DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 3, DAY 2, AFTERNOON

March 15, 2022

On the 15th 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.

PROCEEDINGS

MS. MILLER: Welcome back, everyone. I hope you had a really good lunch. We have a lot to get through this afternoon. So I want to remind you of the protocol's; three minutes per negotiator or any new information that you have to offer the Department. We are in week three, so that means all proposals previously submitted have been considered. And what the Department is looking for today and this week is new information that would get you to consensus. And you may hear the facilitators remind you of that several times, but that is to move the process forward. Okay. Alright, so with that, I will turn it over to Greg to pick up where we left off.

MR. MARTIN: Thank you, Rozmyn. Before I do that, I wanted to go back and clean up some things from the previous from this morning. So the first thing is, with respect to the cohort periods, there were some questions about the cohort years, what is what and so, I'll give you the proper reference. We're back in def, going back to definition 600 668.402 and that's under cohort period. And under cohort period, you see one for the two-year cohort and two for the four-year. But the principles are the same. I think part of the problem is that people are, and I'm a prime offender, are wedded to the '14 the way that was done in '14. And if you wrap your head around that and then and then you're stuck in that and in that mode where I am, sometimes it gets this gets a little more confusing, but what's presented here is correct. So assessing program eligibility for the award year '22 to '23 will be calculated in '21. So the two-year, if we look at the earnings data that we would be using, we're using 18, we're using calendar years '18 and calendar years '19. And the use of both years is a departure from what we did in '14 with the '14 year. And you'll remember that what we did in '14 was if I just could give you an example. So if you're looking at a cohort where you had 115 students in '16, we would have used the earnings only for one year. And what we did, we only used one year earnings for both years in the cohort. So we would have used earnings in '18. And so remember that the criticism at the time was that for those in the cohort for '16, those students in the cohort who were from '16 would have been measured with a lot fewer, a fewer shorter period of time, as I want to say, for earnings than would those in '15. So it wasn't consistent. So what we did here, if you look at what we've done now, you've got starting in the latest year for which we have earnings is '19. And if you count back the four years, you get the '15, three years you get the '16, those are your third and fourth years. And so what we do is to account for both earnings years rather than just use the '18 and apply it to everybody, we take '18 and '19 and we are, it's still all in one cohort. So the earnings in '18, remember Brian's presentation this morning, the earnings in '18 will be inflated to '19 numbers and then the median can be done in aggregate. So that's the explanation there. I also wanted to return to the question we had about the earnings threshold and what the earnings were. Whether I mean, whether for the earnings we used just full-time or other, we don't there's no distinction made between whether somebody is full-time or part-time. We don't have any way of doing that. So it would be all earners not just full and part-time. I mean, not just full-time, rather full and part-time we would use. Other questions we had as far as to the question of whether the Department would consider either removing GE from this from this table. The answer to that is no, we will not consider that, and neither can we consider, would we consider adding another week to the negotiation schedule. So everything will remain as-is. And with that, if Rozmyn doesn't have anything else, I'll move on to, [audio] remember where we were. We finished 403. And in 404, yeah we're moving up to 404, calculating D/E rates, so I'll have Renee pull that up. And the only thing here, if we move down to 404 B1 romanette two. We've corrected a cross reference there. As you can see, it's the only change to the only change in that, area and then moving to, and that, I believe, is it for, let me just make sure. Right. That is it for, oh yeah, moving on to, let's move on to 404 E. And here we have clarified in E that, this is on page eight and again, we're in 668.404 E under exclusions. And we have clarified here that students in qualifying approved prison education programs are excluded from the calculation. You can see that reflected in E, in E5. So I'm going to move on to 405 because there wasn't much in 404 just specific technical things. So let's move on to a discussion of 405. After we finish 405, I'll open it up for discussion. This is calculating the earnings threshold measures and this section explains the procedures for calculation of the earnings threshold rates. The Secretary will calculate the rates based on whether the median whether the median earnings of the program exceed the earnings threshold. Specifically, will obtain the earnings data. The earnings threshold will be specified by the Secretary of the Federal Register Notice. In general, the same exclusions apply to the earnings threshold measure as to the D/E rates and the earnings threshold measure will not be calculated in the same circumstances. So let's take a look at 405. This is new for a calculation of the earnings of the earnings threshold. And except as provided in paragraph D of this section for each award year, the Secretary assesses the earnings threshold measure for a GE program by determining whether the median annual earnings of the Title IV HEA recipients who completed the program exceeded the earnings threshold. Move to the median annual earnings. And that is the Secretary obtains from a federal agency with earnings data under 668.406, the most currently available median and annual earnings median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph C of this section. The Secretary uses the median annual earnings of students with a high school diploma or GED using data from the Census Bureau to calculate the earnings threshold described in 668.402. Notice the definition. The Secretary determines the earnings threshold and publishes the thresholds annually through a notice in the Federal Register. And the exclusions are the same as for D/E, so I'm not going to walk through all of those all of those exclusions. In D, the earnings threshold not measured. The Secretary does not measure the earnings threshold measure for a GE program. Under this section, if, after applying the exclusions in paragraph C of this section, fewer than 30 students completed the program during the two-year or four-year cohort period, except as provided in paragraph E. And the federal agency with earnings data does not provide the median earnings for the program as provided in paragraph B. So go down to E and we see that we do have a small programs rate applicable here. For each year the Secretary determines the total number of students who complete the small programs within a credential level at the institution during the four-year cohort period, after making the exclusions in paragraph C of this section and if that total is 30 or more students, it will calculate a small program rate for those small programs under the provisions of this section, which is 405. So I'll stop there since that's the end of the section and open the floor for comments and discussion.

MS. MILLER: I see Anne and then Brad.

DR. KRESS: So thank you for getting the information about the income and especially as we went into the earnings threshold. And so I'm going to come back to that. And I do think you know one thing I want to put out there is that there should be accountability standards. And I think this paper is very much unlike the others that we've seen in that in week one we didn't have redline text. What we had was a series of questions about how Gainful Employment should be implemented now that it's being brought back. And I think there was a pretty clear message at that first discussion that the 2014 standards have been tested, they've been legally challenged, they withstood that. And so, if I recall correctly, there was a real consensus that those standards would be supported. And I know that the Department made a decision not to stick with the 2014 standards and hold, but to add an earnings threshold measure. And I think as we've seen this morning, there are lots of questions about how that's being calculated, how it's going to be, how it will be applied. You know, I'm concerned

I'll just put out there that unfortunately you know that is going to become the object of this discussion, more so than the much needed accountabilities that Gainful Employment carries with it. And so I'll just put a plug in again, as we did in week one for return to the 2014 standards. They were in place for a very short period of time, so we didn't even have a real ability to understand their full impact and how it benefited students. And I'm afraid that may get lost in this discussion.

MR. MARTIN: Thank you, Anne.

MS. MILLER: Thank you, Anne. Brad.

MR. ADAMS: I've got a couple remarks regarding earnings so I can get back in line if I go through the three minutes. But I'll just start with you know this doesn't appear to be much of a negotiating rulemaking. I will tell you, it seems like it's just a bunch of listening to one or two people talk and comments being considered but not really being considered. So I guess that's just the way to get through this process by the end of the day today, as the goal as stated earlier. So a quick question. We were able to actually run through this spreadsheet that was sent out five minutes before our meeting started this morning and looked at over the 1,277 failing programs, about 574 of them, or 45 percent, are in cosmetology. In other words, half of the programs fail based on this new metric in one program area. Of the of the programs, that's 130,000 students a year, according to the data in the spreadsheet. So I've just got a question here. Doesn't, doesn't that concern anyone on this committee? Doesn't that raise a red flag? Where are we going to get haircuts? I still want to get haircuts, honestly. I mean, let's think about that. Are we just shutting down all cosmetology schools in the country? Look, I know there was a lawsuit. It was referenced previously about underreported earnings. I know they graduate a majority of their students being female. And there's ways discrimination issues in America. So what are we going to do when we don't have a cosmetology program left? You know, it's just a question for the Department. Is it considered you know this alternate earnings appeals process that was taken away that at least listen to the idea that maybe some wages and tips were not reported. But I mean, just honest question. If we shut down half of the cosmetology schools around the country, what's plan B for the labor market?

MR. MARTIN: Well, I don't feel I'm in a position to answer a rhetorical question like that. It's certainly not the intention of the Department to shut down the cosmetology programs. It is in the earnings with the earnings threshold, the earnings threshold measures instances where while the debt accrued by students might not be as much, but the earnings are still. But the earnings the earnings for the program are so are so small that it doesn't that it was not in the end worth the student's while to attend as far as measured by earnings, if the earnings don't aren't any more than they would have been had the student only completed a high school education or a GED. And that's what that's what the earnings threshold does address.

MR. ADAMS: Again, I mean, we should have put a cosmetology expert on this. I don't have a program here, and we had the opportunity to do so. But it is frustrating that we knowingly are putting in a rule that is really targeting one program. And I just had that for the record, and I'll come back in line for the rest of my comments.

MS. MILLER: Thank you, Brad.

MR. MARTIN: I'll speak, one more, I mean, we have already addressed the issue of reported earnings. We've already stated the Department's position that although it is true that in certain industries people might not report their income, they are supposed to. It's the law that you report your that you report all your earnings, including your tipped, your tipped earnings. Most all federal all federal programs on which benefits are based are based on reported earnings, not those that are remain under the table or remain unreported, because it just happens to be the culture of a particular profession or something. So we're not inclined to take that into account and in probably getting a federal regulation.

MR. ADAMS: As a follow up to your point, Greg, I did want to ask, given the lack of an alternative earnings appeals process, did the Department consider anything else for programs like that around repayment rates or default rates or look at anything? Or are we just looking at comparing ourselves to high school average high school earners that are you know maybe different demographic across the country?

MR. MARTIN: Well, you know, I've just going back to what I said, the measure is looking at in a program where earnings are low whether or not there was any benefit to the program over having simply attended high school. And that's, I think, a very applicable, applicable measure. It's certainly not the only one that could be used. I agree with that. But the Department has determined that that is the most appropriate measure to use for this and to get at that, to get at that very real problem of programs that produce graduates with exceptionally low earnings.

MS. MILLER: Steve, I saw your hand up. Did you want to respond?

MR. FINLEY: I had nothing to add to Greg's remarks just now. I thought I did, but he covered what I was going to say.

MS. MILLER: Thank you. Johnson.

MR. TYLER: Yeah. Thank you. So on the, on putting in the threshold, I really applaud this. And I have spent some time looking at the data like Brad did, and the cosmetology issue jumps out at me as well. But I found some interesting data related to it that you can see in there. And I got to start out by saying I come from a place where I have many clients who went to schools, cosmetology schools, told that they'd have get an entry into the business and never did. And they're now working retail, working as home attendants, doing stuff like that. One of the data points that's in this thing is how many graduates there are every year from cosmetology schools that fail this earning metric. It's 134,000. And then if you look and I'm thinking, well, that's a lot of people. How many barbers and hairdressers are there in the country? I mean, the Department of Labor says there are 640,000. So every two years you're getting an influx of all these people trying to set up work in this this business. And they're not making money. And it's not because, I mean, I no longer think it's because they're taking it all in cash and not reporting it. I think it's a very competitive industry and people could be going into fields that are much more lucrative through Gainful Employment. I looked at, for example, LPRs, licensed practicing nurses. Now that obviously requires a higher aptitude in terms of book learning and stuff like that than being a barber, which is more physical skill, but it's a different skill set. There, they graduate 16,000 students every year for that, and there's a 60,000 demand every year going up. So they're choices that people can make to go into right career paths that Gainful Employment is designed to provide a better path. And I find this data really useful, not just confusing. I only had one day to look at it. I'm not a numbers guy, but it was very useful and it confirmed a lot of the thoughts that I had had before with actual hard data supporting the ideas behind Gainful Employment. So I applaud the Secretary for doing this.

MS. MILLER: Thank you, Johnson. Jamie.

MS. STUDLEY: Thank you. In GE, we tend to focus on program closure, but the experience under the prior rule was actually that some of the other effects are at least as important in public policy terms, and that's that providers have the ability to consider the cost of the program to the student. And whether that's another way to affect the ratio at the end is what the student has to pay. And while this is an indirect measure, if it is the case that we need people in these fields, then states which are setting the licensure rules for these fields and the number of hours may be in a position to reconsider whether those are appropriately keyed to the public safety that they are supposed to serve and whether the program length is part of what's causing the equation. Johnson certainly makes a good point about an individual choice that may follow from having accurate and not misleading advertising and public perception and so forth. But just when you think about other ways to achieve having programs, if they are needed and I need haircuts too, including at this moment, but the cost of the programs there, the number of programs and the perception that's created by people going to them can also be altered by a good rule that addresses those for the protection of students, so that where the market and information may have failed, that there are other ways to get to better results for students who are investing in career success. Thank you.

MS. MILLER: Thank you, Jamie. Brad and then Barmak.

