

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
INSTITUTIONAL AND PROGRAMMATIC  
ELIGIBILITY COMMITTEE  
SESSION 3, DAY 4, MORNING  
March 17, 2022

On the 17th day of March, 2022, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

1 PROCEEDINGS

2 MS. MILLER: Good morning, everyone. Welcome back to  
3 day four. We have a packed agenda today. So with that said,  
4 I'll get right into roll call. For accrediting agencies, we  
5 have Jamie Studley.

6 MS. STUDLEY: Good morning. Happy Saint Patrick's  
7 Day.

8 MS. MILLER: Good morning to you. And her alternate,  
9 Dr. Laura Rasar King.

10 DR. KING: Good morning.

11 MS. MILLER: Good morning. For civil rights  
12 organizations and consumer advocacy organizations, we have Ms.  
13 Carolyn Fast.

14 MS. FAST: Good morning.

15 MS. MILLER: Good morning. And her alternate, Mr.  
16 Jaylon Herbin.

17 MR. HERBIN: Good morning.

18 MS. MILLER: Good morning. For financial aid  
19 administrators at postsecondary institutions, we have Ms.  
20 Samantha Veeder.

21 MS. VEEDER: Good morning, everyone.

22 MS. MILLER: Good morning. And Mr. David Peterson.

23 MR. PETERSON: Morning.

1 MS. MILLER: Good morning. For four-year public  
2 institutions of higher education, we have Mr. Marvin Smith.

3 MR. SMITH: Good morning.

4 MS. MILLER: Good morning. And his alternate, Ms.  
5 Deborah Stanley.

6 MS. STANLEY: Good morning.

7 MS. MILLER: Good morning. For legal assistance  
8 organizations that represent students and/or borrowers, we  
9 have Mr. Johnson Tyler.

10 MR. TYLER: Good morning.

11 MS. MILLER: Good morning. And his alternate, Ms.  
12 Jessica Ranucci.

13 MS. RANUCCI: Hi, everybody.

14 MS. MILLER: Hello. Okay. For minority serving  
15 institutions, we have Dr. Beverly Hogan. Dr. Hogan is not with  
16 us just yet. And we have her alternate, Ms. Ashley Schofield.  
17 Not with us just yet. For civil rights organizations, we have  
18 Ms. Amanda Martinez.

19 MS. AMANDA MARTINEZ: Good morning.

20 MS. MILLER: Good morning. For private nonprofit  
21 institutions of higher education, we have Ms. Kelli Perry.

22 MS. PERRY: Good morning.

23 MS. MILLER: Good morning. And her alternate, Mr.  
24 Emmanuel Gilroy.

1 MR. GUILLORY: Good morning and happy St Patrick's  
2 Day.

3 MS. MILLER: Happy St Patrick's Day. Okay. For  
4 proprietary institutions of higher education, we have Mr.  
5 Bradley Adams.

6 MR. ADAMS: Good morning.

7 MS. MILLER: Good morning. And his alternate, Mr.  
8 Michael Lanouette.

9 DR. LANOUILLE: Good morning.

10 MS. MILLER: Morning. For state attorneys general, we  
11 have Mr. Adam Welle.

12 MR. WELLE: Morning.

13 MS. MILLER: Good morning. And his alternate, Yale  
14 Shavit.

15 MS. SHAVIT: Good morning. How are you?

16 MS. MILLER: Good morning. Okay, for state higher  
17 education executive officers state authorizing agencies and/or  
18 state regulators or institutions of higher education and/or  
19 loan services, we have Ms. Debbie Cochrane.

20 MS. COCHRANE: Good morning.

21 MS. MILLER: Good morning. And her alternate, Mr.  
22 David Socolow.

23 MR. SOCOLOW: Top of the morning to all of you.

1 MS. MILLER: Good morning. For student loan. I'm  
2 sorry. For students and student loan borrowers, we have Mr.  
3 Ernest Ezeugo.

4 MR. EZEUGO: Good morning.

5 MS. MILLER: Good morning. And his alternate, Mr.  
6 Carney King.

7 MR. KING: Good morning.

8 MS. MILLER: Good morning. For two-year public  
9 institutions of higher education, we have Dr. Anne Kress.

10 DR. KRESS: Hello. Good morning.

11 MS. MILLER: Good morning. And her alternate, Mr.  
12 William Durden.

13 MR. DURDEN: Good morning.

14 MS. MILLER: Good morning. For U.S. military  
15 services, service members, veterans or groups representing  
16 them, we have Mr. Travis Horr.

17 MR. HARR: Good morning.

18 MS. MILLER: Good morning. And his alternate, Mr.  
19 Barmak Nassirian.

20 MR. NASSIRIAN: Morning.

21 MS. MILLER: Good morning. For the Department office  
22 of general counsel, we have Mr. Steve Finley.

1 MR. FINLEY: Actually, you've got Donna Mangold this  
2 morning.

3 MS. MILLER: Okay. I'm sorry. We have Donna Mangold.  
4 I'm sorry.

5 MS. MANGOLD: Good morning. I'll do my best Steve  
6 impersonation.

7 MS. MILLER: Okay. Thank you. And our chief  
8 negotiator, Mr. Gregory Martin.

9 MR. MARTIN: Morning.

10 MS. MILLER: Good morning. Have I missed anyone?  
11 Okay.

12 MR. MCCLINTOCK: I'm here. Dave's here.

13 MS. MILLER: Oh, I missed the advisors. I'm so sorry.

14 MR. MCCLINTOCK: The esteemed advisors.

15 MS. MILLER: Yes, the esteemed advisors. How could I  
16 forget them?

17 MR. MCCLINTOCK: I trademarked that already.

18 MS. MILLER: So let me do that. So compliance  
19 auditors with experience auditing institutions that  
20 participate in Title IV HEA programs, Mr. David McClintock.

21 MR. MCCLINTOCK: Good morning. Thank you.

22 MS. MILLER: Good morning. And labor economists  
23 and/or individual with experience in policy research,

1 accountability and or analysis of higher education data, Dr.  
2 Adam Looney. Dr. Looney is not with us quite yet. Now, have I  
3 missed anyone? Okay, I think we're ready to go. Greg, I'm  
4 going to turn it over to you. I don't know if you want to pick  
5 up where we left off yesterday or have any comments or  
6 responses.

7 MR. MARTIN: Yeah. Thanks, Rozmyn. Before we start,  
8 we left off at six at yesterday, I believe we left off at  
9 600.21. But before we go back there are a couple of things I  
10 want to revisit. So, let's go back to the definitions of  
11 starting with a nonprofit institution. So, if we go down to  
12 where the definition of a nonprofit will be, arrow down the  
13 definition of a nonprofit institution. Yeah, just keep going  
14 south of there, Vanessa. Here we go. Starting here under the  
15 definition, we have made some changes to this over what you  
16 saw yesterday. And we believe this language does provide the  
17 Department with a more justifiable and reasonable  
18 interpretation of a nonprofit institution, ensuring that any  
19 revenue-based lease or other agreements with a former owner  
20 must be market based and appropriate. We appreciate the  
21 concern of negotiators, but our interest as the Federal  
22 Government is to ensure institutions are acting appropriately  
23 and consistently with the tenets of a nonprofit organization.  
24 We believe this is the clearest, most effective way to ensure  
25 that. For instance, consider an example of an institution that  
26 fails, and the new owner purchases the institution but  
27 continues to lease the building from the former owner since it  
28 is already outfitted with classrooms and other needed  
29 facilities. In that case, we are concerned about the  
30 involvement of the former owner. We are less concerned about

1 the involvement of the former owner provided the market study  
2 shows that the lease on the building is appropriate. However,  
3 we agree with the negotiator who suggested language related to  
4 excess benefit transactions and we have added that language.  
5 So, let's walk through these changes here. I'll read through  
6 these going back. We'll start at the top and just so we can  
7 get a holistic view of this non nonprofit institution, I  
8 should point out that the changes over yesterday are  
9 highlighted in light blue. An institution that meets the  
10 requirements of either paragraph one or two of this definition  
11 for a domestic institution, no part of the net earnings of the  
12 institutions benefit of the institution benefits any private  
13 entity or natural person. And for a private nonprofit  
14 institution, the institution is owned and operated by more by  
15 one or more nonprofit corporations or associations, is legally  
16 authorized to operate as a nonprofit organization by each  
17 state in which it is physically located and is determined by  
18 the U.S. Internal Revenue Service to be an organization which  
19 to which contributions are tax deductible in accordance with  
20 section 501(c)(3) of the Internal Revenue Code. When making  
21 determination regarding that earnings, the Secretary considers  
22 the entity of the entirety rather of the relationship between  
23 the institution entities and ownership structure and other  
24 parties. By way of example, a nonprofit institution is  
25 generally not an institution that is an obligor, either  
26 directly or through, and any entity in its ownership chain on  
27 a debt owed to a former owner of the institution, or a natural  
28 person or entity related to or affiliated with the former  
29 owner of the institution, either directly through any entity  
30 in its ownership chain, enters into or maintains a revenue or



