless of  
17 their profit or not for profit status should be able to  
18 justify the investment of time and resources that our students  
19 invest in their education. Let's make the Gainful Employment  
20 rules simple, fair, and equally applied. Thank you so much [30  
21 seconds] for your time today.

22 MS. JEFFRIES: Thank you.

23 MR. WAGNER: Okay, Brady, before I go to you, real  
24 quick, if there are public commenters that are registered,  
25 they need to log in now and they need to log in under the name  
26 they've registered under. That being said, Brady, who do we  
27 have?

28 MR. WAGNER: I just admitted Michael Cole, who is  
29 here on behalf of the Tulsa Welding School.

1 MR. WAGNER: Welcome Michael. Can you hear me?

2 MR. COLE: I can. Can you hear me?

3 MR. WAGNER: Yes. You have three minutes for your  
4 public comment, which will begin when you start speaking. You  
5 have the floor.

6 MR. COLE: Alright. Thank you, guys. As noted, my  
7 name is Michael Cole. I'm the campus president at Tulsa  
8 Welding School in Jacksonville, Florida. But today I wanted to  
9 speak to you as a former student of a proprietary for-profit  
10 school. Out of high school, I went away to the traditional  
11 route and found myself in a situation where I had to return  
12 home due to life circumstances and wasn't sure what I was  
13 going to do. Had some of the rules like we're proposing here  
14 go through, I wouldn't have had much choice. I chose to go to  
15 a school in Pittsburgh, Pennsylvania, called Western School  
16 Health and Business Careers. And in doing so, I was able to  
17 get my diploma. Actually, my associates degree in pharmacy  
18 technician and I was able to find a job that helped me provide  
19 for my family and allow me to parlay that into another private  
20 school and getting my bachelor's degree and master's degree.  
21 Had it not for the choice that I had option, I wouldn't be  
22 able to sit here in front of you and have had the living and  
23 the opportunity that I've had for my family. I ask that when  
24 you're looking at rules, please be fair and consider what  
25 could happen to students in my situation that don't have the  
26 circumstances all the time to go to a traditional school or go  
27 to the traditional route, or when life happens and changes, it  
28 makes them have to change a different course. And I have the  
29 opportunity right now to work in the skilled trades, and I

1 know that we're in a situation where we need a ton of skilled  
2 workers. And I'm proud to say that Tulsa Welding School  
3 contributes more welders than anybody else in the country to  
4 that to that growing demand. Please again, when you're  
5 considering these rules, take that into consideration. We need  
6 welders just as much as we need doctors and lawyers. We have  
7 to have people that can build the things that everybody wants  
8 to use for the traditional schools. My ask again, one more  
9 time, please just be fair when you're making the rules that  
10 come forth and impact all of us and don't just look at it from  
11 one side. Thank you.

12 MR. WAGNER: Thank you for your comment, Michael.  
13 Alright Brady, who do we have next to comment?

14 MR. ROBERTS: I am admitting Dr. Aaron Banas who's  
15 here representing themselves.

16 MR. WAGNER: Dr. Banas, can you hear me?

17 DR. BANAS: Yes, I can hear you.

18 MR. WAGNER: Okay, you have three minutes for your  
19 public comment, which will begin when you start speaking. You  
20 have the floor.

21 DR. BANAS: Okay, thank you. So again, my name is Dr.  
22 Aaron Banas. I am a active-duty lieutenant in the United  
23 States Navy, where I serve as a clinical psychologist. I'm  
24 joining this call just to share briefly my experience with  
25 University of Phoenix, so I'm prior enlisted. I, you know, in  
26 high school I did okay. I tried community colleges kind of  
27 here and there. Didn't really fit for me, so I joined the Navy



1 in 2003. Towards the end of my enlistment, one of my peers,  
2 who was also going to university at the University of Phoenix,  
3 connected me to the program and I jumped into it, and it  
4 really felt like a great fit and connection. I learned a lot  
5 about a lot of how to write. The writing assignments are on  
6 point really helped me in my job in the Navy as a psychiatric  
7 technician and really helped me get meaningful jobs after my  
8 time in the Navy. Following once I graduated from University  
9 of Phoenix in 2010, I continued in and outside of military and  
10 military settings. But then I was accepted to the George  
11 Washington University Professional Psychology Program, where  
12 the skills that I learned at Phoenix really helped me to  
13 evolve and grow, and I felt I was successful. I went to a  
14 pretty rigorous program and I felt that those the things I  
15 learned there were very meaningful. And so I guess the reason  
16 why I'm speaking here is in the hopes that people like me in  
17 the future also have the same opportunity to do what I did. If  
18 they were kind of unsure what to do at first, maybe they  
19 struggled with school a little bit, but to have a place to  
20 where that's supportive for their academic goals, it kind of  
21 meets them where they're at and helps them to achieve greater  
22 things and can help, can help them, as Phoenix did with me,  
23 achieve career goals, get them on the path [inaudible] to do.  
24 And so that's all I have. Thank you very much for your time,  
25 for listening and for listening to me today.