MR. ADAMS: I just want to remind everybody that you know we're talking four digit CIPs now, not six digit dips-CIPs. So the numbers Johnson just used are not accurate because they don't include makeup artists, they don't include facial treatments. They don't include nail technicians, they don't include other areas. There are looks like about 15 or 16 different programs that roll up into the CIP code 1204, so it's not just cosmetology. And again, we're looking at the four digit instead of the six digit, I want to call that out. You know, I think it's important to point out here and you know I'll just call out the elephant in the room is you know the US Gates and you can find this information anywhere you search, just published some information that basically says that minority students, in particular blacks, are paid 25 percent less across the board regardless of their degree of education and females, depending on what study you look at, is anywhere from 25 to 30 percent less as well. So I do want to just call out that this program, the only threshold that schools can't control is earnings of students. And the only threshold that is applicable to all three of these metrics is earnings. And I 100 percent agree, all students should pay their taxes. But let's not forget that this will inherently close programs that are predominantly people of color and women. I mean, let's be honest here, and we're going to be left with a bunch of programs serving white males. And I think that's a problem. And frankly, I am surprised I'm the only one on this committee that's standing up for the ways discrimination is applicable [ph] in America today. And I'll put in the chat the source from a very reputable organization, and do with it what you want. But as earnings are less, programs fail. And that's a fact. And it's a fact that in America, women and people of color are paid less. And no one else on this committee will stand up and say that? But I'm happy to support those folks in those demographics. Thank you.

MS. MILLER: Thank you, Brad. Barmak and then Amanda.

MR. NASSIRIAN: A couple of thoughts here. I want to emphasize again that as important as impact analysis is so that we have a better sense of the likely consequences of what we're doing, the fact that particular changes may have significant impact is not in itself indicative that that impact is necessarily a bad one. It may well be that that we have had a period of free for all in which the Federal Government has been shoveling money out the door without regard to the efficacy of the programs that it has so indiscriminately funded. As long as the logic of what the normative judgments that went into devising GE holds true, then, you know, come what may, we have to follow through on that logic. That logic, I think, can be reducible to the idea that people should not be worse off in general because they borrowed money and attended a postsecondary program. They certainly should not be living in abject poverty at the very least. And that to me, that's true. If there are programs that generate too many people who live in abject poverty, I got a problem with that. And that problem is not any less allayed by the acknowledgment that 50 percent of a particular genre of program may have to be the changed. But having said all that, look, I wouldn't be averse to a fallback safe harbor to whatever extent the allegation is that these are really worthy, fabulous programs that are being unfairly shut down. I wouldn't be averse to having a repayment rate metric that circumvents the entirety of the rule. If 80 percent of your people are repaying their debt or don't have a you know, you can fail all the metrics as far as I'm concerned and still allege yourself to be a good program. That's something for the Department to consider, I think. But in general, I just want to emphasize, do not do not assume that just because there is a significant impact, that somehow that impact is by definition a bad one. And apropos civil rights and wrapping ourselves in the flag of progressive concern about minorities, hey, I share those concerns. But the remedy to that is not to saddle minorities with more crushing debt. The remedy to that is lower the cost of the programs for them so that you give them an opportunity to participate in economic life in a more meaningful way. It is not a remedy to wage discrimination to say let's super expensive high debt programs proliferate in minority communities because that results in even greater discrimination.

MS. MILLER: 30 seconds, Barmak.

MR. NASSIRIAN: Thank you.

MS. MILLER: Thank you, Barmak. Amanda and then Ernest.

MS. AMANDA MARTINEZ: Yeah. It's a little frustrating to have to, Brad, I understand the point that you're bringing up and it is you hoping to back up an argument from your perspective. But let's and while it's partly true, it's part of a truth, right? You're not telling the whole entire picture here and I think centering what racial equity is. I'm going to I have to refute the argument in how it was framed and put it in context. It's the wrong one. And I think the Education Department is trying to uphold a principle here and restore the promise of higher education. And while I understand that upholding principles, especially ones that deal with closing racial equity gaps, both in education but also in the economic system, which we know income inequality is extremely pervasive and is only was only exacerbated and continues to be exacerbated back in the 2008 recession and now in the pandemic and continues to be. But really, there are multiple factors that contribute to wage, the income inequality gap and wage discrimination. But partly, I would say part of solving that problem, yes, it is dealing with the labor market and there are other agencies that deal with those issues. The Education Department still has a role to play here in regulating its educational funding, educational institutions to help hopefully solve that problem. I mean, that was the whole point of the Higher Education Act, which was it came up through a response of our economic income inequality in this country and to try to hopefully earn some wage premium. And I think we're trying to define what that wage premium is. And I think we all should agree that it should be higher than poverty level wages and education systems are clearly aware of this problem. So when you're instituting or trying to uphold or create an institution, your mission should also be if you're getting federal funds to uphold that promise. You can still operate with or without Title IV funds, but again, we're here in a specific scope. So I think you bringing up that point really is framed in the wrong way.

MS. MILLER: Thank you, Amanda. Ernest and then Jamie.

MR. EZEUGO: Yeah. You know, honestly, Barmak covered the majority of what I would have said in response to that, so I'll try to be brief and simply add that the conflict that you know, I believe that you're trying to broach here, Brad, is like a counterfactual to kind of what you've said is then let's leave up programs that historically and will continue to underserve the populations, the same populations that you show concern for. I think it's important to have the same energy across with that. I just don't know that that counterfactual is a just one either. But Barmak and Amanda covered this point pretty well, so. Thank you.

MS. MILLER: Thank you, Ernest. Jamie and then Brad.

MS. STUDLEY: The three previous speakers said it well, so I'll be brief. The challenge of thinking about when and how to take into account the discriminatory history and labor market variations is one that has been at the center of much of this analysis, and you end up trying to figure out what's creating opportunity for people. When should you adjust for these realities and what is a matter of false hopes and at worst in some cases, exploitation of those facts. So a rule that inclines toward improvement of programs or shifting people to better programs where in the light of the economy and society in which we operate with these profound flaws is to either use disclosures and counseling and other means to move people toward things that will meet their needs and satisfy their economic requirements. Or and when disclosure fails to do it by regulation when the Department says the taxpayers should not be covering these options. So it's not for lack of considering these, and I know you do as well, think about these consequences, Brad. It's all of us thinking about what roads should be closed off because they are so likely to suffer from these problems that are revealed by the data.

MS. MILLER: Thank you, Jamie. Brad.

MR. ADAMS: You know, I want to be clear. I agree with a lot of what Amanda said. You know, it's important to recognize ways disparities and account for them. You know, Barmak mentioned charging less for the students. I agree. The goal here is to not settle students, saddle students with a significant amount of debt. I agree with Barmak. And if students are repaying their debt, we should consider that. And the fact of the matter is, is earnings is the only metric that is in all three of these gainful these proposed debt-to-earnings in high school earning thresholds. It's important to recognize that. And we've asked the Department for some additional information, but what was presented to us early today, that $25,000 dollar metric, it was disclosed in that metric that it did not include zero wage earners. And it's comparing against programs that are graduating folks and they're earning an income. And we are averaging in the zero median income earners into that calculation. So we're not apples to apples. And I hate that that the wages differ among these various segments. And again, I want to be extremely clear, but when comparing to a high school earner that may be primarily male and maybe primarily white, maybe in a big city versus a rural market like Mississippi, let's not forget that that these disparities do exist and these programs will go out of business because we're comparing them against the national average instead of state average, because a lot of these schools cover multiple states. So there is a problem. And this this rule as designed, will take out programs, whether you like it or not, based on earnings. And it's not based on the debt in a lot of instances, it's based on the earnings, and that's unfortunate. Thank you.

MS. MILLER: Thank you. Greg, I'm not seeing any other hands. Did you have more Brad that you wanted to add?

MR. ADAMS: I did have two, other quick comments just for the Department in section 404, not specific to earnings, one of which is, I'm trying to find the exact section. It's in 404 on the Parent PLUS, I guess it is. Let's see, on page eight is 2D romanette or 2D1 romanette one. I know there's been several comments about including Parent PLUS and the reasons behind it. But let's remember and as you know we keep debating is that's not the student's debt. It's the parent's debt. And we're only looking at the student's income, not the parent's income. And so we've got to consider why that Parent PLUS debt is being added into this calculation when looking at debt, when we're not considering the student's income. I mean, the parent's income in that analysis. It's just not apples to apples similar to the zero earners that we were talking about earlier. If the Department could just address again why Parent PLUS, we believe, should be student debt when it's the obligation of the parents.

MS. JEFFRIES: Brad, you have 30 seconds left.

MR. MARTIN: We, including the PLUS, the Parent PLUS is acknowledgment of the fact that many programs are, for undergraduate students are financed through Parent PLUS Loans and in some cases with parents being encouraged to take on that debt. And in many and although it is you’re absolutely correct that is a is not it's not a debt the student the student owes there are frequently students are expected to help their parents pay that debt pay that debt back. So there often is a sort of de facto onus on the student. And in some cases, as I said before, not always, but some schools do purposefully try to offload the burden onto parents. So, this does account for the fact that it is that though it is parental that is being borrowed to finance the finance to finance the program.

MR. ADAMS: Then last comment. In my 30 seconds, we removed higher of mean or median annual earnings. We asked for data to talk about why we did that and what the impact would be. Does the Department have any comment on why mean or median, and let me also finish on Parent PLUS I disagree with that approach is it's not apples to apples as previously mentioned and the Department will most likely not consider that. But on the mean or median, do you have any information on why we went with median and not the higher of or mean or some other metric?

MR. MARTIN: But primarily the Scorecard uses median, that's what we have been using. It was a more streamlined way of approaching it. I don't have any more data. I'll ask whether or not I can whether we have done any more any more data on the comparisons for that, so [inaudible].

MR. ADAMS: Okay, thank you. And then we use property-

MS. JEFFRIES: Brad, you're time is up.

MS. MILLER: Brad, Barmak and Johnson have been waiting. Thank you so much. Barmak.

MR. NASSIRIAN: Since we are on D1 romanette one, I'll quickly respond to Brad's concern about the inclusion of Parent PLUS, but pointing out that the Parent PLUS is really necessary to understand the level of debt financing for the program, regardless of whether the student is expected to contribute or not. The Parent PLUS exclusion of Parent PLUS would really create a huge loophole, I think. So that's one concern. The other concern, which I have expressed before, and I'm really befuddled by this. Once again, the Department is treating a debt in the form of converted TEACH Grants as if it doesn't exist. The student is coughing up the money. If the issue is whether the program was debt financed, yes, it's debt financed, not in some hypothetical imputed way, but in fact, in fact, the student is now saddled with an unsub loan. The exclusion of that loan, I understand the theory that the Department is basing this on is that the student just willfully refused to comply with the service requirements for the TEACH Grant, but that is not the reality. The 2015 GAO report clearly indicates that nearly half of all TEACH Grants end up converting the Department's own forecast, forecasts almost 80 percent of the loans converting. Schools know full well that they're packaging people with a form of aid that is more likely than not to become a loan. So please reconsider that. That doesn't make any sense here. We're not forecasting anything. We're asking the Department to treat a loan as if it's a loan and TEACH Grants that have been converted to unsub loans are loans. The student is sweating the payments. It is ridiculous to exclude it from the debt load for purposes of GE. Thank you.

MS. MILLER: Thank you, Barmak. Johnson and then Emmanual.

MR. TYLER: Yeah. And just on the Parent PLUS, I applaud the Department for keeping that in interest [ph]. I find that my students who go to very expensive schools under the Parent PLUS loans and you really need to return, parents are often put in this very difficult situation where the kid wants to go to school and the school is saying this will make a difference in your child's life, will transform your child's life, just sign this document and then they end up with very little. If, so, it should be counted. With, I have a more specific question to the language. If I can just get back here with respect to E of, on page 10 of the calculating earnings threshold measure of the small program rates. I just want to make sure I understand this. Is this basically saying if you had three programs and they all had, say, 17 students in them, you could then combine them all together to get a small program rate for the three programs together and use that data?

MR. MARTIN: Yes.

MR. TYLER: Okay. Okay. Thank you.

MR. MARTIN: At a given credential, at a given credential level.

MR. TYLER: Right. Right. So the credential level would be say certificate level or something like that. But they could be very different fields.

MR. MARTIN: Correct. [Interposing] Yes. That would be the credential.

MS. MILLER: Thank you. Emmanual.

MR. GUILLORY: In our proposal to Gainful Employment, we did suggest that if the Department wants to include Parent PLUS Loans, then to include the income of the parents since parents are also paying those loans back. You indicated, the Department indicated that students will often or often students have to help parents pay those loans back, or there are instances where that actually happens, but they are helping those helping the parent pay the loans back. So it's not only solely the student's income with that additional debt load, it's also the parent's income. So I just wanted to know if the Department is willing to consider for Parent PLUS Loans aspect, the loan, the income of the parent too as well with that.

MR. MARTIN: No, we have not done that. There's no, I don't think we would be disinclined to do that. I don't have any indication that we have that we have considered that. Again, I go back to the I understand fully that there's no obligation on the part of the student to pay back the loan, the parent to repay the loan, if that ever if that happened, it would be strictly something within that family or whatever expectation exists. But again, there's no getting around that it is a debt instrument used to finance the education it is. It is debt maybe being assumed by the parent, but it is being assumed by the parent on behalf of that student for that program. So, and it is possible to in some cases, to many cases, if a school chooses to do this, they can convince families to load that debt burden onto parents as opposed to students to shift you know shift the effect of those of that of those numbers. So it in a sense it can be used. It isn't always, but it can be used as a way of circumventing the student debt. This accounts for all the debt that was that was acquired in order to in order to pay for the program. So, and then ultimately, it is still the what we're talking about here is the success of the program as it pertains to the students. Not you know not whether the not whether the parents, not the parents income. I think it goes without saying that with better off parents, they can afford to pay the help their students pay debts that frequently happens even where students don't where there is no PLUS Loan. A parent with means can always help a student to repay that debt. So what we're doing here is capturing the we are getting a more holistic picture of the debt for the program. I also wanted to point out that with respect to the median use of median, in addition to what I spoke of before, it also we feel that it's just a fact that using use of the median better accounts for outliers. So we just decided to go with go with that in lieu of median and mean.