1 maintains revenue a revenue sharing agreement with any party,  
2 including related or unrelated parties of a former owner of  
3 the institution, or a natural person or entity related or  
4 affiliated related to or affiliated with the former owner of  
5 the institution unless the institution demonstrates that  
6 payments under the revenue sharing agreement are reasonable  
7 based on the market share for such services or materials,  
8 including demonstrating a reasonable relationship to the cost  
9 of services or materials provided. Is a party either directly  
10 or indirectly, to any other agreements, including lease  
11 agreements with a former owner of the institution or natural  
12 person or entity related to or affiliated with the former  
13 ownership of the institution under which the institution is  
14 obligated to make any payments unless the institution  
15 demonstrates that the payments under the agreement are  
16 comparable to payments in an arm's length transaction at fair  
17 market value or engages in an excess benefit transaction with  
18 any natural person or entity. So those are the changes related  
19 to the definition of a nonprofit institution. And that's where  
20 the Department is on this. And however, I will open the floor  
21 for any comments related to it before we move on.

22 MS. MILLER: Johnson and Yael and Carolyn I see your  
23 hands. But I just want to mention that David Peterson is in  
24 for state agencies and Yael is in for attorney general. Okay.  
25 So first on my list, I have Johnson.

26 MR. TYLER: I think Yael was first.

27 MS. MILLER: Okay. Yael?

1 MS. SHAVIT: I just want to say I'm really  
2 disappointed that the Department has taken this position in  
3 light of both the discussion that we had yesterday. And more  
4 than that, frankly, the experiences that state AGs have been  
5 seeing seen consistently and that the Department is aware of  
6 that necessitated this rulemaking on this point to begin with.  
7 But I'm also really surprised that at the very least, the  
8 Department didn't include language here requiring the  
9 assessment. So, when you ask an institution to demonstrate  
10 fair market value, why would the Department not put the onus  
11 on the institution to ensure that the fair market value is  
12 being determined by an objective, independent third party?  
13 Right. What does demonstrate mean in this context where we  
14 know that these types of calculations are subject to  
15 manipulation by institutions?

16 MR. MARTIN: Well, the Department does have  
17 discretion in reviewing that to make our own determination  
18 about fair market value. So, I don't think that precludes us  
19 from doing that. I, I will I'll turn it over to Donna if she  
20 wants to add to that. I want to give her an opportunity to  
21 weigh in on this.

22 MS. MANGOLD: We do that. We ensure that the  
23 valuation comes from an unrelated third party. We look to see  
24 who has commissioned the valuation. We look at the terms of  
25 the valuation. We absolutely do that in our review. We don't  
26 just take the word of the institution or the party that  
27 submits it that it is a value. I mean, that's our process.  
28 That's what we do.

1 MS. SHAVIT: If I could just say one more thing here.  
2 I appreciate that the Department does a lot of work here. It  
3 seems like if you're going to be in the context where actually  
4 seeing comparators and finding real comparators is exceedingly  
5 difficult, if not impossible. I don't know why, at the very  
6 least, wouldn't be spelling out more clearly that it's the  
7 requirement of the institutions and the details related to the  
8 requirement of demonstrating fair market value. Make sure that  
9 the Department at least has all of the information that the  
10 Department needs to engage in these types of determinations.  
11 It just seems like more of the work needs to be shifted here  
12 to the institutions and that it should be made clear that  
13 these types of arrangements are disfavored. It seems like  
14 we've, in these discussions, identified one circumstance where  
15 having a continued relationship between proprietary owners of  
16 proprietary institutions makes sense, right? We've been  
17 talking about one scenario, which is the lease of classrooms,  
18 but the language here envisions a lot of different types of  
19 arrangements, and it feels to me like the exception is  
20 overvalued here as compared to the real risk of misconduct.  
21 And when I say risk, I want to be clear that this is not  
22 hypothetical. It's what we have seen time and time again in  
23 these types of changes of ownership. But I won't belabor the  
24 point.

25 MS. MILLER: Johnson?

26 MR. TYLER: I'm disappointed here as a litigator and  
27 often the litigator who's dealing with adversaries with much  
28 greater resources than our office. I'm really troubled by this  
29 creates sort of a burden shifting test where if the Department

1 of Education says we don't think this is legitimate, you're  
2 going to be in litigation with adversaries. We're going to be  
3 pointing, frankly, to other transactions that have happened  
4 and that the Department of Education hasn't been able to do  
5 any enforcement action that had run under the scheme, under  
6 their ability to police these things. And those will be the  
7 standards of what is a market rate transaction. So I just I  
8 feel like you're giving a lot here. And I have great respect  
9 for the litigators in the Federal Government. They they're  
10 very capable. But, you know, so are a lot of these white shoe  
11 law firms who attract the same people. So, I just feel like  
12 you're setting yourself up where you're losing a huge amount  
13 of discretion here. And part of your discretion is designed to  
14 protect students, particularly in these sort of transactions  
15 where they're looking for nonprofits because they think  
16 they're better. And often they don't know the difference  
17 because of a transition. And that goes back to that case in  
18 Colorado is that that institution was marketing itself as a  
19 nonprofit for four years until it closed its doors in 2016.  
20 Thank you.

21 MS. MILLER: Thank you. Carolyn.

22 MS. FAST: I share these concerns and I fear that the  
23 language as it is, is actually legitimizing the types of  
24 arrangements that we're trying to prevent. So, I feel that  
25 this language is actually worse than nothing and it doesn't  
26 help the problem that the regulation was attempting to  
27 address. And it would be better, in my opinion, to scratch  
28 this entire section rather than to legitimize the kinds of  
29 relationships that we're trying to avoid.

1 MS. MILLER: Thank you. Barmak?

2 MR. NASSIRIAN: I want to echo the profound  
3 disappointment of my colleagues that after what we have  
4 already seen in terms of fake transactions that the Department  
5 has approved, that we would add language like this. And for  
6 what it's worth. This is such a gigantic sized loophole that I  
7 don't care what else the Department does in this section. We  
8 might as well move on because I mentioned yesterday this  
9 really is as close to a deal breaker as it gets. I cannot wrap  
10 my head around the thinking that allows this. I mean, the  
11 inconsistency, you point blank, prevent debt financing by  
12 former owners, even if it's below cost, presumably, but then  
13 allow revenue sharing on the basis of the fuzzy market-based  
14 assessment that that they're going to put on the table. Are  
15 you not concerned that every debt financing that you are going  
16 to block is going to turn into a revenue sharing agreement  
17 that you can't contest? It's just such a profound error that I  
18 just don't see what the point of the rest of this effort is if  
19 we're going to allow loopholes like this to be formalized in  
20 regs, particularly when the Department does have the  
21 discretion to do exactly what it purports to want to do under  
22 this provision with the previous language, the previous  
23 language said it's generally prohibited, but that means that  
24 occasionally it's not, and that that delegates the discretion  
25 to the Department without the constraint of these kinds of  
26 excuses. You bought this sort of nonsense before. It's not a  
27 matter of the career civil servants. A future political  
28 administration could endorse all kinds of things that I don't  
29 think civil servants would endorse. It's a mistake, and it's  
30 just really regrettable.

1 MS. MILLER: Thank you, everyone. Greg, I'll turn it  
2 back over to you.

3 MR. MARTIN: Thank you very much for the comments and  
4 understand some of the misgivings that have been expressed,  
5 all of the misgivings that have been expressed. I'll take that  
6 back. Currently, this is the Department's position, however, I  
7 will convey I will convey those misgivings, as I said before.  
8 Donna, do anything else you want to add before you move on?  
9 Alright. Vanessa, could you pull up 600.20 please? It's 20,  
10 yeah let's go back to where we see the blue text so we'll.  
11 Yeah. So. Right. We have made some changes to three here. And  
12 you see those changes highlighted in in in blue. So let's just  
13 start looking at these, for purposes of this section, a  
14 private nonprofit institution, a private for-profit  
15 institution or a public institution submits a material  
16 incomplete application if it submits a fully completed  
17 application form designated by the Secretary, supported by a  
18 copy of the institution's state license or equivalent document  
19 that authorized or will authorize the institution to provide a  
20 program of postsecondary education in the state in which it is  
21 physically located, supplemented with documentation that as of  
22 the day before the change of ownership, the state license  
23 remains in effect. A copy of the document from the  
24 institution's accrediting agency that granted or will grant  
25 the institution accreditation status, including approval of  
26 any non-degree programs that offers supplemental supplemented  
27 with documentation that as of the day before the change of  
28 ownership, the accreditation remained in effect. So those are  
29 some changes that we made to 600.20. And I, I will see if

1 anybody has any comment about this section before we move on  
2 as well.