26 MR. WAGNER: Thank you, Dr. Banas, for your comments.  
27 Appreciate it. Brady, do we have anyone else in the waiting  
28 room?

1 MR. ROBERTS: No one else is in the waiting room  
2 right now.

3 MS. JEFFRIES: Okay, I would suggest, Kevin, I mean,  
4 there are two registered speakers, one with a slot of 3:54  
5 p.m. and one at 3:57. We do need to wait in all fairness, to  
6 see if they do log on.

7 MR. WAGNER: Sure.

8 MS. JEFFRIES: You could go over any housekeeping  
9 items for tomorrow, in the meantime, so that if they do log  
10 on, we can let the committee go as soon as they complete it.

11 MR. WAGNER: Sure. And correct me if there's anything  
12 that I'm missing, but from what I understand, we're going to  
13 the next session tomorrow, we'll pick back up with Gainful  
14 Employment. I believe when we last, before public comment, we  
15 talked about presentation towards the beginning of the session  
16 after roll call, that'll begin at 10 a.m. We'll go through  
17 starting with Gainful Employment and our break at lunch  
18 tomorrow will be at 12:00 noon. Greg, is there anything else  
19 from the Department regarding, you know, previewing tomorrow's  
20 session?

21 MR. MARTIN: No, we hope to get through Gainful  
22 Employment and if I'm being optimistic, I'll start financial  
23 responsibility tomorrow. But that's our plan. Yes, you're  
24 correct. We have the presentation tomorrow morning and then  
25 questions related to that and then we'll go into the issue  
26 paper text.

1 MS. JEFFRIES: I do want to add that I do want to  
2 remind the committee that given the fact that if you are in  
3 dissent of any issue paper that you do come prepared with, you  
4 know, language that would you could present to the Department  
5 for their consideration so that we can see if we can get to  
6 consensus. And, you know, rather than breaking off on the  
7 issue and no consensus, so other than that, I think we are at  
8 3:54, we have about three minutes. Does anyone have any  
9 questions about what's going to be on the agenda tomorrow?  
10 Brad.

11 MR. ADAMS: I just want to make a suggestion that we  
12 take off smaller components. I mean, I know we went all the  
13 way through two and a half pages in the initial kind of flip  
14 that Greg did, and I like to take it more in a systematic way  
15 so we're not jumping all over the place if possible.

16 MS. JEFFRIES: Thank you. I think that that would be  
17 the intent, and thanks for bringing that up. Today he was just  
18 more or less trying to give just a you know get as far as he  
19 could into it for an overview recognizing that you had been  
20 told that the presentation would be held before the discussion  
21 and that was always the intent. So we do appreciate that.  
22 Johnson.

23 MR. TYLER: Yeah, I understand. Professor Looney is  
24 going to be talking. If there was someone in the Department of  
25 Education who helped prepare the data, who could also answer  
26 questions, or I don't know if Dr. Looney did the whole thing  
27 himself. I just have some very specific questions that I hope  
28 would be answered. Thanks.

1 MS. JEFFRIES: Thank you. Okay, so our registered  
2 guest for 3:57 has now logged in. So, Brady, do you want to go  
3 ahead and admit, admit them?

4 MR. ROBERTS: Absolutely. I just submitted Allison  
5 Johnson, who's a veteran representing themselves. So it looks  
6 like they need to enable audio, and we'll be all set. There we  
7 go. They should be able to hear us.

8 MR. WAGNER: Great, Allison, can you hear me?

9 MS. JOHNSON: I can hear you.

10 MR. WAGNER: Great. Welcome. You have three minutes  
11 for your public comment, which will begin when you start  
12 speaking, you have the floor.