MS. MILLER: Thank you, Greg. Brad.

MR. ADAMS: Yes. You know, since this is a negotiation, Barmak made reference to something a few minutes ago that several folks in the chat, including myself, gave a plus one too, which means we give a thumbs up or agree with the concept. But I believe what he stated and I'll do my best to restate it, that is, if a student, if the goal of Gainful Employment is to ensure the students aren't saddled with debt and that they're able to repay their debts that they accumulate during school, would the Department consider having a safe harbor specific to the high school earnings metric that, if failed, as long as you have a repayment rate above whatever that threshold is, you have a safe harbor that you're not losing your program because at the end of the day, that is the main goal of this provision as I read it. And we have one metric now specifically tied to program's Title IV eligibility that's earnings only and has no debt component to it whatsoever. So the program could cost $1,000 and fail based on a comparison to a high school earner. So would the Department consider a safe harbor provision based on a debt repayment rate? And Barmak, if I said it incorrectly, you proposed the comment, maybe you could help clarify if you'd like to reword that.

MR. NASSIRIAN: You did a good job.

MR. MARTIN: I'll certainly take it back and discuss it with Leadership. I don't feel I'm in a position currently to say, yes, we would consider that or not consider that. But I will definitely take the concern back. So, Steve. I know I don't, well I'll leave it to the facilitator. I'm sorry. I'm not trying to take anybody else's job.

MS. MILLER: No, that's okay.

MR. MARTIN: Mine's taxing enough.

MS. MILLER: Steve, please.

MR. FINLEY: I'm just going to say, to the extent somebody is suggesting a repayment rate as a some kind of measure in the GE metrics, recommended thresholds and a basis for doing so would also be welcome given that was the issue that set aside the original GE rates was like not being able to establish a threshold for a repayment rate as a metric.

MR. ADAMS: Thank you. I'll reach out to Barmak in the chat and see if we can come up with one together. Or maybe we even have a break out here in a minute, but I'll debate that with him in the chat. Thank you.

MS. MILLER: Thank you, Brad. Johnson and then Debbie.

MR. TYLER: And I'm not endorsing a repayment rate as a metric. I haven't thought of that enough. But just in the context of this, this has come up in the College Scorecard, which is a useful way to evaluate schools if there is a repayment rate. You know, making payments under an Income Driven Repayment Plan where you're just paying interest or paying nothing because you're so poor or you're below 150 percent of the poverty line is a completely meaningless tool. It really goes to whether people have the capacity to sign up for Income Driven Repayment and stay in it. So the real key question is, are they paying down principal? And that's what the College Scorecard has a has a metric that measures that and what percentage of students are actually doing that. So it's certainly not enough to get out of school, get a job, have a ton of debt and be paying less than not even being able to keep up with the interest that's accumulating every day. You're in debt for the rest of your life. So any repayment metric has to take into account principal and ability to repay down the principal.

MS. MILLER: Thank you. Debbie.

MS. COCHRANE: Thank you. So I guess I maybe have a big picture question first and then I'll go into a specific.

But you know I feel like we're putting a lot of kind of big questions on the table. The idea of a safe harbor being like the latest one that's come up and maybe, maybe something Brad and Barmak will come up with and be able to send to the Department later today or maybe that's later in the week. I guess my big question is like, how do we proceed from here knowing that there are a lot of big outstanding questions and we're supposed to take a vote pretty soon and kind of like the direction that some of those conversation goes probably influences some of some of the votes. I think it'd be very helpful to know before any vote, assuming that's today, or whenever it is, kind of which of the outstanding questions the Department, you know to the extent that they can't be resolved at the table, which of them is the Department going to take back and kind of explore more in-depth, you know committed to committed to digging into versus set aside not for this rulemaking. So I think that would be helpful before any vote. The specific thing I did want to put on the table potentially is that you know I am very concerned about impacts. I know this has come up and with respect to both students and as well as institutions. And I think a really important aspect of this has got to be that the rule in terms of setting clear standards has got to be not to shut down programs or schools, but to actually get those programs and schools to comply with the standards. Right? We all saw what happened after the 2011 rule, then the 2014 rule, and lowered programs, more scholarships, more career services. Those are the kinds of things we actually want. I think in some other areas where we need some of the stuff at the state level to shake out. Jamie kind of brought that up, but all of my point is all of that takes time. And one thing I would want to put on the table is the idea of having some sort of transition period and whether that would be worthwhile, both given the fact that we're inserting kind of late in the game, the idea of an earnings metric, which we're still figuring out, is that apples to apples sufficiently? But also we do have challenges with the COVID earnings and some of the years that we would be looking at. So of course, back in 2011, the Department did have a transition period where it was like mixing and matching the debt and the earnings that would essentially give institutions who are trying to make improvements to their program time for those improvements to be realized in their metrics. So I would love to I would love to hear the Department's thoughts on some on that. I don't think it's anything we've discussed in the negotiations to date, but I think it actually might both be substantively warranted given the situation we're in right now, but also help to address some of the concerns that are coming up from a variety of angles.

MR. MARTIN: Well, I'll certainly take back the concerns expressed here. As I said before, we are in the last week of negotiation. We had originally scheduled a vote for this for today on consensus. But I can explore if that should be if that should be postponed, you know, and in consideration of answering some of these questions as far as something like repayment rate goes, I think I can you know I can get a response to that pretty quickly as to whether we're supportive of that. Obviously, if we're not going to go that way, then it doesn't it doesn't need to be a whole lot of time spent fleshing that out because we wouldn't be doing it. So I can definitely get that. In response to the removal of the transition rates and the transition and also the removal of the zone, I don't know if I could say much else about that. At this point, I've already given our rationale for not doing that. We, all these concerns, obviously we'll take back in anticipation of doing or before doing the NPRM. That's what I don't want to commit to exploratory processes that we don't have time for at this point. But if there are, we'll see where we are at the end of this paper and at the end of doing this issue paper. And if there is an interest in postponing a vote until some other questions are addressed, I think I can do that. I mean, as far as the entire, the thinking behind it, the entire etiology, I don't think we're going to be able to do that in a couple of days, in the remaining time. So. I don't want to overpromise, but certainly where I can get some clarification, I'll make every attempt and I'll look into, you know, whether or not we should do the vote today or perhaps a different day.

MS. MILLER: Brad and then Anne.

MR. ADAMS: I'd like to support delaying the vote until we get some additional answers on these things. But I do not recall, and I think Debbie and Anne are both agreeing with me in the chat that we discuss transitional rates. It was on my list to discuss. I did mention the COVID year impact, and that's one way to get around it. But you know I do think it was a very important component of the 2014 rule that has been removed. It allowed schools to do things to make sure they were complying with the rule. This is a brand new 2022 rule. This is not the 2014 rule. It's got a complete new metric of whether or not a program will lose Title IV eligibility. I don't want to forget that. And without a transitional rate period, we are going to have a ton of programs fail in 2020 just due to the unemployment rate being 30 percent for most of the year. So I think the Department would be wise if they considered a transitional rate period again. And I'll let Debbie and Anne add to that. Thank you.

MS. MILLER: Thank you, Brad. Anne.

DR. KRESS: I just quickly want to go back to Debbie's point. You know, there are so many uncertainties here, and I want all of us to take a step back and recognize that the whole point of Gainful Employment is to protect students from predatory practices. Right? And I am very afraid that if we were to put this to a vote, at the end of the day, we would all be voting on those luminal issues and we wouldn't focus on the big picture. And so I just want to put in my or to say that, you know, we're setting these deadlines. They're arbitrary. We can come back to this before the week ends. We don't need to extend. I just I would hate for us to take a vote based on these marginal issues that have very specific impacts that would cause us to lose sight of what the whole point of Gainful Employment is and how it did protect students. So I just wanted to put that out there.

MS. MILLER: Thank you, Anne. And before we go on, Adam Welle is at the table for state AGs. I don't see any other hands, Greg. Where should we go from here?

MR. MARTIN: So we would be moving on to, I believe, a discussion of 406, issuing D/E rates and threshold measure. So that is on that's on page 10. And again, we're on we're at

668.406. And here we have you see some various references here to updates to refer to the issuance of both debt-to-earnings rates and earnings threshold measures, for instance, under administrative data and calculating D/E rates and earnings threshold for a GE program as well program rates, Secretary uses student enrollment data, etc. So that's updated. You see that throughout. If we move on to 406 D and specifically D2. Here that we've added a correction from session two to specify that earnings information will be provided by a federal agency with earnings data. So we took out Social Security Administration and added in a federal agency with earnings data. And that is really that is really all for 406. I want to move on to 407. The termination of the D/E rates and earnings threshold measure. Again, throughout this section, we've updated to refer to both the debt-to-earnings rates and the threshold measure. Let's move down to 407A, I'm sorry, B, ineligible programs. We have added language here clarifying how the Department will effectuate the loss of eligibility, which may be through the signing of a new PPA. That does not include the failing program such as recertification or a termination or a termination action for program eligibility of the failing program or revocation of program eligibility for the failing program if the school is provisionally certified. If the Department utilizes the termination action, the institution may appeal under a subpart G proceeding if the school wishes to argue that the calculation of the rates was incorrect. We have clarified the terms of such an appeal both here and in in 668.91, including the subpart Q language. So I'll take a look at this in B. And this is ineligible programs. If the Secretary determines that a GE program is ineligible under paragraph A3 of this section, the program's participation in the Title IV HEA program ends upon the signing of a new program participation agreement that does not include that program, the completion of a termination action of program eligibility if the action is initiated under subpart G of part 668 or revocation of program eligibility if the institution is provisionally certified. If the Secretary initiates an action under paragraph B1 romanette two of the section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the programs debt-to-earning rates under 668.404 or the earnings threshold measure under 668.405. Institutions may not dispute a program's ineligibility based on its D/E rates or the earnings threshold measure, except as described in this paragraph, B2. So I'll stop there and open the floor for discussion.

MS. MILLER: Thank you. Carolyn and then Emmanual.

MS. FAST: I have some significant concerns and questions about this section 407B, which talks about how a program that is not meeting the GE rule standards would lose eligibility. So as I understand it, this, and please correct me if I'm wrong from the Department, but this this provision says that instead of a, that if a program doesn't meet the standard for two out of three years, they will continue to, even if that happens after the three years, they will continue to be able to get and will get Title IV funding and enroll students unless one of these three things happen. One is they've come up for a renewal of their program participation agreement, which might not take until six years, because, as I understand it, those are renewed every six years or the Department initiates and completes a termination action which would take an action like an active action by the Department, and then a whole process that could also take a long time or they could just be revoked if their provision is certified. So it seems to me that someone could a program could fail and continue and after three years, continue to get money and enroll students for some period of years afterward. But maybe I'm wrong, so please correct.

MR. MARTIN: Steve Finley explains this very well. So I'm going to yield to Steve if the facilitator will call on Steve.

MS. MILLER: Steve, please.

MR. FINLEY: And if I will think, to unmute my microphone. So a fully certified institution has a right to offer eligible programs unless that program is loses eligibility. And the way that would happen would be through the Department initiating an action to terminate, limit, or suspend the program under subpart G. That's just the way it has to happen under the regulations because it's a fully certified institution that has rights under the HEA. So, a fully cert- a fully certified institution that has a program that that fails these eligibility metrics, the Department will routinely then turn around and initiate termination actions against those that one or more programs. If the institution is already provisional, the Department may choose instead to revoke its participation for that program, and if it was up for recertification, it could just have the program removed during the recertification. So it's not necessarily that there's a large amount of time that happens. This is much more situational on where the institution is in it's in its participation cycle and, and in its participation status with the Department.

MS. MILLER: Thank you, Steve. Oh, sorry.

MR. MARTIN: No, I clicked it accidentally. I'm sorry.

MS. MILLER: Okay. Carolyn, did you have any further questions or comment? Okay. Emmanual.

MR. GUILLORY: So I want to say that we were very happy that the Department included some sort of appeals language. That was really one of our biggest concerns during session two when we talked about the proposed text initially was that there was just no opportunity to ensure that data is accurate before any actions are taken. So we were very happy that at least there was some language here. But there's still a concern around this language because a program will be deemed ineligible before they would be able to look at that data, make any corrections if there are corrections that need to be made to that data. And that's a bit concerning based on how this reads. And also, you would think that there was a call earlier to go back to the 2014 rule, but the main thing in that rule for us was that an institution had the ability to make sure that data is accurate. And really this is what this comes down to. We want to make sure the bad actors are you know sought after. We want all of that. We just want to make sure that we have the opportunity to correct data if data needs to be corrected. So I guess you know we did submit an appeals process language here the Department didn't take. And obviously, you know, for whatever reason, the Department felt like that wasn't the route we want to go in. But we really believe that the opportunity to correct the data before the action is taken is important because we definitely want to make sure that we are informing students of ineligible programs because they're truly ineligible and not because there was a mistake or flaw or something like that. So we continue to request the Department consider to allow institutions to at least appeal the data when they fail one rate, you know, to make sure that that is accurate. Also with small program rates as well, since those will be calculated and like I mentioned earlier, the Department will use those rates to potentially determine whether or not to approve a program participation agreement or recertify or put a program participation agreement on provisional certification status. Then there should likely be an opportunity to look at those rates too as well. How are institutions going to, how will those rates be delivered to institutions and institutions appeal those too? So I would like to hear from the Department on that. Thanks.