3 MS. MILLER: Kelli?

4 MS. PERRY: I don't have a comment about this section  
5 per se, but it looks like you're going through changes that we  
6 may have discussed yesterday. One of the things that had come  
7 up was in number six, the whole concept of distance ed.  
8 programs being associated with the main campus. And you were  
9 either going to define that or check on what the rest.

10 MR. MARTIN: Yes. Hold on one moment. We did, I was  
11 going to address that later about the about the in six, the  
12 distance education language. And so, to that, what we have  
13 reflects our current policy. By codifying in the regulations,  
14 we can ensure, we do ensure consistency. We are concerned that  
15 the negotiator's proposal to base the location on enrollment  
16 may mean that fluctuations in student enrollment can lead to  
17 floating locations that change from year to year, which could  
18 be challenging to both institutions and the Department. We do  
19 agree that institutions may need some time to adjust to having  
20 to have all the distance programs flow to the main campus. So,  
21 to that end, we would allow a year for institutions to conform  
22 to that requirement.

23 MS. PERRY: What was the answer regarding the branch  
24 campus though?

25 MR. MARTIN: The branch campus would be treated no  
26 different than an additional location. It still has to, even  
27 in a branch campus, the regulatory definition of branch campus

1 the of all distance programs have to be related to the main  
2 campus.

3 MS. PERRY: That's really unfortunate. I mean, I  
4 think that Jamie brought it up yesterday that all the main  
5 campus has responsibility for all of the branches and etc. And  
6 so, you're asking institutions to go through a lot of  
7 additional work for something that they already have oversight  
8 of.

9 MR. MARTIN: Yeah, your point is taken. I however we  
10 have especially with distance education, we for consistency's  
11 sake, are still of the hold to the position that all of those  
12 programs need to stem from the main location.

13 MS. MILLER: Brad, please.

14 MS. PERRY: I'm sorry. I just want to follow up with  
15 one question. So, when it says associated with the main  
16 campus, what does associated with actually mean?

17 MR. MARTIN: Those, all the distance programs at the  
18 institution would be basically offered from the main campus.  
19 So, all those all students enrolled in those and those  
20 programs, distance education programs are enrolled are at the  
21 main campus.

22 MS. MILLER: Brad.

23 MR. MARTIN: Donna, do you want to address that at  
24 all or?

25 MS. MILLER: I don't see that. Brad?



1 MR. ADAMS: Yes. I just want to also say I'm  
2 disappointed. And but that being said, I am appreciative of  
3 the one-year extension. This is going to be a very burdensome  
4 undertaking and I just want to confirm the new effective date  
5 for six will be July 1st of 2024. And if so, could we get that  
6 added to the text in six? Because I didn't see any changes in  
7 blue to six when we reviewed it.

8 MR. MARTIN: Thus far, the Department hasn't, we have  
9 not proposed any reg text. We would just be allowing the  
10 institutions a year to comply with that.

11 MR. ADAMS: Isn't this effective date of this paper  
12 going to be July one or 23? I just worry if it verbally.  
13 That's great, Greg. I appreciate it, but I'd like to see it in  
14 writing.

15 MR. MARTIN: I'll take back what we can what we can  
16 do in writing. We certainly could make reference to it in the  
17 preamble to the document. But let me let me take that back  
18 with me.

19 MR. ADAMS: Thank you.

20 MS. MILLER: Okay. Greg, I don't see any other hands.  
21 So, I'll turn it back over to you.

22 MR. MARTIN: We're going to be moving on to 600.21,  
23 which is where we left off yesterday. So, in 600.21 looking at  
24 (a) (6), there we have it. We just note throughout the entire  
25 section that we have removed references to direct or indirect  
26 ownership interests or control and voting interests, and  
27 instead have ensured those terms are reflected later in the

1 definitions of ownership, ownership, interest, and control.  
2 So, you see here where we've made those changes to changes in  
3 ownership. So, changes ownership is any change in ownership of  
4 the institution whereby the natural person or entity acquires  
5 at least 5 percent of the ownership interests, direct or  
6 indirect of the institution, but does not result in a change  
7 of control as described in 600.31. Moving on to (a) (14) and I  
8 just think we'll start with A just so everybody knows the root  
9 of this. These are reporting requirements except or as  
10 provided in paragraph B of this section, an eligible  
11 institution must report to the Secretary in a manner  
12 prescribed by the Secretary no later than ten days after the  
13 change occurs. Any change in the following. So, then we are  
14 moving on to 14. And here we have made some changes again to  
15 streamline the language in this item, but we have not made any  
16 substantive changes to 14. So, we'll take a look at that. This  
17 would be reporting any change in the ownership of the  
18 institution that is subject to the requirements of 600.20 G  
19 and H but does not result in change of control as described in  
20 600.31 and is not addressed under paragraph (a) (6) of this  
21 section, including the addition or elimination of any entities  
22 in the ownership structure. A change in the entity from one  
23 type of business structure to another, or any excluded  
24 transactions under 600.31 E. And now we'll move down to B.  
25 600.21 B and this subsection was not previously included in  
26 the in the issue paper, but we've added it so that we can  
27 cross reference to the new paragraph (a) (14) So we just added  
28 B in here for reference and you can see that it says  
29 additional reporting from the institutions owned by publicly  
30 traded corporations. An institution that is owned by a

1 publicly traded corporation must report to the Secretary any  
2 change in the information described in paragraph (a)(6) or  
3 (a)(14) of the section when it notifies the accreditation  
4 agency, but no later than ten days after the institution  
5 learns of the change. So that just in there so we can  
6 incorporate the reference to (a)(14) above. And that is all  
7 for 21. So, before we move on to 31, I'll allow any comment,  
8 I'll allow an opportunity for comments or a discussion.

9 MS. MILLER: Jamie, is your hand up?

10 MS. STUDLEY: Yes, I think I call it a point of  
11 order. I did not see the last text on the screen at all. It  
12 never appeared while Greg was reading it and he said it was  
13 completely new language. And this is these last set, I just  
14 wish we could do it at a pace where we can actually write. You  
15 were reading something that you could see. Greg it never  
16 appeared.

17 MR. MARTIN: Okay Vanessa, let's bring that back up  
18 again then, please. So, we're going to.

19 MS. STUDLEY: I just don't want to whip through brand  
20 new language.

21 MR. MARTIN: No, that's fine. Let's bring up. You  
22 have received it has been emailed to you. But for purposes of  
23 discussion here, will we'll bring it up.

24 MS. STUDLEY: Was that emailed this morning?

25 MR. MARTIN: I don't know exactly when.

1 MS. STUDLEY: Or are you reading things from the  
2 last? I'm not sure.

3 MR. MARTIN: No, this is in the current issue paper.

4 MS. STUDLEY: Okay. Because I couldn't see it. I  
5 couldn't tell whether it was a today blue revision.

6 MR. MARTIN: No, that's not a blue revision.

7 MS. JEFFRIES: Right. You were emailed the whole  
8 entire document again this morning with the addition of the  
9 blue pages. And the rest would be the same as what was in  
10 yesterday. So, you should actually have two copies of this at  
11 that point, one with the added blue changes and then the one  
12 that we were working off yesterday.

13 MS. STUDLEY: I'm simply saying it was going so fast  
14 that.

15 MR. MARTIN: Vanessa, arrow down from arrow down from  
16 this to 600.21 B. So just above 600 point, it's just above  
17 600.31. It's on page seven.

18 MS. STUDLEY: Thank you. I don't mean to slow folks  
19 down.

20 MR. MARTIN: No, don't worry. No, it's, we want to  
21 definitely pull it up. I wasn't aware it wasn't up there. So  
22 let me let's review that again. No problem.