13 MS. JOHNSON: Thank you. Good afternoon. My name is  
14 Allison Johnson. I'm a veteran of the U.S. Army. I am here  
15 today because I want you to know how for-profit colleges like  
16 Kaiser University takes advantage of disabled veterans.  
17 Shortly after leaving the military, I enrolled at Kaiser to  
18 further my education and to transition to the civilian life.  
19 While I am grateful for the opportunity to serve my country  
20 and have many great memories of my time in the army serving in  
21 the military also involve difficult experiences that left  
22 lasting impacts on my mental health. This January, my doctor  
23 recommended that I take time off from Kaiser so I could get  
24 mental health treatment I needed. Everything started out fine.  
25 I requested medical leave of absence and provided the document  
26 from my healthcare provider to the school requested. The  
27 associate dean notified me in writing that my request was  
28 approved and that I would not be charged for the courses that

1 term. But a couple of weeks later, my online account showed  
2 that I still registered for classes. I contacted the associate  
3 dean again, and she said not to worry. She confirmed that I've  
4 been withdrawn for my classes, placed on medical leave, and  
5 would not be charged. It seems odd that my account still  
6 showed I was enrolled, but I thought I could trust the dean.  
7 But then, a month later, my academic advisor asked why I had  
8 not logged into my classes that term. I've ordered the email  
9 showing I was approved for leave of absence, but no one paid  
10 any attention. Soon the financial aid office was telling me  
11 that in addition to using my Pell Grant, I would need to tell  
12 the VA that I took classes that term, so they had given me my  
13 benefits or else I would have to pay \$5,000 out of pocket to  
14 the school. I was shocked and upset. I would never ask the VA  
15 to pay for classes that I did not take. So I am continuing to  
16 urge Kaiser to remove the charges for my classes they assured  
17 me that were taken off of my schedule. Instead of being able  
18 to use my medical leave of absence to work on my mental  
19 health, I've been I spent weeks dealing with the issue. It's  
20 been so stressful that my mental health is actually worse than  
21 before. Kaiser preys on disabled veterans like me because they  
22 think they can get away with it. The Department of Education  
23 must prove them wrong. Please prioritize the well-being of  
24 disabled veterans for over profit executives who are trying to  
25 just make a buck. If the Department of Education doesn't do  
26 more to regulate for-profit schools, disabled veterans will  
27 continue to pay the price. Thank you.

28 MR. WAGNER: Thank you, Allison, for comment and for  
29 your service.

1 MS. JOHNSON: Thank you.

2 MR. WAGNER: Okay. I think that's it for public  
3 comment for the day, the session for today is completed, the  
4 next session will begin tomorrow at 10:00 a.m. We can stop the  
5 live feed and everyone have a good evening and stay safe.



1 From Jamiene Studley Accrediting Agencies (P) she/her to  
2 Everyone:

3 I could support Debbie's (and i think Jessica expands it)  
4 approach which I understand to be adding specificity  
5 about claims about services and results through the  
6 misrepresentation provision.

7 From Bradley Adams (P - Proprietary Institutions) to Everyone:

8 I am proposing we change k (1) to the following "The  
9 Secretary is aware of multiple relevant student complaints,  
10 and has verified the legitimacy of such complaints;"

11 From Bradley Adams (P - Proprietary Institutions) to Everyone:

12 +1 to Jamie's comment about adding in the word resolved

13 From Kelli Perry - (P) Private Non-Profits to Everyone:

14 Instead of "has not been" could you say "is not" = it  
15 makes it more current

16 From Bradley Adams (P - Proprietary Institutions) to Everyone:

17 why can't we just insert the word unresolved into current  
18 wording

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

20 +1 Carolyn

21 From Debbie Cochran (P), State Agencies to Everyone:

22 What if we inserted "relevant"? If it is old, or  
23 unimportant, it is not relevant.



1 From Ashley Schofield (A) - MSIs to Everyone:

2 +1 to Jamie's comments

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

4 I agree with Brad: delete "including"

5 From Yael Shavit to Everyone:

6 +1 Carolyn

7 From Cynthia Jeffries to Everyone:

8 Negotiators, I am present but off camera as my internet  
9 became unstable and at one point was kicked out of the  
10 meeting. But I am back in and present just off camera til  
11 it stabilizes.