MS. MILLER: Thank you. Steve. You're on mute, Steve.

MR. FINLEY: I apologize for that. This is partially in response to the points Emmanual was raising, but it's also something I should have added to my earlier reply to Carolyn. Institutions that have a revocation action if they're provisionally certified, these are not, they have a right and a procedural right to request reconsideration of that decision, and they can provide information in support of that request. And institutions that have a program removed during recertification also have a right to have the ability to request reconsideration. Those are much less formal than the appeal mechanisms that are set out in subpart G. But they do exist and there are opportunities there for institutions to point out errors that were made in the material that was relied upon by the Department in making those decisions. And the other point I would make to Emmanual is there is an intention here that the information compiled for the Completer List and everything will have an ongoing ability for the institution to be able to see that information and update it as needed before it is actually used to obtain the earnings information from the other federal source.

MS. MILLER: Thank you, Steve. Emmanual,-

MR. GUILLORY: Yeah, I wanted to say that I appreciate it. Steve, I appreciate your response. And again, I appreciate everything Department's doing here. So I don't want to seem like we're, you know, we understand the goals and what we're trying to do with this particular issue paper. But if it's not clearly stated here within subpart Q that there is an appeals process for this data that kicks in if you fail and you have the opportunity to make sure, okay, well, based on what we calculated, we didn't fail, the Department reconsiders that and say, oh yeah, there was an error here, or no, you do. We're moving forward. You have to warn your students, and if you do this one more time, then you're going to become ineligible. It's just that is the process that typically it should, in our opinion, that should be allowed for institutions as it is in other areas like financial responsibility area or audit reviews, or have an opportunity just to look at that before a final determination is made. How this is written, you're deemed ineligible. So you've already warned your students twice, right? You've warned your students twice and you're deemed ineligible. But then you can go back and look at maybe the first rate was fine, you know, but the second rate wasn't. So we're technically not ineligible yet or it just seems a little backwards in some ways. But and if I'm misinterpreting that, please let me know. Thanks.

MS. MILLER: Brad.

MR. ADAMS: I also want to say I was glad to see there was an inclusion of some sort of appeals process, however appealing, whether or not the calculation was calculated accurately to me is without actually knowing what the underlying data is, especially on the earnings side, doesn't add really much of anything. We certainly hope the Department can divide accurately. And so I'm curious why we're introducing subpart G, which I've never gone through subpart G, but I understand it involves a hearing at the Department through an administrative law judge and does the Department have the staffing available within these law judges to hear the cases that may come up through this provision as written?

MS. MILLER: Doesn't look like there's a response from the Department.

MR. MARTIN: I don't know if I can speak to the Department's staffing patterns, but certainly I would say what's the appeals rights the institutions have under subpart G, they just have. It's incumbent upon the Department to allow institutions to exercise those whatever the amount of a person power might be necessary to accomplish that. So I don't know if I can, you know, it just it and it's not, it's one tool we have as Steve pointed out that there are, you know there's the signing of a new participation agreement that does not include the program. If the institution were to refuse to do that and pushed it to a proceeding under subpart G then, then yes, they would have all those, all those appeal provisions would be there. But I would just say it is, a due process, right, that the institution has that we would have to adhere to.

MR. ADAMS: It just appears to be a pretty burdensome process when the previous provision that was hashed out over three weeks for GE alone included an earning appeals process. It seems like we're trying to recreate something that worked the first time. And also, I'd like to add to Mr. Finley's point that if there is going to be a Completers List review, I believe we should add that to the provision. That is good news and is something we support. But I didn't read that that's an option within this issue paper. So if that is going to be part of this process, I think we should add it back in. Or did I miss it? Is it somewhere else, Mr. Finley?

MR. FINLEY: I think that's going to be built into the systems where schools have access to see the information and just make ongoing reviews of it on their on their own, since the schools are the source of a lot of the data anyway.

MR. ADAMS: Will that also include system for the debt in addition to the completers like last time?

MR. FINLEY: I'm sorry. I don't know the answer to that.

MR. ADAMS: It'd be nice if it did. So then you know your numbers prior to getting your earnings number. This is the way it was last time.

MS. MILLER: Thank you. Johnson and then Adam.

MR. TYLER: Yeah. I may have missed this, but, so, what happens to the small completers when you can't get 30 over 40, 30 people over 40 years have completed and you're basically combining different programs? So you do that combination and you evaluate the earnings and the debt. And what are the consequences of that? Is it the or do those programs have to be removed or is it just a publication consequence?

MR. MARTIN: There is no loss of eligibility associated with a small program.

MR. TYLER: There's no loss. Okay. Thank you.

MS. MILLER: Thank you, Johnson. Adam.

MR. WELLE: Yeah. I just wanted to piggyback off of Carolyn's question. As I heard her concern is, it's that the program could be a program could be failing Gainful Employment standards and would not be supposed to receive funding Title IV funding, but it could continue indefinitely. So I guess I'm still unclear about this. Would the Department have discretion to decline to issue the termination the termination action that's listed in one romanette two? [Audio] that seems like a concern, that the rule could be undermined. And I guess I'm wondering, why can't the program become ineligible once it's determined to be ineligible?

MR. MARTIN: I'll probably yield back to Steve on this. But we point out we under the 2014 rule, we never got to the point where any programs lost eligibility. So they're unlike with something which is statutory, such as if you failed the failures for 90/10 where the institution automatically loses eligibility and per statute. That's just what happens. We don't have that here. So these are these what you see here are the mechanisms that that would be used for removal of program eligibility. And I don't, I should turn this over to Steve. I don't think that would have been any different had the 2014 rule stayed in effect, there would have been no way for it to be just automatic without the school being able to if the school had disagreed with that or would not have consented to having that removed from the from the PPA, they still would have had recourse to due process if we had moved into termination action. But I'll take that back to Steve.

MS. MILLER: Steve.

MR. FINLEY: Yeah. I mean, Greg's correct there. And we never reached the stage with the earlier set of GE regulations but to fully certify an institution, the programs the programs are ineligible when they are, when they fail the metrics under the regulations. But you've got to establish the final agency position on that through a hearing process. And unless you're doing it, you're doing it through recertification or you're doing a revocation of the institution's part of the institution's participation under provisional certification. So they're not self-implementing. But all you're doing is confirming the status that the program is becoming ineligible under those measures.

MS. MILLER: Thank you, Steve. Emmanual.

MR. GUILLORY: Yes. This is the second time that I've heard that the small program rates don't determine Title IV eligibility at all. So I am really confused of why small program rates are included in section 668.13, if that's the case, because that is tied to Title IV eligibility. So can the Department answer that question? If the intent is that they don't have any bearing at all whatsoever on Title IV eligibility, then then they should not be included in section 668.13. And then also, as it relates to the data appeal, just we should be mindful of the 2020, 2021 cohort and 2021 2022 cohort and probably 2019 2020 cohort as it relates to the pandemic and the issues that they face too, and how the data is going to reflect that. I just want to be mindful of, because there's going to be some differences in the data there regarding the appeals process for institutions, too. So first question, small program rates, do they have Title IV eligibility bearing at all or no? If the answer is no, then they should be removed in section 668.13.

MR. MARTIN: Well, they have no there's no there's not an automatic there's no automatic loss of eligibility for based upon rates, you know. You were I'm sorry, you're referencing from the other, I'm trying to find that. You, let me let me let me get, I'll address that further. But I just want to say that there's no there's no, it's not, the rate has no impact on a loss of eligibility such as the D/E, such as the D/E threshold rates would for programs that that are not small programs.

MR. GUILLORY: Okay.

MS. MILLER: Okay, thank you. I'm not seeing any more hands. Do we want to move on or take a break?

MR. MARTIN: Let's take I'd like to take a short break, please.

MS. MILLER: Okay. How long? Ten?

MR. MARTIN: Yeah. Let's call 10 minutes.

MS. MILLER: Okay.

MR. MARTIN: Thank you.

MS. MILLER: Alright, we'll take a 10-minute break. If we could stop the live, please. Welcome back from break. Adam, I see your hand up, but I just want to ask Greg if you want to kick us off or have anything to add.

MR. MARTIN: Yeah, I have a couple of comments. I wanted to address Emmanual's point first. So, he was referencing, we're not there yet, it's at the end of the document. But just because he brought the point up, so I do feel it's necessary to address at this point. So when we talked about the ramifications of any rates connected with a small with a small program. If you look and as I said, there's no threshold, there's no ramifications connected with a specific threshold for small programs the way that there are for other GE programs. However, in 668.13, which is what he was referencing is the certification procedures and I can just address that now. When we talk about supplementary performance measures, the Secretary assesses and analyzes the following information, among other information, prior to issuing an institution, to issuing an institution, a new program participation agreement, and may consider the information in determining whether to certify or condition the participation of an institution under 668.13 and 668.14. So that's the certification. And then 14 is the program participation agreement. So one of those, if you look down there, the, the, the under romanette, in E, romanette three is small gram- small program rates. I'm still trying to get used to that word. I keep wanting to say short-term program that's entirely incorrect. Small program rates. The small program rates under 668.404 G and 405 E if applicable. So yes, it is, it is, while there's not a specific loss of eligibility associated with the with a rate, those rates, as I point out here, it's also true that debt-to-earnings rates and earnings thresh- earnings threshold measures, irrespective of whether they result in a loss of program eligibility, can also be considered in the certification in the certification procedures in this evaluation of when we look at whether to extend typically this would happen when we're when the school is up for recertification. If we were recertifying the institution, would we limit, sometimes schools are limited in being able to add new programs. I think there are elements like that in these that happened with recertification. So, yes, it can be considered holistically along with these other these other indicators when the Department is determining whether or not to certify or recertify an institution or condition its recertification on certain elements. So I did want to point that out. So it's not, and Emmanual is correct, it's not it would not be accurate to say that it would never have any bearing whatsoever. But there's no as you'll know, there's no specific rate associated with it. It's not as if that rate wound up being a certain percentage that would result in a conditioned program participation [inaudible] to clarify that. And also before we get going again here, if we turn to 406. Yeah, it's 406, 406 D/E, issuing D/E rates and earnings threshold measures 406A, administrative data. I think it's important to go back to something, I think we mentioned that the first during the first session that the Department is trying to the extent possible to make GE reporting or base GE calculation of GE rates off of the administrative data as much as possible in order, and to the extent possible, limit the amount of information that needs to be provided by schools under the reporting protocol. So we, our systems, the data that we now have in in both NSLDS and in COD is much more complete, robust than it was a number of years ago. We now have program level data that's much better. So we're trying to, to the extent possible, use administrative data. And as we point out in A, we in calculating the rates and earnings threshold measures for a GE program and the small program rates, the Secretary uses enrollment disbursement and program data and other data. The institution is required to report to the Secretary to support its administration or participation in the programs in accordance with procedures established by the Secretary. The institution must update or otherwise correct any reported data no later than 60 days after the end of the award year. So this goes back to our contention that the data reported by the institution is expected to be correct. We believe we have, that we're, we're well with within what is reasonable to assume that what the institution reports to us is correct. And I don't think an institution would want to say to us that, well, we need to look at this again because the data we reported to you was not we reported to you in COD and NSLDS is not correct. So all those, debt, all that is based off of reported disbursements. So we expect that all that information would be correct. And we are pointing out that the institution is that that needs to be corrected no more than 60 days after the end of an award year. So I just wanted to make those points before we moved on to, I believe 668.408 if I'm not mistaken. And I'll wait for Renee to pull that up. Thank you, Renee. Okay, so, in 668.408 consequences, just make sure I'm in the right, yeah, I am in the right place, just second guessing myself here. So we are in 668.408, consequences of the D/E rates or earnings thresh- threshold measures. And here we note that we've updated the entire section to refer to both the debt-to-earnings rates and the threshold measure. If we move down to 668.408 A2 romanette four, for warnings provided to enrolled students. Per questions from negotiators, we have added B, that we intend the provision to reflect how institutions expect to respond in the event that our program loses eligibility. So you can see here that for the warnings provided to students, in addition to the what is an A, which we had previously description of the academic and financial options available to the students, whether students can transfer credits earned in a program to another program at the institution and which course credits would transfer. We've added there in B an indication of whether in the event that the program loses Title IV loses eligibility for Title IV funds, the institution will continue to provide instruction in the program to allow students to complete the program and to refund tuition fees and other required charges paid to the institution on behalf of students for enrollment in the program. And here in C, we've added language to clarify that we intend for this to refer to institutions' plans if their program does lose eligibility and address negotiator concerns that transfer promises may not may not always be realistic. So in C you see an explanation of whether in the event the program loses eligibility for Title IV funds, the student could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach out plan or agreement. And then moving on to A6 and I'll wait for, oh, Renee is one step ahead of me. That's good. Here, you see the, at negotiators' suggestions, we have added a disclaimer that institutions must still provide accurate information to students and that students' access to relief will not be limited on the basis of a warning or an attestation. So let's read what we read the language we've added to A6. The provision of a student warning and or the completion of an attestation does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor, nor does not, that should be that's a typo there. Nor will it be considered as evidence against the student's claim in applying for a loan discharge. So we did add that language there will clean up that typo there with does and will. And that is it for section 408. So I'll stop there and take any comments or any discussion. Thank you.