23 MS. PERRY: There, it's just not highlighted or  
24 there's no red text.

1 MR. MARTIN: There's no highlight. There's no  
2 highlight to it. No, it's just because it's not new. It's just  
3 showing something that was already in regulation that we just,  
4 the only reason we put it in there is because we wanted to  
5 reference what was what was in 14 above. We changed or for it  
6 just changed (a) (6) to or 14 so. Vanessa, just go down to  
7 600.31 where it starts. There we go. Now, just go up just one  
8 little bit to B, right above it. Right. So there, there's, the  
9 new language, Jamie. So, it says there's only one part that's  
10 new, but we, just put B back in so we could make the reference  
11 to (a) (14). So it says additional reporting from institutions  
12 owned by publicly traded corporations, an institution that is  
13 owned by a publicly traded corporation, must report to the  
14 Secretary any change in the information described in paragraph  
15 (a) (6) and the addition there is or (a) (14) of this section  
16 when it notifies the accrediting agency, but no later than ten  
17 days after the institution learns of the change. So, the only  
18 the only addition is the reference to 14. Does that make  
19 sense?

20 MS. STUDLEY: Thank you.

21 MR. MARTIN: Sure. Sorry about the confusion there.

22 MS. MILLER: Any questions or comments about this  
23 section? Greg, I don't see any hands up so we can move on to  
24 the next section.

25 MR. MARTIN: Yes. So, we'll be moving on to 600.31,  
26 which is change in change in ownership, resulting in a change  
27 of control for private, nonprofit, private, for-profit and  
28 public institutions. And we are going to B. Under the

1 definitions. And let's go down to ownership or ownership  
2 interest. There we go. So here we are in B under ownership or  
3 ownership interest. And we have built a direct or indirect end  
4 to this definition so that we don't have to repeat it  
5 throughout the regulatory text. In 600 point and 600.21, so  
6 here you see the definition of ownership or ownership  
7 interest. Ownership or ownership interest means a direct or  
8 indirect legal or beneficial interests in an institution or  
9 legal entity or a right to share a right to share in the  
10 profits. So that's a change there. Our next change is in still  
11 under the definition of ownership or ownership. No, sorry.  
12 Going over to the definition of a parent. There we go. We have  
13 made some clarifications here in this section of the  
14 definition of a parent or parent entity. So, I'll read through  
15 that. A parent is the legal entity that controls the  
16 institution or a legal entity directly or indirectly through  
17 one or more intermediate and through one or more intermediate  
18 entities. So just a little bit for clean up and in the  
19 language there. Next, we are moving and then the number  
20 becomes a little complex here. So, let's start with where it C  
21 and we're the standards of identifying standards for  
22 identifying changes in ownership for control. I just want to  
23 walk through the numbering here. So, we have one, two and  
24 three starting with other entities. So, if we're in three and  
25 then we're moving to, so to note three is broken up into  
26 romanette one and then we come down to romanette two and under  
27 romanette two we have a, b, c, d, e, f, g and then H and so  
28 we'll start there. There are some changes here. We have added  
29 a new H and I to further capture transactions that may not  
30 have been reflected in the list, which involve an entity that

1 has a member and ceases to have a member or has no members and  
2 becomes an entity with members. So, we've added H and I so  
3 I'll just read those and remember looking at the stem again.  
4 The Secretary deems the following changes to constitute a  
5 change of ownership, resulting in a change of control of such  
6 an entity. So, adding H and I here, which is an entity that  
7 has a member or members, ceases to have any members. And then  
8 in I, an entity that has no members becomes an entity with a  
9 member or members. And then we need to go down to romanette  
10 four under that section. There we are. And we have moved this  
11 out to a new romanette. This is romanette four because it was  
12 unclear how it worked with the stem and in romanette three.  
13 Below we have further streamlined the language to conform  
14 without making substantive changes. So, this romanette four is  
15 new, notwithstanding paragraph (c)(3), romanette two and  
16 romanette three of this section. If a person who alone or in  
17 combination with other persons, holds less than 50 percent  
18 ownership interest in an entity, the Secretary may determine  
19 that the person, either alone or in combination with other  
20 persons, has actual control over that entity and is subject to  
21 the requirements of this section. And any person who alone or  
22 in combination with other persons, has the right to appoint a  
23 majority of any class of board members of an entity or  
24 institution is deemed to have control. And now we will move  
25 down to five below there. And this is we have we have added a  
26 cross reference to (c)(3) which addresses the variety of  
27 entity structures that might involve changes to changes of  
28 control. So, you can see in five. Nonprofit institution, a  
29 nonprofit institution changes ownership and control when a  
30 change takes place that is described in paragraph (c)(3) and D

1 of this section. So, I'll stop there before I move on to  
2 paragraph D since there was there was quite a lot in the  
3 numbering gets a little complicated there so. I'll go back and  
4 take any comments.

5 MS. MILLER: Johnson and then Brad.

6 MR. TYLER: Yeah. I think I commented at the second  
7 negotiated rulemaking week that we had that 50 percent was too  
8 high and that the GAO who did the what I think is a seminal  
9 study on conversions of for-profits this is 50 percent of the,  
10 owns 50 percent of the interest in in the company. They use 35  
11 percent I mentioned that and I just read while we were talking  
12 why they use 35 percent. That's what the IRS uses. They want  
13 that in the documents they're reviewing if there's more than a  
14 35 percent interest in a transfer of ownership of a company.  
15 So, I don't know why we're stuck at 50 percent. That seems  
16 you're going to not even identify entities that the IRS is  
17 already considering the transaction as worthy of greater  
18 scrutiny.

19 MR. MARTIN: I know Donna addressed that in previous  
20 sessions, so I'll turn it over to Donna to address that issue.

21 MS. MANGOLD: What we're seeing is most transactions  
22 as we review these transactions and they're very time  
23 consuming to review, that the corporate documents, all the  
24 time, are showing control at 50 percent. We're just not seeing  
25 it at the lower levels. And that was compelling us to look at,  
26 this is a default position. Is that we will deem it to be  
27 control at 50 percent. And we could still have we would still  
28 retain the discretion to actually find actual control that



1 isn't triggered by if we found it at 25 or 35 or some lower  
2 amount. But this is what we're deeming to be. This is the  
3 default position. If you've got 50, you've got control.

4 MR. TYLER: Okay, thank you.

5 MS. MILLER: Thank you, Johnson. Brad.

6 MR. ADAMS: Yes. We discussed and I submitted  
7 language requesting a voluntary application fee after the week  
8 one session to the Department. And I was just curious if they  
9 considered that kind of where they stand? I can resubmit the  
10 language. I think you've probably got it, though. Just want to  
11 get your thoughts on whether the Department is on whether or  
12 not they would consider a voluntary application fee in  
13 exchange for an expedited pre acquisition review.

14 MS. MILLER: The idea of the fee is something that we  
15 need to do some research on. It's definitely, we heard you. We  
16 saw it. I've got, we've got it.

17 MR. ADAMS: Great. I think there's a bill too in  
18 Congress related to this. Okay, perfect. Thank you.

19 MS. MILLER: Greg, I don't see any other hands or  
20 comments.

21 MR. MARTIN: Okay. In that case, we'll move on to 31  
22 D. And there we go. Under covered transactions and we have in  
23 the only one we have there is in is in eight, which is we have  
24 added this item to clarify that the Department views mergers  
25 of institutions in which a non-closed institution or in which  
26 a non-closed location or institution is acquired by another as

1 a change of ownership. So, in eight, I'll read that change,  
2 the acquisition of an institution or additional. Well, I  
3 should start with seven because it flows into that. So, a  
4 change in status as a for-profit, nonprofit, or public  
5 institution or in eight the acquisition of an institution or  
6 additional location of an institution to become an additional  
7 location of another institution unless the acquired  
8 institution or location closed or ceased to provide additional  
9 instruction. And that concludes the issue paper. So, I welcome  
10 any discussion on the last section.

11 MS. MILLER: Okay, Kelli and then Jamie.

12 MS. PERRY: I'm going to get back in line because my  
13 question goes back to the very beginning.

14 MS. MILLER: Jamie?

15 MS. STUDLEY: Mine's right here at the very end. The  
16 acquisition unless it's a closed location. There's nothing  
17 there that would preclude the accreditor from reviewing the  
18 addition of a program or the effect of that closure. You're  
19 just trying, I'm trying to understand the purpose of the  
20 unless. It's to allow a closing location to be, I don't want  
21 to say rescued, but to acquire an institution presumably in  
22 distress, or that was going to change. But the accreditor  
23 could still review it as a new program or a change to the  
24 structure of the institution, is that right?