12 From Kelli Perry - (P) Private Non-Profits to Everyone:

13 Attached proposed language regarding high school diplomas  
14 as it relates to private high school concerns.

15 From Bradley Adams (P - Proprietary Institutions) to Everyone:

16 Here is what I proposed adding previously "(iii) If the  
17 high school the student attended is no longer open, the  
18 institution must take other reasonable steps to verify  
19 the validity of the diploma such as contacting the entity  
20 that may serve as a repository for the closed high  
21 school's critical records, if applicable; but the student  
22 is not barred from participating in title IV, HEA  
23 programs solely because the high school is no longer  
24 open."

1 From Jamienne Studley Accrediting Agencies (P) she/her to  
2 Everyone:

3 + Kelli's comments about not inadvertently making it  
4 difficult for or excluding grads of certain high schools,  
5 perhaps due to State law form. If it would indeed fall on  
6 small, faith based or other private schools. I don't have  
7 a solution for how to solve this

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

9 +! to Jessica's comment. "Applicable" seems the right  
10 word and not "appropriate."

11 From Yael Shavit to Everyone:

12 Do you want to raise your thoughts about v(2) before we  
13 break

14 From Debbie Cochran (P), State Agencies to Everyone:

15 If there were no deadlines, wouldn't telling students  
16 about the lack of deadlines suffice?

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

18 Doesn't the applicable deadline language work?

19 From Yael Shavit to Everyone:

20 Adam will sub in for aGs

21 From Jamienne Studley Accrediting Agencies (P) she/her to  
22 Everyone:

1 Still on career services: dropping "number and  
2 distribution of career services staff" would not deprive  
3 the Dept of the ability to consider that in evaluating  
4 admin capability, it could avert unintended  
5 misunderstanding across institutions that the quality of  
6 programs would be judged by #s v quality, results and  
7 student success.

8 From Kelli Perry - (P) Private Non-Profits to Everyone:

9 +1 Jamie

10 From Bradley Adams (P - Proprietary Institutions) to Everyone:

11 +1 Jamie

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

13 +1 on Jessica's point: I understand the concern about  
14 validation, but it would only apply in rare instances  
15 when colleges have reason to doubt validity of diplomas

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

17 + 1 Jamie

18 From Anne Kress (P) Comm Colleges to Everyone:

19 +1 Jamie

20 From Kelli Perry - (P) Private Non-Profits to Everyone:

21 Emmanuel will be coming to the table for GE

22 From Bradley Adams (P - Proprietary Institutions) to Everyone:

1 I thought we were starting off with a presentation from  
2 the department before going into GE issue paper

3 From Anne Kress (P) Comm Colleges to Everyone:

4 +1 Brad

5 From Anne Kress (P) Comm Colleges to Everyone:

6 This was the note that accompanied the materials sent  
7 yesterday evening.

8 From Debbie Cochran (P), State Agencies to Everyone:

9 Agree it would be helpful to start with the discussion of  
10 the data.

11 From Ernest Ezeugo (P) Students and Student Loan Borrowers to  
12 Everyone:

13 Agreed. Can we get a response on if that's still  
14 happening?

15 From Bradley Adams (P - Proprietary Institutions) to Everyone:

16 +1 Anne. Why are we starting GE issue paper comments  
17 before the presentation

18 From Ernest Ezeugo (P) Students and Student Loan Borrowers to  
19 Everyone:

20 I think that would be helpful personally.

21 From Debbie Cochran (P), State Agencies to Everyone:

1 I would support waiting to start the substantive  
2 discussion.

3 From Bradley Adams (P - Proprietary Institutions) to Everyone:

4 I agree. Let's hold all section 402 comments for the same  
5 day

6 From Johnson Tyler, Brooklyn Legal Services to Everyone:

7 I agree with waiting

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

9 Johnson is back for legal aids as well

10 From Bradley Adams (P - Proprietary Institutions) to Everyone:

11 I will save my comment from my hand being raised until  
12 tomorrow

13 From Bradley Adams (P - Proprietary Institutions) to Everyone:

14 i would like to be in the queue as well. i had my hand  
15 raised behind marvin

16 From Anne Kress (P) Comm Colleges to Everyone:

17 +1 Marvin

18 From Bradley Adams (P - Proprietary Institutions) to Everyone:

19 +1 Marvin

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

1           In prep for tomorrow's data discussion, would the  
2           Department be able to include the earnings threshold  
3           impact on HSIs ?

4           From Bradley Adams (P - Proprietary Institutions) to Everyone:

5           +1 Amanda

6           From Ernest Ezeugo (P) Students and Student Loan Borrowers to  
7           Everyone:

8           +1 Amanda