MS. MILLER: Adam. And then Marvin.

MR. WELLE: Yeah, I'm sorry. I still had one final comment from 407 B1, I guess in the I don't mean to harp on this, but as I heard it, it was stated that there's some sort of authority that says if there's a condition that is not statutory for program and eligibility, that there has to be some sort of additional administrative action that's taken subsequent to the event to decertify or make the program ineligible. I guess if that authority could be provided, I'd appreciate that. I just worry that that provision creates you know an opportunity for mischief. I feel like if the Department unreasonably delayed in taking that termination action, it would result in students enrolling in a program that, under the rules, is supposed to be not receiving Title IV aid. I'm worried about how students you know would be how that fact would be represented to students, and it seems completely inimical to the rule and the purpose for that event to be allowed. So if that can be remedied in some way to prevent that type of delay, we would, I think I'd strongly support that. Thank you.

MR. MARTIN: Thank you.

MS. MILLER: Thank you. And Jessica Ranucci is at the table for legal aid. Marvin and then Jessica.

MR. SMITH: Greg, I wanted to go back to small program rates just a little bit so I understand kind of even the intent because I think you've assured us from the beginning that it won't impact schools and now it's a supplementary kind of measure. Again, I feel like GE programs, you have the data, you can share it with schools. We can make a determination whether programs are meeting some type of metric, but we won't have any specific data, if I understand it to say you know of our 30 small programs, which ones are meeting some types of metric and which ones aren't? And I understand I think I understand from a statistical point of view that the Department can't reveal you know small less than 30 income. But I guess I'm wondering, Greg, have you guys ran some data? Because I don't think you've shared it with us to show us what kind of small program rate impacts schools. And really, I'm just still trying to understand what are schools supposed to do with the data? Because I think that schools want to be good partners in this and want to figure out if there's programs that are not meeting some type of metric. What are we going to be able to do with that data?

MR. MARTIN: I'm not sure I can answer what you do with the data. It is essentially informational, I think, and it's there to, it was added to account for the number of programs that were out there about which there was nothing reported because they are so, the programs are so small. When I said I mean, I guess it comes down to a matter of semantics. I was talking about the ramifications, the program ramifications for any calculated, small program rate. There are none specifically for that. But it is true that under certification procedures, we can use the rates and we say, I would add that in reading the language, the supplementary information, the Secretary assesses and analyzes the following information, among other information. So it's just pointing out that it can be used in an assessment of an institution prior to our recertifying that institution, which is a process that takes place now. We use a lot of factors in determining whether to recertify the institution and whether or not to condition that in any way. But there's certainly not the case that that if that if a program had if there were a small program rate, that a certain rate would trigger the Department to say you're not you're not certified. So there's no there's no stated ramification. However, yes, it is included in there as something that we can look at. But as far as what the school should do about it, I don't, when they're, when they receive a certain small program rate, I'm not sure I can answer that, I can answer that question.

MR. SMITH: Have you ran some data to show small program rates? Is that possible to, I don't know, look at?

MR. MARTIN: I will I will ask what data we have are related to small programs.

MR. SMITH: Thank you.

MS. MILLER: Thank you, Marvin. And just before we get to Jessica, I want to make a comment to those in the public who are coming for public comment at 3:30, if you could log on just 10 to 20 minutes early so that we can make sure that we get to you when it's time. Okay, Jessica.

MS. RANUCCI: Thanks. We submitted a proposal prior to this week that would require institutions to give certain information to their accreditors upon at the same time that they would be required to give the student warning. I understand the Department didn't adopt any of that, so you may not agree that all of that information is necessary, but at a minimum, I think requiring institutions or the Department directly notifying the accreditors that their whatever program has failed one year of the metrics really seems like a no brainer. I don't understand why there would be any opposition to the accreditors getting that information. I think it's really at a point where the accreditors can use that information in the interest of helping students. I think the more that the accreditors know early about programs that potentially lose Title IV, the more that the accreditors can do their job well. So just wondering if the Department will consider adding that in?

MR. MARTIN: Your suggestion being to have the Department do it or require schools to do it?

MS. RANUCCI: I, this is not my area of expertise, so maybe let Jamie or someone else answer that question. But I guess I just the idea that someone has to tell the accreditors that this is happening.

MR. MARTIN: Thank you.

MS. MILLER: Greg, I'm not seeing any other hands, can- oh, Emmanual.

MR. GUILLORY: I'll just add to Marvin's comments that we continue to be really, really concerned about the small program rates, especially since we don't know what a, I mean, I'm assuming that it would be the same as a debt-to-earnings rate metric where it's 8 percent annual or 20 percent discretionary. And if, you know, if you're over that, you fail, if you're below, you pass, I assume that's what it would be.

MR. MARTIN: But there's no pass or fail associated with those rates.

MR. GUILLORY: So then that's even more concerning because then institutions don't know what is passing or failing or good or bad, and won't know how the Department will make the determination if they use small program rates when approving their PPA or recertifying or whatnot of how they're doing it. So, I mean, there's no language here that says in the Federal Register, we're going to put out how we're going to do this. Like that's not listed here. So this is just really up to the Secretary to just pull from these potential rates and kind of determine whatever they want to determine based on that. And that's just a real concern. And I think that is a very, very valid one. And so I would just reiterate that if it's the intent of the Department to not have a small program rates determine Title IV eligibility at all, then they should be removed from that particular section that we haven't technically gotten to yet, but that we keep talking.

MR. MARTIN: Thank you.

MS. MILLER: Okay. Greg, do you want to move us into the next section?

MR. MARTIN: Sure. I just want to make sure, I believe that we are going to 668.409 on page 14, which is reporting requirements for the GE programs. And if we'll move down to 409 A2 romanette five. We've added a, we've added the phrase for such expenses simply to clarify the intended reference to expenses for books, supplies and equipment. So that's in five under reporting requirements, the total amount of the allowances for books, supplies and equipment included in the students Title IV cost of attendance or COA for each award year in which the student was enrolled in the program or higher amount if assessed the student by the institution for such expenses, that would be a higher amount than the actual. Remember that you're reporting the allowance for book supplies not, which is different from each student's actual costs unless those and unless the amount assessed the student is actually higher than what that what that allowance is. And wait, that is it for 4, that is that's all we have for 409. We do point out that the supplementary performance measures was moved to 668.13, which is that's a timely discussion given the, Emmanual's last comment. So you can see that 409 was taken out. And that's now that's now 413. So I'll move on, just basically [inaudible] correction there. So I will move on to, we'll move on to 668.410, that's certification requirements for the GE programs. And there is we've added we've added nothing there. So I'll move on to, there's also nothing new in 668.411 under severability. So we'll move on to 668.91. Just hold on one second here. And, yeah, okay. So, here we referenced this earlier with respect to loss of eligibility. This is under initial and final decisions. And this section was not previously included in the proposed language at all. We've added it here so that we can include a corresponding provision to the ineligibility language included above related to the grounds for appealing the loss of eligibility. So here you can see in 91 that termination action against a program based on the program's failure to meet the requirements in 668.404 and 405, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable able calculation. So I do want to point out here that since we had some discussion earlier on these termination actions and the Department's capacity, that this would be a relatively limited, limited action. So it would be it would be erroneous to draw a comparison between this type of action and a, an overall [inaudible] action where the where the Secretary was moving to terminate an institution's participation say based on program compliance is usually something a lot more that might involve a lot more complexity than this. And you notice it's limited here and we do state the hearing official must terminate the eligibility so that would be that would automatically happen unless that official concludes the Secretary error in the applicable calculations. So, the only avenue of appeal really is that the Secretary erred in in calculating the calculating the rates. But I'll stop and allow comment there before we move on.

MS. MILLER: Okay. Brad and then Carolyn.

MR. ADAMS: Yeah. You know, within 668.409, talking about the cost of attendance and you know I may have missed it earlier as we were flying through some of these other sections, but I do think and it's a comment I made in week two that we need to consider taking tuition down by institutional grants. Those are not loans. Those are not anything that the student would ever owe. Those are dollars in which the institution is taking off this tuition. As you probably know, we can't differentiate tuition for various things, but students can be eligible for institutional grants for whatever that grant is driven for. So, example, veterans who have $1,000 dollars off, first responders, employee dependents, various things that have specific criteria. So, for example, tuition is $5,000. A VA student gets a $1,000 dollar institutional grant. They owe $4,000 dollars. But if they borrow $5,000 from the Department, the full $5,000 is what's counted for GE. Just a simple example. So you know my concern is institutional grant is monies that the student never really owed in tuitions. And so you know whether it's here or in the actual calculation of the median debt, I'd like to get the Department's perspective on why we're not considering reducing tuition by an institutional grant that is never going to be owed by that student and all it's doing is reducing tuition.

MR. MARTIN: Well, the taking of or the reporting of this information, specifically the total amount, tuition and fees assessed the student for the student's entire enrollment in the program and also the allowance for both the supplies, I would point out that that's not that's not what the student owes. The student owes what has been borrowed. And I think that's an important point to make. So this was just put in there as a I don't think concession would be the right word, but as a an acknowledgment of the fact that there are, you know, that that there is borrowing above tuition and fees that goes for other things. But I think it's still we're still concerned about it because it's still debt. This is merely a cap at what we'll, what portion of that borrowing we are going to count. So it's a reasonable cap. I do understand that, yes, if grants if an institution makes grants to a student, that that that that does not have to be repaid. But the amount the student borrows is still debt owed by the student in a very real way. And in in actuality, as far as does the student have the means, does the student make enough money or the means through which to pay that debt back? It doesn't really change as a result of what the what the what that debt went for. This is this was just a cap placed in here as a recognition of those differences. So we'd be disinclined to count those grants.

MR. ADAMS: Well, in theory, though, that additional monies they borrow would go back to the student and the stipend above and beyond books, supplies, and equipment. So it would be for something other than what we're capping tuition at. But thank you for the consideration of that.

MS. MILLER: Thank you, Brad. Barmak.

MR. NASSIRIAN: I just wanted to endorse Greg's explanation. We are already excluding a significant amount of the burden that participation in that program is imposing on the student. The student ends up owing the entirety of the debt. Furthermore, it's really hard sometimes to disaggregate what component of a grant was intended for living expenses and what components should be allocated to tuition. So I feel like we're already again extending the benefit of a significant doubt to institutions here and further discounting that cap just makes it meaningless.

MS. MILLER: Thank you, Barmak. Carolyn.

MS. FAST: I just wanted to comment on, Adam had brought up in the chat, which I know is not available to those watching, a suggestion about addressing concerns that he and I raised about the process by which a Title IV funds would stop going to a failing program and that there might be they might address this concern to have a provision clarifying that a termination action would be commenced right after a program was determined to be ineligible to address this concern that we have, that without Department action, there could be no consequence for a failing program, which is a huge concern for us. And I don't know how it was supposed to be handled under the prior version of the rule, but this [inaudible] seems to be new in this rule.

MR. MARTIN: I'll respond to that. But again, I yield to Steve because his explanations of this are usually better than mine. But, we never, it wasn't specifically addressed in the previous rule. That is true. But the mechanisms that are spelled out here would have been those that would have had to have been used. We could, we could have the institution sign a new program participation agreement, as Steve points out at the time, that the first that the earnings rates come out and the program would lose eligibility. The institution is still a fully certified institution. They could sign a new program participation agreement, which is one of the options indicated there. In the event the school refused to do that, then we would be, I believe, faced with having to move ahead with the subpart G. But Steve, do you want to comment on that again?

MR. FINLEY: Could you repeat what the question was? Because I thought you responded to it.

MR. MARTIN: Yeah, I think I did. It was just about the idea that that I think because we've put this in in this time, that that it appears to be to be new, which it really isn't. It would have been the same, the same protocol we would have had to use under the '14 rule. Had that rule remained in place and that it doesn't mean, and I don't, it doesn't mean that a program automatically continues to function and we wouldn't do anything but that if a school I guess, Steve, the situation would be if we wanted if we were to have a school sign a new program participation agreement that that eliminated the program that failed, if the school refused to do that, where we would how we would proceed.

MR. FINLEY: Yeah. I mean, what you're seeing right now just kind of captures the process the Department has. There are three options there. It's the same options that are there for institutions that fail financial responsibility based on whether they're fully certified or not. So this is just actually highlighting what that procedure would be here. And we never did reach it in the earlier GE regulations, but it's exactly the same choice as we were faced with.

MS. FAST: Thank you for clarifying. I guess one reason I was confused was that my understanding was that the 200, the 2014 rule had some sort of mechanisms for appeal and that this termination process also provides a mechanism for appeal. So would people be able to appeal twice? That was why I was confused. I thought that this was a was a new a new and different way. But if you're saying this is the same, then that's that helps to clarify that this is not a new problem. But it does seem to be a concern that the Department chose to not take action or didn't get around to taking action, students would continue to be harmed for a long period of time.