25 MR. MARTIN: Yes.

26 MS. MILLER: Does that answer your question, Jamie?

1 MS. STUDLEY: Yes.

2 MS. MILLER: Okay, Kelli.

3 MS. PERRY: Okay. So, I apologize for going back, but  
4 I want to go back to the definition of the private nonprofit,  
5 just because I needed time to process what was here. First,  
6 I'm disappointed that there wasn't more that changed in this  
7 based on the fact that it seemed like it was the one issue  
8 that negotiators actually were somewhat in agreement on  
9 yesterday. But in saying that, does this definition only apply  
10 to changes of ownership, or is this the Department's  
11 definition of a private nonprofit? Because if it's the  
12 definition of a private nonprofit without a change of  
13 ownership, this would affect almost every private nonprofit in  
14 the country. Because I guarantee that the majority of them  
15 have some agreement, whether it be food service, bookstore  
16 lease agreements, anything where part of the net earnings of  
17 the institution is going to benefit a private entity because  
18 they have agreements and relationships that exist in the  
19 normal course of business. So. I guess if you could answer my  
20 question first and then I'll go on. But is this just change of  
21 ownership? And I'm honestly, I don't know that it even  
22 matters. But or is this your definition of a private  
23 nonprofit?

24 MR. MARTIN: I'll let Donna address that.

25 MS. MANGOLD: This is contained in our definition  
26 section. It happens to be part of this issue paper, but it's  
27 in the definition section. So, it's not it's not limited.

1 MS. PERRY: Okay. So, I have even more concern.  
2 Because nonprofits, private nonprofits have these  
3 relationships. So how are you going to address those in the  
4 normal course of business? In essence, basically what this is  
5 saying is, is that every private nonprofit out there is now  
6 not a private nonprofit if they have some type of an agreement  
7 with a private entity.

8 MS. MANGOLD: No, what we're saying is we presume  
9 that all of these contracts that you have, whether it's for  
10 food service, whether it's for anything else, maintenance of  
11 the dorms are at market rate.

12 MS. PERRY: I understand what you're saying down  
13 below. I'm talking about number one, where it says a domestic  
14 institution, no part of the net earnings of the institution  
15 benefits any private entity.

16 MS. MANGOLD: That is the statutory definition of a  
17 nonprofit. It's in 501(c)(3). It's been in our regs all along.  
18 That is the statutory definition of a nonprofit in, you know,  
19 for tax exempt status. And it's in our statute also.

20 MS. PERRY: Okay. So, you're saying that by adding in  
21 B below, unless the institution demonstrates that the payments  
22 under the revenue sharing room are reasonable, that that  
23 section, you're saying that that would exempt all of the  
24 private nonprofits in the country from this becoming an issue  
25 for having relationships and agreements with food service  
26 providers and.

27 MS. MANGOLD: It is not intended to catch that.  
28 Generally, under tax authority, that clause, that first clause

1 there, is really looking at either insider relationships or  
2 former owner relationships, those kinds of things where you're  
3 actually almost treating where you're treating that that other  
4 party is really almost looking like a shareholder. But in  
5 nonprofits you don't have shareholders, but it's looking like  
6 a shareholder. But that is that is just the standard that is  
7 the standard language.

8 MS. PERRY: Okay. But I still do have some concern  
9 about this language and the fact that it is expanded, but as  
10 long as that is not the intent of this and.

11 MS. MANGOLD: It is not.

12 MS. PERRY: Okay. Because that could be very  
13 detrimental to the private nonprofit industry as a whole and  
14 students as well, because these relationships that that  
15 schools have with these companies, they're structured such  
16 that they do benefit the students.

17 MS. MANGOLD: And even in the lower section, we talk  
18 about the connection to costs that there has, even if you  
19 would do a revenue share SF connection to cost. It is not our  
20 intent to say you can't do food service outside, that you  
21 can't get an outside vendor to provide food service or  
22 cleaning services or maintenance services on machines.

23 MS. PERRY: Well, and it's not I mean, it's not so  
24 much the service in the contract itself, but there's other  
25 things within those contracts a lot of times that, you know,  
26 for example, you may have a this is pretty typical, right,  
27 with food service suppliers, where they'll make a contribution  
28 to your facilities to improve the facilities where they're

1 giving you, let's say, \$10 million of capital investment that  
2 you're then amortizing over a period of time and the payback  
3 on that relationship. That that is not captured here, correct?

4 MS. MANGOLD: That is correct.

5 MS. PERRY: Okay.

6 MS. MANGOLD: The intent is not to capture those  
7 kinds of relationships in this, in this in this definition.

8 MS. PERRY: Okay.

9 MS. MILLER: Thank you, Kelli. Brad?

10 MR. ADAMS: Apologize for that. I've been also I want  
11 to apologize for going back and I've been thinking about  
12 something, Greg, you said on distance ed. comment, and I did  
13 provide some text on the effect date being one year out from  
14 this regulation going into effect for you to consider. But you  
15 said that this change in the distance ed. codifies current  
16 policy. So today, if an institution has its distance ed. out of  
17 a branch location, are we not in compliance with the policy is  
18 written today?

19 MR. MARTIN: No, I no. I would not say that you're  
20 out of compliance. We can we consider that the programs are  
21 offered from the main location. But we would not because you  
22 have associated it with the branch say that it's out of  
23 compliance. In assessing an institution for certification or  
24 recertification, we might bring that up, but I'm not going to  
25 make a blanket statement that all schools have done that right  
26 now are out of compliance. In fact, that's why we would be

1 allowing the year for institutions to properly align those  
2 programs.

3 MR. ADAMS: Thank you.

4 MS. MILLER: Jamie.

5 MS. STUDLEY: I'm picking up Kelli's thread. I  
6 completely understand the challenge for Kelli. That I think  
7 hinges on the word benefits. And I've spent years also trying  
8 to figure this out. It has a special meaning. And it's not  
9 just the benefit of having a market rate contract or  
10 arrangement with somebody. It has special tax meaning. I  
11 wonder whether it's duplicating or what the purpose of the new  
12 D that's being added is, is engages in an excess benefit  
13 transaction, the same as no part of which benefits any  
14 private. Is that actually a specific version of the same  
15 thing, or is it a narrower or more demanding test? Because I  
16 can certainly understand why no part of I have struggled with  
17 no part benefits any private entity. But the benefit is above  
18 and beyond market rate contracting. It's not, you can't have a  
19 deal to buy books at millions of dollars each in order to  
20 transfer money to a source that the Department doesn't want  
21 you dealing with. But you may buy books from a bookseller at  
22 the price of books as your purchasing people determine. This  
23 is a, you know, a good price in the market for those books  
24 that we need to buy. But can you speak specifically to D and  
25 whether that's just articulating what the benefit test is at  
26 the beginning or is it something in addition?

27 MS. MANGOLD: This was in response to Barmak's  
28 suggestion yesterday of his drafted language that he included

1 an excess benefit transaction. This is actually to try to  
2 catch other kinds of transactions that we may not have caught  
3 in A, B, C. For example, the president or a board member gets  
4 a very expensive car. Is that that might be included or being  
5 paid in some other ways that is beyond, you know, it's someone  
6 who the president is a bad example but say it's someone who  
7 devotes 50 hours over the course of the year and that person  
8 gets a car, you know, that 50 hours shouldn't result in a car.  
9 It's just it's trying to capture some of these other some of  
10 these other things.

11 MS. STUDLEY: And wouldn't it capture my books? And  
12 \$1,000,000 for a book can't be a sham way of transferring  
13 money over the benefit of the book or books. But does it but  
14 isn't that the same thing as no part of the net earnings  
15 benefits any entity? I thought it was a more specific  
16 articulation of that legal standard.

17 MS. MANGOLD: We are informed by tax authorities. I  
18 mean, obviously it's different because sometimes what happens  
19 is either it's the tax status is disallowed or you might have  
20 an excess tax on the excess benefit excise tax, on the excess  
21 benefit. But that authority, which does guide us, talks about  
22 these different prongs. They talk about the prong up at the  
23 top is typically called the inurement prong. No part of the  
24 net earnings inures the benefit of any person. Then the second  
25 part is the excess benefit prong, which is which also provides  
26 us a benchmark for looking at things.

27 MS. MILLER: Kelli.



1 MS. PERRY: Thanks. I just want to go back to my  
2 other concern in number six. So, we're saying that branch  
3 campuses are excluded as it relates to the definition of being  
4 associated with the main campus. But then in the definition of  
5 branch campus, we're saying that the branch campus is approved  
6 by the Secretary as a branch campus. So, the Secretary's is  
7 proving that branch campus, that branch campus is most likely  
8 being included in the financial statements for financial  
9 responsibility and all of the other things that we've been  
10 talking about here. I Just, I would recommend that this whole  
11 concept of associated with the main campus includes the branch  
12 campus based on based on those two things.

13 MR. MARTIN: I'll take that for consideration. We did  
14 discuss it previously and that was the position we reached.  
15 But I will ask to revisit it.

16 MS. MILLER: Okay, Greg, I don't see any more hands.  
17 Should we move to consensus?

18 MR. MARTIN: Yes.

19 MS. MILLER: Oh. Barmak, did you have a comment?

20 MR. NASSIRIAN: Yes. Is it possible to take a ten-  
21 minute caucus with a subgroup of the negotiators before the  
22 vote?

23 MR. MARTIN: I'll turn it over to facilitators?

24 MS. MILLER: Yes. I believe so. Cindy, am I right  
25 about that? I'll get, your headset is on mute.

1 MS. JEFFRIES: Sorry about that. You are correct,  
2 Roz. Any member of the committee can request a caucus. So,  
3 Barmak, we're going to ask you to say for the record who you  
4 would like to have in the caucus. Then we will go off the live  
5 feed and Brady will double check to make sure he has everyone  
6 assigned to it that you that you wanted, and then we'll open  
7 that room. Okay?

8 MR. NASSIRIAN: So, I would like negotiators from the  
9 consumer civil rights groups, both negotiators from both  
10 organizations, including Amanda. I would like to invite the  
11 legal aid negotiators, the student and student borrowers  
12 negotiator, the state agencies negotiator and the AGs, plus  
13 myself.

14 MS. MILLER: Okay. So, with that, I think we can stop  
15 the live feed. Okay. Welcome back. The caucus has concluded. I  
16 see Kelli, you have your hand raised.

17 MS. PERRY: Yeah, before we before we vote. Two  
18 things. One, Greg, you had said that you would take back the  
19 whole concept of the branch campus. I don't know if you had a  
20 chance to discuss that while you were or while they were in  
21 their caucus. But I really would like you to consider  
22 including the branch in that. And then my second thing,  
23 quickly going back to this definition, when we were discussing  
24 it a minute ago, I was told that one was what was already in  
25 the statute and during the break, this what the statute says  
26 is that no part of the earnings benefits a private shareholder  
27 or individual. So, we're changing private shareholder or  
28 individual to private entity or national person. A private  
29 entity is very different from a private shareholder. So, I

1 just would like someone to explain to me, one, why was I told  
2 that this was what was already in statute, which it doesn't  
3 seem like it is, and two how we go from shareholder to entity,  
4 because those are two very different words.

5 MS. MANGOLD: Nonprofits don't have shareholders. So,  
6 the language doesn't quite really fit because they don't have  
7 shareholders typically. Usually it's a non-stock and it's not  
8 a shareholder, but that is the shareholder is the language.  
9 So, I sort of spoke a little bit too broadly, but nonprofits  
10 don't have shareholders. So, we felt that this language fit  
11 better.

12 MS. PERRY: Well. So again, it goes back to my  
13 concern about the language and that you're right, nonprofits  
14 don't have shareholders, which means the language as it exists  
15 currently is not necessarily accurate. But the concept of  
16 benefits, any private entity there could nonprofits could have  
17 a situation where a private entity is benefiting from a  
18 relationship. So, we're really changing. And I mean, I'm not  
19 going to we don't need to go back and forth, but I'm just I  
20 want to go on record saying we're really changing the  
21 definition of this. And, you know, I guess I don't, to be told  
22 that this was what was already in statute when it wasn't is  
23 somewhat concerning to me.

24 MS. MANGOLD: And I had overstated it. The private  
25 inurement part is in the statute. That's the language of the  
26 statute, the private inurement.

27 MS. MILLER: Okay. So, Greg, are we ready to take  
28 consensus? And before we do that, I just want to mention that

1 there is no representation for minority serving institutions,  
2 but that will not hold up consensus.

3 MR. MARTIN: Yes.

4 MS. MILLER: Okay. So, a show a thumb's sorry to  
5 change of ownership. Hold them up high and we'll go through.  
6 Okay. Kelli has a question before we take or consensus.

7 MS. PERRY: I just would like the Department to  
8 respond to the requests about the branch campus. If they did  
9 discuss if they did.

10 MR. MARTIN: I'm sorry. Yes, we did discuss. And we  
11 remain on the same position we have. We're concerned to have  
12 branch campus there is a there is a we do have a separate  
13 definition in the regulations in 600.2 for branch campus. And  
14 essentially it has its own program it has its own budgetary  
15 authority, having authority as geographically separate. There  
16 is somewhat of a haze between what separates a branch from an  
17 additional location there. Essentially, the only advantage to  
18 having a branch is we don't approve that many of them. It's  
19 kind of an antiquated thing. But those are approved as branch  
20 campuses do have the authority to spin off another location  
21 from the branch. That's about the only true difference. But as  
22 concerns to distance education, we have we have some, we do  
23 have, as I said, concerns about distance programs going  
24 through branches. First of all, the only relationship the  
25 student really has is with the main, if they're in a distance  
26 program is, you know, as far as where it flows from. And we do  
27 have there could be issues related to closed schools where a  
28 student is in a distance program and if they in the event of a

1 closure of a of additional location or branch, there could be  
2 issues related to any type of closed school benefits that  
3 accrue to the student. So, we've elected to remain with our  
4 initial position.

5 MS. MILLER: With that, we will move on to the vote.  
6 Please a show of thumbs for issue paper five, changes of  
7 ownership. We will read so first I have Brad, sideways thumb.  
8 Kelli thumbs down. Barmak thumbs down. Carolyn thumbs down.  
9 David S. thumbs down. Johnson thumbs down. Ernest thumbs down.  
10 Amanda thumbs down. Jamie thumbs down. Sam thumbs sideways.  
11 And Marvin thumbs sideways. Anne thumbs sideways. And Yael  
12 thumbs down. Okay. So, we have a number of dissenters. Kelli,  
13 would you like to explain your descent and what would it take  
14 to get you to consensus?

15 MS. PERRY: Sure. So, my thumbs down relates to the  
16 changing of the definition of a nonprofit. I appreciate the  
17 Department's attempt to add language to B that it talks about,  
18 you know, unless it demonstrates payments as it relates to  
19 revenue sharing agreements and such as something that was not  
20 intended to include the relationships that most private  
21 nonprofits have. However, I'm concerned that what they may the  
22 Department may think is reasonable versus what a school may  
23 think is reasonable based on a whole slew of different  
24 business decisions that have been made may be different. And I  
25 don't think that schools should be caught up in this as a  
26 result of that.

27 MS. MILLER: Thank you, Kelli.

1 MS. JEFFRIES: Roz? Kelli, and maybe I missed it,  
2 could you articulate what it would take to get you to  
3 consensus?

4 MS. PERRY: Going back to the language from the  
5 second session.

6 MS. JEFFRIES: Okay, thank you.

7 MS. MILLER: Thank you. Barmak, your dissent and what  
8 it would take to get you to consensus.

9 MR. NASSIRIAN: While I appreciate the Department's  
10 efforts. Neither the Department's track record nor the changes  
11 made in this document are adequate to the enormity of the  
12 fraud that is directed against students and the taxpayers. And  
13 I view the changes that the Department made between the draft  
14 we saw during the second round of this negotiation and the  
15 third round, the addition of market-based assessment as a  
16 basis for supporting revenue sharing agreements, as a giant  
17 loophole. I want to read to you from a sample valuation that  
18 the Department has apparently approved. I won't name the  
19 institution or the appraiser, but I love this sentence. The  
20 valuation is for purpose of assisting management in setting  
21 the sales price for the sale of the entity to a not-for-profit  
22 entity and to support the sale price before regulatory  
23 authorities. Our opinion of value should not be used for any  
24 other purpose. I mean, if that's the kind of appraisal we're  
25 going to hang our hats on, we got huge problems. So, the  
26 removal of that language would get me to support this, even  
27 though I would say that the amended language would still not

1 be adequate to protect people. At least we don't create new  
2 loopholes. Thank you.

3 MS. MILLER: Thank you, Barmak. Carolyn.

4 MS. FAST: I have the same opinion as Barmak, as I've  
5 said before. My concern is with the nonprofit definition  
6 language, which I believe is doing the opposite of what was  
7 intended here, which was to try to prevent the problem that we  
8 have seen of schools that are essentially involved in  
9 relationships with former owners, that that really negate them  
10 as a nonprofit so that they're actually for-profit entity. And  
11 I think that the change between section two and section three  
12 was the problem. And if the Department was willing to go back  
13 to the language that was provided to us in session two, that  
14 would address my concerns.