MR. MARTIN: Well, I pointed out about the previous rule. The only the only really stated appeal in there was, was earnings appeal, which we don't which we've eliminated this time. So that was an earnings appeal based on whether or not a reported earnings, Social Security earnings were actually indicative of real earnings, if like for tipped employees or something. That was the only that was the only appeal that was stated in the regulations. These appeals the appeal that Steve's talking about with respect to subpart G still existed. It wasn't it wasn't spelled out in that regulation. But I guess the point here is that nothing is different here with respect to that. We just have put it in the regulation.

MS. MILLER: Thank you. Barmak.

MR. NASSIRIAN: Yes. I'd like to go to a 668.91 on page 17, the new language that the Department has added. And I've mentioned this before, and this is only a very meek suggestion that the Department can take under advisement. I'm not asking for any amendatory of the text today, but in the highly improbable event that we may not arrive at consensus, the Department may decide to contemplate some modification. I had initially mentioned the waiver that obviously didn't take. So I'm thinking that maybe in this romanette six, you may want to give yourself a little bit of leeway, I think Anne had previously mentioned the disparities that you sometimes see between county level macroeconomic conditions and state level conditions, and it may help the Department diffuse some of the pressure that may come from those kinds of concerns, as well as the concern I have that there may well be specific programs that are devised to address specific populations with particular issues. I'm thinking of people with disabilities, for example, where you may have a program that enables them to earn some wages. It may fall short for various reasons of a high school threshold, but may still represent a net gain. So it may be helpful to the Department in this section to give itself a little more leeway by acknowledging at least a couple of potential rounds. And it has to be very carefully worded obviously where the where the hearing official may, in fact, reverse the automatic output of the algorithm. This is just a suggestion. I don't insist on it. It's not going to be determinative of the way I'm going to vote today. But I just think in case there is no consensus, this could be an additional improvement the Department could make. Thank you.

MR. MARTIN: Thanks, Barmak. I'll take that back.

MS. MILLER: Thank you. Okay, Greg, we're almost there, I think. Take us into the next section.

MR. MARTIN: Yes, we are at 668.43. And that is institutional and programmatic information. So again, the, and it's there already. So we'll start in D, which is we've clarified some we've just clarified some, items in this section, made some, did some clean-up here as you can see. Nothing really, changed. We have left the language open-ended here to allow the Secretary to use the best available information, which in some cases may be a programmatic calculation and others may include institutional information. So just wanted to point that out. And that is and then if we move over to D, D2, program web pages. At the suggestion of negotiators, we have emphasized that this link must be prominent to ensure institutions cannot evade the requirements. So under the program web page disclosure, the institution must provide a prominent link to and any other needed information to access the website maintained by the Secretary or any web page containing academic cause, financial aid or admissions information about the program or the institution. The Secretary may require the institution to modify the web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous or direct. And that is the last change for 43. And I think just because they're so different, even though there wasn't much in 43, I will ask if there's any comments there before I move to 668.13.

MS. MILLER: Thank you. Anne.

DR. KRESS: I have a question about the change from will to may in user testing. One of the things we found is that having input from students on disclosures has been incredibly important in making sure that the folks for whom that information is being gathered and promulgated actually understand it. And is there a reason why the Department has moved away from requiring it to saying that it may require?

MR. MARTIN: One moment, please. Yeah, so, you're talking about in 1, right? D1 disclosure?

DR. KRESS: Correct. Where it used to say the Secretary will, and now it says the Secretary may.

MR. MARTIN: It's just to provide to provide us flexibility on the use of the consumer testing to inform, and it's as opposed to obligating the Secretary through regulation or regulating ourselves to have to do it. We do, we do, we do regularly conduct consumer testing and do put a lot of stock in it. So not to suggest we're disinclined to do it, but this just gives us flex- this gives us flexibility. I'm guessing you would prefer will, right?

DR. KRESS: Yeah, I would just say, you know, especially as somebody who works at a two-year institution where a strong percentage of our students are first generation, in some cases, they're not just first generation college students, the first generation high school graduates in their family. And a lot of the information that we're being asked to disclose by the Department is incredibly complicated. And you know there's a purpose for that disclosure. And the purpose is lost if the way the information is presented is makes it illegible effectively, it might as well be invisible to the folks who really need to use it.

MR. MARTIN: Yeah. I mean, I think that I can say that we are committed to doing you know consumer testing. As I said, this does give us, intended to give us more flexibility as opposed to locking us in. But I will I'll take back the comment.

MS. MILLER: We have a little less than 15 minutes before public comments. So we'll go to Jamie.

MS. STUDLEY: Thank you very much. I think the changes about prominent in two is a good one to make clear what that purpose is. And as I understand it, that two and three are really the heart of this in terms of the added requirements under these regulations. That's where the Department is requiring institutions to do something that they have not done before and that the Department expects them to do. You've heard my concerns about D1 romanette I. The primary occupations issue. And one way to solve the fact that this is not a good match for some programs but is directly related to some others would be to narrow the effect of little I, the primary occupations to it, to programs for which an actual connection to a primary occupation or preparation for Gainful Employment in a recognized occupation would be to align it with the other provisions where there are identifiable occupations related to that program. History does not have a primary occupation. It's not proclaiming to prepare people to be historians. If, so, there is a policy suggestion for narrowing the scope of that. If what you're saying, Department, is that this is not a requirement, these are examples of items that the Secretary might consider as the Secretary conducts further analysis of these possible data points and consults and conducts consumer testing, then I would take your suggestion that the how of those elements or whether particular elements are useful will happen at another time and place. That would be fine. If these are requirements here, I feel very strongly about the fact that I is not applicable and should be different.

MR. MARTIN: Yeah. Going back to the root there in one, an institution must provide such information as the Secretary prescribes. That's a must. In a Federal, and we will publish that the Federal Register notice, which we did with the previous regulation as well, though, and we are introducing the website established by the Secretary, which is also new, and I'm actually pretty excited about that prospect. The Secretary may conduct consumer testing and the Secretary may include on the website the following information, among other items. So this is not this is not an exhaustive list of what can be required, nor is it indicative of our intention to require all of it every year. And certainly take your take your point about the SOC, the SOC codes and certain types of programs that may not match exactly, but it is not intended to be a list of this list is what schools must report every year or disclose every year.

MS. STUDLEY: Okay.

MR. MARTIN: So we just want to I want to point that out, but I still will take back your suggestion for changes to that language in the event that we would be requiring something like that for the Federal Registers.

MS. STUDLEY: Okay. I appreciate that. So two and three are requirements. And the first sentence is at the time that the Secretary does publish such a notice, you must do what the Secretary then tells you to do.

MR. MARTIN: Yeah. If you'll remember back to the previous, the previous rule that we, we published the registers and we never, to my knowledge, never included everything that we that we had on the ones [inaudible] disclosed.

MS. STUDLEY: I appreciate that clarification.

MR. MARTIN: Sure, my pleasure.

MS. MILLER: Thank you, Jamie. Brad.

MR. ADAMS: I just had a quick question in 668.483 D1 romanette eight and nine. And just you know given the fact that all programs within the proprietary sector are pretty much subject to the GE rule, is there anything else in eight and nine that would be expected for us to provide? And is this a, you know, this median debt and median earnings, is that a CIP, a four-digit CIP at the program as described here? Do you know exactly what you're asking for here?

MR. MARTIN: Yeah. This would be at the four-digit CIP and it would be we would it would be as calculated by the Secretary. So we would, there would be no, the only thing that would be incumbent on the institution is to provide the link to the Secretary's website where we would be disclosing all this information-

MR. ADAMS: Okay. Thank you.

MR. MARTIN: -for your institution's programs.

MS. MILLER: Emmanual.

MR. GUILLORY: I wanted to make a comment regarding the appeals process before, but I can do that later. I just want to do it before the day is over.

MR. MARTIN: Go ahead, Emmanual.

MR. GUILLORY: Okay. So your response to our concern with the appeals process is that the in the administrative data piece, that they need to report data accurately to the COD system, NSLDS, and then there are 60 days at the end of, there are 60 days that they can ensure that the data they reported is accurate. So therefore, there doesn't need to be any sort of review of the debt-to-earnings, failed rates if they fail because the data they report should be accurate. And I don't, that response really troubles me for those that I'm obviously representing. And one of the big reasons is because even like, for example, with the cohort default rate process, which is what we kind of modeled our proposed appeals process off of, even that process allows for institutions through an incorrect data challenge to challenge the draft CDR rates with the data manager that is reviewing and an institution that has the ability to just ensure, it literally says the data manager should agree with the school if the if the data manager's documentation supports the school's claim or if the school has demonstrated that the data manager has failed to take into account correct information the school sent to the data manager or the National Student Loan Data System. So even though an institution is putting you know reporting data to NSLDS or you know, the COD system, IPEDS, however it's being reported if there is a metric that's being used from the reported data to make a determination, especially one that results in loss of Title IV eligibility, the ability of the institution to say, ho, wait a minute, you know, we report it this way, but we see that you calculated another way or you didn't quite get the right something about that was not accurate in how you captured our data, we just want to make sure there's you know two eyes on this before we lose Title IV eligibility, and our students can't use their loans to go to this particular program. So I just felt you know as everyone's been talking and we've been moving along, I've been researching, going back through documents because it just doesn't seem right or seem fair. But once again, I want to make sure the bad actors are taken care of for sure. I just want to make sure that before we take any firm, hardcore action on these programs that are serving, that are you know are good, good acting programs at good institutions, you know, they're not out to defraud or do anything like that, that the data truly is accurate. So I just wanted to- we still think that it should, the institution should be allowed to appeal a failed rate.

MR. MARTIN: You're talking about more or less a data challenge. We're talking about before there's any action by the Department to take away eligibility, to challenge the challenge the data such as a Completer List, right?

MR. GUILLORY: Well, yes, such as a Completer List or, you know, the items that you have listed in 404 and 405.

MR. MARTIN: Right.

MR. GUILLORY: Before they become eligible.

MR. MARTIN: Alright. Thank you. I'll take the back.

MR. GUILLORY: Thank you, Greg.

MS. MILLER: Greg, we have about three minutes till public comment. Did you want to move into the next section?

MR. MARTIN: Yeah, I guess we could briefly. I think we'll postpone any consensus vote until tomorrow, if that's okay with everybody. Give everybody a chance to sleep on it, have a few drinks, whatever is necessary. So, you know, but if we have, yeah, let's pull it up. And we've already gone through a lot of this already. So as Emmanual joked before, we've kind of been coming back to this this section throughout. So this is the certification procedures. It's about the supplementary performance measures. I think I already described it. We, I'll just say here that at the negotiators' suggestion, we have moved the supplementary performance measures to a new subsection in the certification procedures and but we've left them in the issue paper for convenience and consideration and we've also put down here and I want to point out in six, the licensure pass rate, which is a this is a new additional item to the supplementary performance measure. So I think the other ones I already walked through in when I was addressing Emmanual's comment before. So I don't know that we really have, we're at three minutes. I think I'll leave it to the facilitators how much time we have for comments.

MS. MILLER: It looks like Debbie has a comment and then we'll move to public comment. So, Debbie, please.

MS. COCHRANE: Thank you. My comment was just to follow up on the comment I had made earlier, the suggestion around the consideration of a transition period or some sort of way that would allow kind of the theory of change for all the various actors, students, institutions, states to kind of to make the adjustments they need to make with regard to a rule. So I would love to have a response to that before there's a vote taken.

MR. MARTIN: Okay.

MS. MILLER: Emmanual, your right under the wire, so, please.

MR. GUILLORY: Just one quick technical correction. I think that under the small program rates, that should be four, romanette four, and then five, six and seven. It says three twice, so I just, just a small technical.

MR. MARTIN: It's something new we're introducing. It's called the double three. Obviously you haven't heard. No, I'm just kidding. That is [inaudible]

MS. MILLER: Okay. Thank you all, everyone. And we will delay the consensus vote until tomorrow. Now is the time for public comment. So, Brady, do we have. Who do we have up first?

MR. ROBERTS: I'm admitting our first speaker, Kristy Aviles, who's representing themselves.

MS. MILLER: Kristy, are you with us?

MR. ROBERTS: She should be able to hear us. Kristy, can you hear us? I can admit the next speaker and message her.

MS. MILLER: Okay.

MR. ROBERTS: So, the next speaker is Jason Beardsley, who's here representing the Association of the United States Navy.

MS. MILLER: Jason, are you with us? Hello?

MR. BEARDSLEY: Hi. How are you?

MS. MILLER: I'm well. How are you?

MR. BEARDSLEY: Excellent, thank you.

MS. MILLER: Okay, so you have three minutes for comment, beginning when you're ready.