15 MS. MILLER: Thank you. David.

16 MR. SOCOLOW: Yes, I will associate myself with both  
17 the comments of Barmak and Carolyn, and only just to say I was  
18 cheered by the original January issue paper in its topic,  
19 which cited approvingly the GAO report about the fact that the  
20 Department needs to do more to guard against the risk of  
21 conversions from for-profits to nonprofits. And you expressed  
22 eloquence on that. I think that the provision in the second  
23 session issue paper at the top of page three was certainly  
24 better than current reg and I would be able to reach consensus  
25 on that. But you've opened up a new loophole here  
26 inexplicably, in week three, in session three. So that's my  
27 reason.

28 MS. MILLER: Thank you, David. Johnson.

1 MR. TYLER: Yeah, hi. So, the language that I really  
2 have a problem with is what other people have talked about. It  
3 says unless the institution demonstrates the reasonableness of  
4 the market price and so forth. So, you created a regulation  
5 that is easily appealable. You're going to be fighting over  
6 whether the market rate is correct or not, and it's going to  
7 go to administrative law judges who are going to be Department  
8 of Education related, people who understand all this sort of  
9 accounting stuff or whether they're just going to be other  
10 people, then it's going to go to a Federal court judge.  
11 There's a case now going on involving a gigantic organization  
12 out in the West Coast area, litigating this exact issue with  
13 the Department of Education. So, I think it's really dangerous  
14 for consumers. People believe higher education is out to help  
15 them. And I think everyone here is invested in that mission.  
16 But you're kind of going to end up with where consumers don't  
17 know the difference between a real nonprofit and another  
18 nonprofit. And I think it's very dangerous. And the last thing  
19 I'll say is the fact that Brad mentioned that there's already  
20 a bill in Congress to create a fee to facilitate the  
21 Department of Education's work, which is tremendous, that they  
22 have to do on all of this to for these transactions. So maybe  
23 Gainful Employment is moving all the for-profits into this  
24 area. I think you really have to have the flexibility to  
25 defend your positions in court. This is going to be very  
26 difficult. You certainly can do it, but it's a huge resource  
27 thing. And I think Donna and other people there do a  
28 tremendous job trying to do this. But it's a huge amount of  
29 work. And I think you're putting yourself in a weaker position  
30 by creating this standard where you have to defend yourself.



1 You should, this is a discretionary thing. You have a mission  
2 to help students throughout the country with their educational  
3 trajectories. And you don't have to give this to the other  
4 side so they can beat you in court over and over and over  
5 again.

6 MS. MILLER: Johnson, did you say what would get you  
7 to consensus on this?

8 MR. TYLER: Back to the second paper. Thank you.

9 MS. MILLER: Thank you. Ernest, your dissent and what  
10 would it take to get you to consensus.

11 MR. EZEUGO: Yeah. Honestly, in the interest of time,  
12 my answer to both of those are articulated probably better  
13 than I could articulate it by Barmak, Johnson, David so far.  
14 So.

15 MS. MILLER: Okay. So going back to the previous  
16 language. Okay.

17 MR. EZEUGO: Yes.

18 MS. MILLER: Amanda.

19 MS. AMANDA MARTINEZ: Yeah, associating myself with  
20 Barmak, Carolyn, David, Johnson's comments and issues with the  
21 section of the definition of nonprofit nonprofits and what  
22 would take for consensus is referring back to session two's  
23 paper definition.

24 MS. MILLER: Thank you. Jamie?

1 MS. STUDLEY: Johnson, Carolyn and others did a fine  
2 job of explaining the risks. I think the entirety of the  
3 relationships is a reasonable standard, and the Department has  
4 an opportunity to be crisp and clear here that it can take by  
5 returning to number two. I think there's also a danger that  
6 it's overbroad in the other direction. The obligatory item A  
7 captures potentially things that that the Department should  
8 not need to be spending its time on. And finally, I think the  
9 branch issue that Kelli has spoken to and others, I don't see  
10 the need for that and think it could be dropped. I think it  
11 causes effort and mischief and I haven't heard enough reason  
12 for the need. I respect that the Department believes it would  
13 address a problem it's experienced, but I haven't understood  
14 it well enough to know why it needs this provision.

15 MS. MILLER: And you would move to consensus if?  
16 You're on mute.

17 MS. STUDLEY: We returned to the second, we returned  
18 to the second version and dropped the new branch language.

19 MS. MILLER: Thank you, Jamie. Yael?

20 MS. SHAVIT: Thank you. I think the Department has  
21 missed an opportunity to make a regulation here to propose  
22 language that would be really meaningful and address the  
23 problem that we see. State AGs also review these types of  
24 transactions and have a good understanding of what fair market  
25 valuation actually entails and what these transactions look  
26 like. And we know as well as the Department does that the type  
27 of financial relationships that are incentivized by the

1 language that was proposed during session three should be  
2 generally and there may be a rare exceptions.

3 MS. MILLER: Sorry we lost you just a little bit  
4 there.

5 MS. SHAVIT: I've already made the points. I think  
6 this is a missed opportunity. And returning to the language of  
7 session two with would change my vote.

8 MS. MILLER: Thank you. Have I heard from all of  
9 those in dissent? Okay. Did the Department want to respond to  
10 what they just heard?

11 MR. MARTIN: No, except to say that we thank  
12 everybody for their input and for their time we put into this  
13 and their forthrightness and in giving us their positions on  
14 what it would take to get to consensus. So, I'll take that  
15 back. And again, appreciate all the effort.

16 MS. MILLER: Okay with that said Greg, should we move  
17 to issue paper number six certification procedures?

18 MR. MARTIN: Yes. So, we're moving on to issue paper  
19 six and I'll wait for Vanessa to give her some time to get  
20 that up. Okay. Great. So, issue paper six starting with us  
21 with 668.13 certifications certification and there's not much  
22 here that changed in 13. So, I'll go through the entirety of  
23 13 and then we're going to we're going to go in 13 is 13 C  
24 which is provisional certification. And there are some changes  
25 to 13 (c) (1), romanette one, and F. There we go. So, after  
26 hearing negotiators concerns and suggestions, we have proposed  
27 to eliminate the proposed specification that the Department

1 may place an institution on provisional status for repeat  
2 findings of noncompliance. We understand there are concerns  
3 with how this provision would be used, and we agree with  
4 negotiators who noted that we have the authority already in  
5 place to put an institution on provisional status for repeat  
6 findings of noncompliance. We've also added a new event,  
7 noting that the Secretary may opt to place an institution on  
8 provisional status if the Department has determined the  
9 institution is at risk of closure. This paired with the  
10 Department's proposed additional conditions for provisionally  
11 certified schools at risk of closure and will make it easier  
12 to apply conditions such as transcript withholding if the  
13 Secretary is concerned about the institution's viability. So,  
14 you see in F that we have stricken the language that said the  
15 institution has received the same funding of noncompliance  
16 more than one reviewer audit and added the Secretary has  
17 determined that the institution is at risk for closure. That's  
18 all the changes associated with 668.13 certification. So, in  
19 the interest of clearing this discussion on that section,  
20 before we move on, I'll open it up to discussion or comments.

21 MS. MILLER: Brad.

22 MR. ADAMS: You know, I'm struggling with the  
23 inclusion of the language that the Secretary is determined  
24 that the institution is at risk of closure. I think this is a  
25 surprising, unfortunate addition to this issue paper. I mean,  
26 who behind the magic curtain is actually making this decision?  
27 What information are they using? I think it's important to  
28 note how serious this is. And this isn't just proprietary  
29 issue. This is for all schools. There are a lot of schools out

1 there, especially on the nonprofit side, that don't have  
2 strong financials. If we go around announcing that an  
3 institution is at risk of closure, it's like announcing a bank  
4 is at risk of closure. Everybody is going to leave and take  
5 their money and run. And so, to me, this is you announce any  
6 institutions at risk of closure. There'll be zero students at  
7 the door and it will close. And so, if you want this provision  
8 in there to just close an institution, then it sounds like  
9 that's why as how it's written. So maybe, Greg, help me  
10 understand why we think the Secretary and frankly, also we've  
11 been negotiating all the different points and all these  
12 different issue papers of how the Secretary can use these  
13 items up to their discretion across the board. And now we're  
14 saying in here that Secretary, based on some unknown report or  
15 information, can announce that the institution is at risk of  
16 closure.

17 MR. MARTIN: You know, I think that there has to be  
18 acknowledged that there is a lot of discretion available to  
19 the Department here with this. And there is always some degree  
20 of subjectivity involved. We're not talking about announcing  
21 that an institution's closing we're talking about the  
22 Department taking an action to provisionally certify an  
23 institution. And the Department rightly so under, under, , I  
24 mean, we've seen a lot of closures, precipitous closures of  
25 institutions over the past few years. Some of them major, they  
26 can affect thousands of students. And there is a desire, I  
27 think, in the part of the Department and a lot of other  
28 individuals that the Department be aware or take action where  
29 there is the possibility of a closure. And to be aware of that  
30 before these events occur that puts students at risk. And I

1 think this is part of giving the Secretary that that  
2 discretion. But I know Steve has his hand, I don't want to I'm  
3 not the facilitator, so I will I'll end there with a  
4 facilitator.