MR. BEARDSLEY: Thank you. Well, my name is Jason Beardsley. I am the executive director of the Association of the United States Navy. And I want to thank you first for the opportunity to speak today. Last year, as you know, Congress amended the 90/10 rule. We believe that's in a way that will actually hurt veterans. And while the change was championed by certain groups that propose to support veterans, we think it's actually going to damage them and ripple through the community in ways that we advise some opportunities for flexibility. A couple of ways we think it'll hurt. One, it's going to shut down programs that are currently close to the 90/10 threshold, and that's going to force the displaced veterans into programs that actually have less federal oversight. The protections or as they're called, protections, we don't think they're needed right now. The Federal Government as-is currently has the authority to crack down on institutions where it's appropriate and where we've seen organizations that are looking to fleece veterans of their benefits or out of the parts of their dollars that they have earned. This, to us, is critical because, of course, we've actually watched organizations that have been put out of business, rightly so. So you already have the authority. When you create these additional hurdles for the remaining institutions, it effectively acts as shutting the door for profit sources of education. And that, of course robs veterans of their choice on education dollars. We do understand that Congress has spoken on this. We know this issue from the Department of Education, though, we think the flexibility is there to provide veterans protection in a way that we believe you intended. So first, we're asking for rule makers to create a waiver, a waiver that would be against the 90/10 rule for institutions, for example, that demonstrate good performance or a waiver that could apply to schools that have a standard like those schools that are consistently helping graduates land great paying or good paying jobs. Or maybe look at schools that are producing graduates with manageable levels of student debt. This waiver system, if you implemented, works with the Congress's intent about the GI Bill, which we believe is to ensure that it's the most efficient and effective use of GI Bill funding. Secondly, we're also calling on the Department of Education and another way to push for something very meaningful, which is the publication of Gainful Employment data. We think that this is the way that every student and every veteran can make-

MS. JEFFRIES: 30 seconds, Jason.

MR. BEARDSLEY: Thank you. Every veteran can make an informed choice with their education dollars in mind. And I believe that access to that kind of data is going to clarify more than any federal rule, regulation or law which programs are worthwhile and which are not. So I want to thank you again for the opportunity to testify. We hope you consider these modifications as you implement this law.

MS. MILLER: Thank you so much, Jason. Brady, who do we have next?

MR. ROBERTS: I'm going to give Kristy another try. They exited the meeting but then reentered so we can see, Kristy, are you able to hear us? I can keep working with them. Let me admit the next speaker. So the next speaker is Mark Dreyfus, who's representing ECPI University.

MS. MILLER: Thank you. Mark, are you with us?

MS. JEFFRIES: Rozmyn, as Mark is connecting, I just want to reach out again to the people who register for public comment that now is the time you need to be logging in so that you know we can call on you in accordance with the registry that we have. So please, we encourage you to log into the meeting as soon as you possibly can. Thank you.

MR. ROBERTS: And Mark, it looks like is in the meeting. Mark, can you hear us?

MR. DREYFUS: I can. I can.

MS. MILLER: Welcome, Mark. So you have three minutes for comments beginning when you're ready.

MR. DREYFUS: Great. Good afternoon. I'm Mark Dreyfus, President of ECPI University. For over 56 years, our institution has served the densest military community in the country. And because of our success, 4,000 veterans enroll annually with 1,100 graduates, 72 percent from STEM and nursing programs. While 60 percent of our students did not find success at other colleges, our outcomes with veterans exceed local public colleges, often by shocking margins. Obviously, we have followed the history of the 90/10 laws and have listened closely to concerns expressed by Congress and advocates about closing the loophole. The issue from all veterans and advocacy groups was to eliminate the incentive to aggressively recruit veterans. Also, many stated that a quality institution would need to have students or third parties willing to pay out of pocket for education. It is clear this rulemaking process, by restricting and reducing what is counted in the 10, is going beyond the recently revised law by Congress and not consistent with other bipartisan proposals by Congress to clarify its intent. Congress has now provided Pell Grants for short-term programs, recognizing the change in workforce development to more micro credentials and apprenticeships. The Department's proposed language, conversely, narrows what counts in the 10 by not giving proper consideration to the present state of workforce development, custom training, nor employer partnerships. Congress was clear that non-Title IV education can be included in the formula in a number of circumstances. The recent Affordability Act, passed by the House with full Democrat support, included language to clarify most education contracted or sponsored by employers is to be included. My institution contracts with many companies and organizations, including the Department of Defense and the US Department of Education, most of it on the employer's site or some hybrid. For example, Volvo Manufacturing in South Carolina contracted to provide a portion of our eligible electronics program as an apprenticeship at their facility. Incredibly, the Department of Education proposals would not count that in the formula for multiple reasons. A dual enrollment program provided for underserved high school students paid by a local school board also would not count. Customized programs we provide for

Boeing's employees at their site would not count. Perversely, increasing tuition causing students to incur more debt would improve our 90/10 compliance, all of which goes against our institutional goal of keeping tuition [30 seconds] by averaging less than 2 percent increases for a very long time. We should be encouraging and rewarding institutions that win competitive educational partnerships with employers and recognize that employers are very good at identifying quality and value. I urge the Department and the Committee to redirect its focus on the recent change by Congress and the overarching intent of this rule so we can agree and be done with this regulation once and for all. Recognize you have many other measures of quality being promulgated as well. My institution can-

MS. JEFFRIES: Your time is up, Mark. Thank you.

MS. MILLER: Brady. And I believe Kristy is with us now. Hello, Kristy.

MS. AVILES: Hi.

MS. MILLER: Hi. So you have three minutes to comment, beginning when you're ready.

MS. AVILES: Okay. Hello. Thank you to the Negotiated Rulemaking Committee for having me today. My name is Kristy Aviles, and my story illustrates why the Department of Education should use its authority to encourage institutions to end transcript withholding practices that lock aspiring students out of higher education and hold their credits degrees ransom. My experience took place in 2015. I lived with my parents at the time. We were a lower middle class family and I was working as an administrative assistant, making $12 an hour helping my family get by. I was on my way to my second year in community college and had attempted to transfer to a different school to continue my education and obtain my associate's degree. It was at this point in my life when I learned through the Community College Finance Department that there was an internal misunderstanding between the Finance Department and Federal Student Aid. The amounts I received in Federal Student Aid didn't cover my tuition balance. Therefore, my transcripts were withheld. In consequence to this withholding, I was unable to finish my education journey and was set back years of progress. This setback was and still is detrimental to my success in society and my personal gain. After being laid off from my job, I was unable to make payments for the following eight months and took an extra six to eight months of financing to pay off all debt, while only making $13 an hour as a part-time cashier at a local grocery store. Transcript withholding delayed my education, and because of this withholding, I missed out on opportunities that would have been presented to me had I remained tracked towards my higher education goals. I should have been on my master's program by now, but I will need to pursue other endeavors in the meantime. Today, I have yet to acquire my associates because transcript withholding made that very impossible for me to achieve this, I am unable to finish my associates now due to the pandemic and misaligned schedules. Yet, this all could have been prevented had my transcripts not been withheld from me. This is an experience no one should ever encounter in their educational journey. It is ridiculous to have something as simple as transcripts held hostage due to one's inability to pay their remaining debts, especially for those who can barely make ends meet. Families and persons like myself who are attempting to set themselves up and the youth for success who come from communities where it is difficult and challenging to get by with little education should be free for all and not an economic disadvantage. I am urging you to please stop withholding our transcripts. Let us move onward with our education so that we may have a chance to be somebody. Many citizens in America already live in a society that influences them to believe that the [30 seconds]. Please don't make education and schooling one of those odds. Thank you.

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

MR. ROBERTS: I'm now admitting Jessica Gill, who's here representing the European Wax Center.

MS. JEFFRIES: Jessica. Jessica, are you with us?

MR. ROBERTS: I think Jessica is able to hear us now.

MS. JEFFRIES: Jessica, can you hear me?

MS. GILL: Yes, I can hear you. Can you hear me?

MS. JEFFRIES: Yes, we can. It's up to you if you want to come on camera or not. You will have three minutes for your public comment, and that three minutes can begin as soon as you begin speaking, whenever you're ready.

MS. GILL: Awesome. Thank you. So my name is Jessica Gill. I am the Director of Industry Relations and Engagement at European Wax Center. Thank you guys for the opportunity to provide my views to the Department of Education. So the voice of employers and small businesses has been notably absent from this rulemaking, which is troubling. European Wax Center is a national franchise, we're over 800 locations across 42 states. These independently owned and operated locations employ approximately 10 to 15 employees per center. This equates to about 10,000 franchise employers or employees across the US. So we hire directly from cosmetology schools, and without these schools, our franchise network would not be able to meet their employment needs and serve their customers. Nor could we as a brand execute on our growth plans. This year alone, we plan to open more than 60 locations or 60 more locations. Each of our centers are small businesses that provide individuals with an opportunity to provide in-demand consumer services and establish a successful business. Consumer demand for skin care and waxing is growing rapidly. So again, many of our centers and franchisees work directly with the schools in their area to employ the students that come from proprietary cosmetology schools. So the Department must be cognizant that it does not broadcast regulations that put these schools out of business when they meet a strong workforce demand. Our franchisees again have strong established relationships with cosmetology schools, and they provide them with trained graduates ready to be employed right out of school. And they're essential to our success. The demand for skin care specialists is projected to grow about 29 percent through 2030, and these positions are often part-time and flexible that meet the needs of women with young families. So it's essential that the Department considers the needs of employers and small businesses when finalizing these regulations. Thank you for the time and have a great afternoon.

MS. JEFFRIES: Thank you, Jessica. Brady, who are you admitting next?

MR. ROBERTS: I just admitted Bernard Hilton, who is a veteran representing themselves.

MS. JEFFRIES: Bernard, can you hear me?

MR. HILTON: Yes. Can you hear me?

MS. JEFFRIES: Yes. You have three minutes to speak and you can begin now.

MR. HILTON: Okay. Thank you. Good afternoon. My name is Bernard Hilton. I'm a Marine Corps veteran, having served 22 years. I enrolled in a two-year program at Le Cordon Bleu culinary college in Scottsdale, Arizona. One year into the program, I was granted a medical leave of absence. While on medical leave, 11 Le Cordon Bleu schools across the United States closed before I could return and complete my education. When I enrolled, I was told that the school had a job placement program where recruiters will come to campus and hire the students. The school touted top level chef training and alumni who went to the set up their own restaurants. I was also told that graduates make 60 to $70,000 per year after graduation. After enrollment, I started going to the job fairs held on campus, speaking with speaking with and handing out resumes to potential employers. Rarely did I get a response. When I did hear back, I was told that I would need to start out as a dishwasher or prep cook. After hearing the same answer several times, I complained to the school. I was told to continue applying to different places, but kept getting the same answer from employers. I received, I realized that the schools didn't have and value the education of Le Cordon Bleu, the employers. Each restaurant has their own way of preparing meals and they prefer to hire new people that start at the bottom and move their way up. This means I would have to wash dishes and prepare ingredients for months or even years before I could minimally be involved with cooking. When I ran out of the VA benefits, the school told me to sign a few forms. The process was so streamlined and automated that I didn't realize I was taking out Federal Student Loans. I knew very little about student loans and received no explanation from the school about what was going what I was getting myself into. When the school closed, the administrators told us that our student loans would be forgiven because of the closure. I thought that would be automatic. Years later, I have realized that I still have these loans and the loans have accrued to close to $40,000 and sent to collections. I applied for a closed school discharge but my application was denied by the collection department. I requested in writing reasons for the decision. They sent me only copies of loan documents as justification for the denial. My request is that I-.

MR. ROBERTS: 30 seconds, Bernard.

MR. HILTON: Excuse me?

MR. ROBERTS: 30 seconds remaining in your public comment.

MR. HILTON: Okay, I hope that you develop rules to restrict the school's ability to lie to students. In addition to hope you consider mandating that collection agents provide real proof and evidence when requested by the student. This activity is on my credit report and is affecting my family tremendously. Thank you for your time.

MS. JEFFRIES: Thank you, Brendan [ph]. Brady, who's next?

MR. ROBERTS: I just admitted David Cohen, who's here representing Five Towns College. Looks like they are-

MS. JEFFRIES: He's connecting [inaudible]. Welcome, David. Can you hear me?

MR. COHEN: Yes, I can.

MS. JEFFRIES: Wonderful. Well, welcome to public comment. You have three minutes for your comment, and you're free to take that away anytime you're ready.

MR. COHEN: Oh, okay, great. Thank you very much. Thank you. My name is David Cohen, and I'm the president of Five Towns College, a doctoral granting proprietary institution chartered by the New York State Board of Regents over 50 years ago. Five Towns focuses on music, teach- music, teacher education, media, and the performing arts. Five Towns College has strong outcomes and has earned accreditation from Middle States, Cape, NAST, and NASM. Indeed, Five Towns is the only NASM-accredited doctoral granting music college on Long Island. According to data published by the Department, Five Towns has the lowest net average tuition of all schools with whom it competes. At $18,000 dollars per year, our net average tuition is half to two-thirds less than all of the private colleges in downstate New York. And so today, I'm here to urge you not to remake the GE rule. How GE affects the Five Towns College Music Program illustrates the irrationality of the rule. Of the music programs for which the Department has usable data, only 23 institutions in the entire nation would pass and fully 68 would fail to fail the GE rule, including Five Towns. Fully three times as many institutions fail than pass. Of the 11 Department recognized music programs in New York, nine fail and two land in the zone. None passed. Zero. And so the rule is irrational because in New York State, only the most affordable music college, only the college that does doctoral granting and has earned national accreditation, only Five Towns College will lose Title IV eligibility. For the rest of the unaccredited, higher-priced music schools, there is no penalty. None. As a practical matter, not only would the GE outcomes of New York schools fail to improve as a result of remaking the rule, but also our students would be forced to spend twice as much money on tuition and to increase their student debt load, all for the privilege of attending another school with a failing GE ratio. The result is simply irrational. If the rule is to be remade, we offer the following suggestions. Make consumer disclosure the penalty for failing ratios and apply the rule-

MR. ROBERTS: 30 seconds remaining, David.

MR. COHEN: -to all schools in America. Instead of removing Title IV eligibility, work to enhance institutions by requiring programmatic accreditation. Three, decouple Pell from loans. The penalty for failing GE ratios should be limited to the loss of loan eligibility. By allowing students to retain Pell Grant eligibility, the GE ratios will correct themselves over time. If you- four, if you must remake GE, student debt should first be counted towards residential charges and not-

MR. ROBERTS: Three minutes, David, I'm sorry.

MR. COHEN: -towards tuition. Am I done?

MR. ROBERTS: You are. Thank you.

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

MR. ROBERTS: Cindy, I just submitted Brendan Mullican, who is a veteran representing themselves.

MS. JEFFRIES: Good afternoon, Brendan. Can you hear me? Good afternoon, Brendan. Can you hear me?

MR. MULLICAN: Yes, ma'am.

MS. JEFFRIES: Wonderful. Perfect. Well, welcome to public comment. You have three minutes for your public comment, and that begins whenever you're ready to take it away.

MR. MULLICAN: Thank you. Good afternoon. My name is Brendan Mullican and I'm a veteran of the US Navy and served in the Iraq War. I decided to use my GI Bill benefits to earn a bachelor's degree from Sam Houston State, a school that's supposedly veteran friendly. When I received my degree in

2013, it was a point of pride for me as I was the first person in my family to go to college. I was fortunate to get a job right after college, but was told in order to move up in the company and receive a higher paycheck, I would need to go back to school and take some accounting classes. I decided to learn my job for a while but hope to eventually take some classes down the road as I continued to work, but I never got the chance. During my final semester at Sam Houston State, I had been told my account had a zero balance. A year later, I was sent a bill for nearly $10,000 dollars, claiming my GI benefits had run out and then I had to pay out of pocket. This baffled me and I had emails from the school informing me my balance was in fact zero, as well as my own receipts keeping track of the tuition bills. I disputed the bill with my information, but nothing came from it. I've been trying to pursue my state CPA exam and master's degree for more than four years, but I'm unable to because Sam Houston refuses to release my transcript because of the debt they say I owe. At this point, it is affecting both my career and my income because I can't pursue further education. I do not understand how they can come after me for this debt when I have documented proof that I don't. Sam Houston went as far as to completely edit and change my invoice dates for tuition billing in order to try to collect the money. Adding insult to injury, the school then sent the debts to a collection agency without any knowledge, and I received a bill from that agency for $12,689 in 2017. I can't afford to pay this ridiculous amount. I have contacted the VA, the veterans advocacy organizations on campus, and my Congressman and senator, but I have received no help or advocacy from anyone. It seems unethical. I regret going back to college. I can't believe they would treat me this way. They say they do things to help vets, but it's just a lie. I am I'm hoping by sharing my story with you today, will help prevent other veterans from going through what I did. Thank you for your time.

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

MR. ROBERTS: I just submitted Jason Altmire, who's here representing the Career Education Colleges and Universities.

MS. JEFFRIES: Okay. Jason, can you hear me?

MR. ROBERTS: It looks like he's still joining maybe [interposing]

MS. JEFFRIES: Okay. Jason, can you hear me?

MR. ROBERTS: Why don't I admit the next-

MS. JEFFRIES: Yeah, please do.

MR. ROBERTS: Okay. I just submitted Jordan Wicker, who is the executive director of the Invest in Student Advancement Alliance.

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

MR. WICKER: Yeah. I can hear you. Thank you. I thought you were talking to Jason.

MS. JEFFRIES: Okay, Jordan, do you have the live stream on in the background?

MR. WICKER: I do.

MS. JEFFRIES: Okay. You would be best served if you would shut that, shut the volume down on that.

MR. WICKER: Sorry about that. Can you hear me?

MS. JEFFRIES: No worries. Yes, we can. So, Jordan, you will have three minutes to, for your public comment, and that begins as soon as you take it away.

MR. WICKER: Thank you. My name is Jordan Wicker. I'm the executive director of the Invest in Student Advancement, or ISA Alliance, a membership organization of education ISA community, which believes in the positive potential of income dependent financing to improve access and affordability to high quality education. I'm speaking to the issue paper published last week on 90/10 under 34 CFR 668.28. The Department of Education's proposal for the Treatment of Education ISAs under the 90/10 rule exhibits a fundamental misunderstanding of the nature of ISAs. Unlike loans, ISAs do not have principal balance and do not charge interest. ISAs provide an alternative financing tool to private and PLUS Loans that shift the paradigm of education investment away from debt to income contingent obligations. Student payment obligations in an ISA are entirely dependent on future earned income. The Department's proposal would require ISAs to provide providers to impute an implied interest rate that may not have any relationship to the amount paid by the student and would mislead students in their choices on education finance. Education ISAs are a fixed percentage of future income. This is a feature of ISAs. Those who earn less after school, pay less, while those who earn more, pay more. This feature allows the Education ISA providers to provide a downside protection and a minimum income threshold to students so that when students are earning less than the threshold, the student pays nothing. Education ISAs are capped as a fixed percentage of income above the minimum income threshold, a more meaningful measure of affordability than the imputed interest rate or actual interest rate, for that matter, on a private education loan. The number of ISA payments are contractually capped. If in those payments, a student pays less than the amount financed, the difference is effective effectively an outcome-based grant. Depending on the ISA program and the institution, some earners will pay more than the amount financed subject to a payment cap, which is the most a student would pay or could ever pay, potentially under the income dependent obligation. ISAs are also limited in duration. This is a calendar based limit regardless of the amount paid or the number of payments made. This protection guarantees a student, a former student's obligation will end in a predetermined amount of time and certainly not exist indefinitely, a protection that does not exist for private education loans. ISA should be regulated by the features they have [30 seconds] imputed. The Department seeks to impose a rate limit on ISAs for the purposes of the 90/10 rule that caps the imputed interest rate charged under the ISA to the interest rate under an unsubsidized Stafford Direct Loan. The Higher Education Act does not give the Department the authority to impose rate limits on ISAs, and the

Administrative Procedure Act prohibits it from making arbitrary decisions, like selecting an interest rate that is below that of what the Department charges for PLUS Loan borrowers.

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

MR. WICKER: This proposal is misguided and should be revised to prevent confusion among students and disrupt-

MS. JEFFRIES: Okay, Brady.

MR. ROBERTS: Our final speaker for today is Kristina Pusok, who is representing the American Consumer Institute.

MS. MILLER: Kristina, can you hear me?

MS. PUSOK: Yes. I can hear you. Can you hear me?

MS. JEFFRIES: Yes, we can, and welcome to public comment. You have three minutes. You have 3 minutes for your public comment and that three minutes begins whenever you start speaking.

MS. PUSOK: Alright. Thank you. My name is Kristina Pusok, and I'm the director of policy and research at the American Consumer Institute. And on behalf of the institute, I want to express my concern with the proposed changes to the 90/10 rule governing the share of revenue that a career colleges can receive from the Federal Government. At the Institute, we analyzed the role of proprietary institutions in higher education back in October. Our research shows that proprietary and career colleges provide a real value, offering educational and vocational opportunities to the sort of students that the Department of Education should prioritize. Those are the nontraditional learners who might otherwise fall through the cracks. Through measures like open enrollment, flexible scheduling and career-oriented curriculum, those schools provide pathways to success for students who lack the academic credentials required by traditional state and nonprofit schools. And as the more traditional schools have avoided vocational training, for-profit career institutions have filled the gap, training students in fields that are in high demand, including home healthcare workers and auto mechanics. Transparency and accountability are necessary to reform education, but by focusing regulatory efforts solely on proprietary schools, the Department ensures that students at high performing for-profit schools will suffer while the failures of state and nonprofit schools remain unaccountable. These failures must be also must also be addressed. For example, research by the Independent Women's Forum notes that most four-year nonprofit schools would have to close their doors if subjected to the same Gainful Employment requirements the committee intends to restore in on for-profit colleges. Meanwhile, the successes of proprietary institutions are often overlooked. A recent Georgetown University study focused on return on investment for low income students found that when accounting for graduation rates and earnings of Pell Grant students, the bachelor level colleges with the best return on investment for low income students are two for-profit colleges, the Newman College of Art and Design and the SAE Expression College. The same study found that when ratings are designed to reflect graduation, graduation rates and long-term earnings, six of the top ten associate's level colleges were private, for-profit institutions. If the Department truly wants to help students, then the best course of action would be [30 seconds] transparency and accountability measures to ensure that every student can get the quality education they need. For that to happen, these students need a fair hearing. With that in mind, we would request that these hearings be extended so that those who will be most adversely impacted by this proposed rulemaking get a fair and thorough hearing. Thank you.

MS. JEFFRIES: Thank you, Kristina. So that concludes our public comment for today. I just want to state one last time before we leave today, the plan for tomorrow is to finish up with the Gainful Employment document, including [audio] and then move into financial responsibilities. In addition to that, I do want to remind the public that the Department is unable to accept written comments during this period of time. You will have at least 30 days during the NPRM period to submit those comments for their consideration. So with that, I bid you all a good night and we will see you in the morning.

STATE OF NEW JERSEY

I, Jamie Young, Shorthand Reporter in and for the State of New Jersey, do hereby certify that the above and foregoing contains a true and correct transcription of the public hearing that was held by the Department of Education virtually, on March 15, 2022.

Certified by me this 20th day of March, 2022.

JAMIE YOUNG

Precise Transcripts

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Department of Education, Office of Postsecondary Education

Zoom Chat Transcript

Institutional and Programmatic Eligibility Committee Session 3, Day 2, Afternoon, March 15, 2022

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

David is remaining in for FA through GE.

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

Maybe states need to work on changing the hour thresholds so that it is not so expensive to get a cosmo degree.

From Anne Kress (P) Comm College to Everyone:

+1 Jamie

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

+1 on Jamie's comments

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

https://twitter.com/gatesus/status/1502003881089417224?s=21

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

+1 Barmak

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

+1 Barmak

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

earnings has nothing to do with school debt (meaning not charging as much in tuition does not change the programs earnings).

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

I agree with Amanda and will say so publicly

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

+1 Amanda

From Amanda Martinez (P) Civil Rights to Everyone:

Thank you Brad, appreciate it!

From Johnson Tyler (P) Legal Aid to Everyone:

+1 barmak and Amanda and Ernest

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

+1 Jamie

From Jamienne Studley to Everyone:

+ Barmak and Brad re potential for repayment alternative

From Beverly Hogan Primary/MSI to Everyone:

=1 to Barmak. There are multiple issues here. Some of these programs appear to intentionally target low income communities of color and compound the inequities in earnings and other societal inequities. They do not create real and sustainable opportunities. Far too many students are debt ridden, with low earning capacity, which is just as crippling as the earnings inequities. +1 to Amanda, Ernest and Jamienne.

From Anne Kress (P) Comm College to Everyone:

+1 on that “safe harbor”

From Anne Kress (P) Comm College to Everyone:

In part bc the earnings threshold calculations seem to be a work in process

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

+1 Johnson

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

I am good with principal being the driver in the rate

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

+1 to transition period

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

Apologies, I do not recall discussion of the transition period -- when did that occur? That is different from the zone.

From Anne Kress (P) Comm College to Everyone:

+1 Debbie I also do not recall this.

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

I would suggest a safe-harbor provision that would exempt programs from the application of the earnings metric if at least 80% of their borrowers are amortizing their debt in accordance with the applicable repayment terms in 668.404(b)(2)

From Yael Shavit to Everyone:

Adam is swapping in for State AGs

From Beverly Hogan Primary/MSI to Everyone:

There should be a clear procedural guide and a process to be able to validate data accuracy. +1 to Emmanual.

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

+1 Beverly

From Beverly Hogan Primary/MSI to Everyone:

I am on - listening. My video s off for right now

From Yael Shavit to Everyone:

There are comments left on the previous sections

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

I'm coming to the table to make a comment for legal aids

From Johnson Tyler (P) Legal Aid to Everyone:

Jessica is going to step in for Legal Aid

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

+1 to Adam.

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

Johnson is coming back to the table for legal aids

From Jamienne Studley to Everyone:

I heard Jessica’s comment about schools telling their accreditor about year 1 GE failures. I am consulting with my alternate about programmatic accreditors. My agency would find it relevant to know; I would want to understand other agencies' reactions to that and can advise ED.

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

Thanks Jamie

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

My concern is about unreasonable delay in bringing the termination action. While I believe that a bad faith delay may likely be unlawful, I think it would be helpful to have a provision clarifying that a termination action be commenced promptly after a program is determined to be ineligible.

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

+! to Carolyn's concern

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

I want to go on the record that we support the small program rate proposal as written

From Anne Kress (P) Comm College to Everyone:

+1 Barmak

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

+1 Anne

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

+1 Jamie

From David Socolow (A) State Agencies to Everyone:

+1 to Jamie's point about 668.43(d)(1)(I) applying to all programs, not only GE programs -- and that not every program has a 1-to-1 correspondence with a "primary occupation" that the program "prepares students to enter" (e.g., institutions don't hold out a history bachelor's degree as preparing students for "historian" as a primary occupation).

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

+1 to Emmanual on the appeals comment

From Anne Kress (P) Comm College to Everyone:

+1 Debbie

From Jamienne Studley to Everyone:

it would help if ED could explain the availability or potential burden of the edus spending requirement in Cert

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

+1 Debbie. There are several items where there were multiple people on the committee that proposed a change to language including transition rates. Could we summarize those items and get the departments thoughts before a vote