5 MS. MILLER: Yes, Steve.

6 MR. FINLEY: Yeah. I just want to add on as Greg  
7 pointed out, it's not necessarily that there's any  
8 announcement that the Secretary's made this determination. The  
9 institution would be advised that the Secretary had made that  
10 determination. And in that exchange, the Department has an  
11 obligation to explain the basis for the determination that  
12 would have that the institution was at risk of closure. So, in  
13 the dialog between the institution and the Department, there  
14 would be a discussion about the basis for that decision. And  
15 the institution could push back and say, you know, we disagree  
16 with that for the following reasons, and there would be an  
17 exchange there and that would result in some kind of final  
18 decision that could be challenged elsewhere.

19 MR. ADAMS: That's helpful. My main concern is not  
20 knowing the determination of that, but and there's so much  
21 discretion. So that's probably my main concern. But the  
22 secondary concern was that that becomes public information,  
23 and it somehow gets out in the press that the Secretary is  
24 deeming an institution is at risk of closure. And then we're  
25 all they're closed if that happens. So, I'll just leave it as  
26 I've got serious concerns with the discretion in in E here.  
27 Thank you.

1 MS. MILLER: Kelli, I see your hand up, but I just  
2 wanted to mention that Debbie is back at the table for state  
3 agencies. Okay, Kelli.

4 MS. PERRY: So, in romanette two, it talks about the  
5 fact that if the institution triggers one of the mandatory or  
6 discretionary triggers. And the institute is required to post  
7 financial protection. So, two questions. One. If the  
8 institution post financial protection up to a level of say,  
9 they go up to 50 percent, they are deemed to be financially  
10 responsible. So, in that case, would that still require the  
11 certification to become provisional? And then the second  
12 question is, we're adding this here as it relates to the  
13 mandatory and discretionary triggers. Is there something  
14 somewhere, and I apologize, I just can't, if it's there, I  
15 can't find it, does the institution become provisionally  
16 certified if they fail the composite score, or is it just  
17 relate to the additional triggers that we're adding?

18 MR. MARTIN: I'll let Steve address that.

19 MR. FINLEY: Why, thank you, Greg.

20 MR. MARTIN: Well, I think the first one, yeah, the  
21 first one I can address is the institution automatically  
22 becomes a certification, becomes provisional upon the  
23 triggering event. So even if you post a letter of credit,  
24 it's.

25 MR. FINLEY: So, let me let me try to expand on that.  
26 Institutions that fail the financial responsibility, strength  
27 standards, the composite score the Secretary usually provides  
28 an option of posting a smaller letter of credit in conjunction

1 with provisional certification or a larger letter of credit as  
2 an alternative demonstration of financial responsibility.  
3 Right? The larger letter of credit is at least 50 percent but  
4 could be higher if there were other risk factors identified  
5 that the Department thought required a higher letter. And it's  
6 the same thing for the smaller one. It's at least 10 percent  
7 and it could be higher. There are performance-based failures  
8 of the financial responsibility standards that cannot be  
9 overridden by posting a larger letter of credit. And the past  
10 performance violations are an example of that large program  
11 review liabilities, late audit submissions, those trigger  
12 mandatory failures that will require a letter of credit. But  
13 the institution does not have the option of being financially  
14 responsible by just by posting the larger of the two amounts.

15 MS. PERRY: Or just the triggers that don't allow the  
16 letter of credit to be posted or for all of the triggers? So,  
17 for example, there's triggers that would allow you to post a  
18 letter of credit, and then there's triggers that don't. Is  
19 that what you're saying?

20 MR. FINLEY: Yeah, I think in general, the only time  
21 you've got the option of meeting the alternate financial  
22 responsibility demonstration with the larger letter of credit  
23 is for a composite score violation failure.

24 MS. PERRY: Okay.

25 MR. FINLEY: It's not really a violation. It's just a  
26 failure.

27 MS. PERRY: Okay. Thank you.



1 MS. MILLER: And Jessica has joined the table for  
2 legal aid. Don't see any other hands. So, I'll turn it back  
3 over to you, Greg, to take us to the next section.

4 MR. MARTIN: Okay. Thank you very much. Thank you,  
5 Steve. We'll be moving into six 668.14, which is program  
6 participation agreement. And will be starting in (b) (18). And  
7 in (b) (18) we're looking at romanette two. So this is an 18  
8 the stem there, it will not knowingly and then looking at  
9 looking at romanette two under that we have proposed some  
10 revisions to 668.14 (b) (18) romanette two that this will  
11 address the situation in which institutions contract with  
12 another institution or third party servicer who have been  
13 terminated, who have been terminated for participation in  
14 Title IV, or whose owners, officers, employees, or had  
15 substantial control over the institution that still owes a  
16 liability to the Department for a Title IV violation and is  
17 not repaying. It will also ensure that institutions may not  
18 contract with owners or officers whose participation in the  
19 Federal aid programs led to a loss of Federal funds of at  
20 least 5 percent of annual Title IV volume. So I read the  
21 change there in romanette two, will not knowingly contract  
22 with an institution or third party servicer that has been  
23 terminated from participation in the Title IV HEA programs for  
24 a reason involving acquisition use or expenditure or Federal,  
25 state or local government funds, or that has been  
26 administratively or judicially determined to have committed  
27 fraud or any other material violation of law involving  
28 Federal, state or local government funds, or whose owners,  
29 officers or employees exercised substantial control over an  
30 institution or a direct or indirect parent entity of an

1 institution that has a liability for a violation of Title IV  
2 HEA program requirement and is not making payments in  
3 accordance with an agreement to repay that liability. And  
4 look, we also have a change in 26 and I'll review that one and  
5 then we can go back and have conversations since or  
6 discussions since I know there are a few changes here, so  
7 let's review the one in 26. Here we have removed the  
8 reasonable relationship language as it's not relevant and  
9 potentially confusing. We've also clarified that rather than  
10 making this an eligibility limitation, the provision will  
11 apply to Title IV eligibility for the program. In other words,  
12 this ensures taxpayer financed Title IV aid will not exceed  
13 these maximum lengths. Though institutions may offer their own  
14 aid or financing to support ours beyond the cap, we have also  
15 clarified in B that this national medium will be established  
16 in the year of the effective date of these regulations so that  
17 the cap on time for eligibility has not become a moving target  
18 to institutions. So I'll review that the language there. This  
19 is in 26 for educational, for an educational program offered  
20 by the institution that is required to prepare a student for  
21 Gainful Employment and a recognized occupation. The Secretary  
22 limits Title IV HEA eligibility for the program to the lesser  
23 of the minimum number of clock hours required for training in  
24 the recognized occupation, for which the program prepares the  
25 student as established by the state in which the institution  
26 is located. If the state has established such a requirement or  
27 as established by any Federal agency or in B, at least half  
28 the states license the recognized occupation for which the  
29 program prepares students. The national median number of hours  
30 required for training as established in in those states, as

1 determined by the Secretary for the year of the effective date  
2 of these regulations and published in the notice in the  
3 Federal Register. So, I will now open up the floor for  
4 discussion and comment. So, we are looking at 18 and 26  
5 comments on either of those.

6 MS. MILLER: Anne.

7 DR. KRESS: Sure. So, I've raised this issue before  
8 in 26 romanette one, A and B, the reality is that institutions  
9 don't have any ability to control what the states set as a  
10 threshold for license professions. And I'm just really  
11 concerned that we're going to disadvantage students based on  
12 where they live from accessing Title IV funds, because the  
13 students also don't have an ability to control what the state  
14 set as the minimum threshold for these programs. So I  
15 appreciate that the Department added the national median,  
16 which wasn't there before, but I really wish we would have  
17 kept greater because I do feel we're going to disadvantaged  
18 students who have no ability to control again what the states  
19 are setting and the states are consulting typically the boards  
20 of these licensed professions.

21 MR. MARTIN: Thank you. The Department's concern and  
22 I want to say that we understand those concerns. We do have  
23 concerns over the rather high number of hours in some states  
24 that are required for licensure that far exceed national  
25 meetings and far exceed whereas in most states. And I would  
26 also point out that we have concerns extended it to the fact  
27 that there is not an appreciable difference in the earnings of  
28 students for a specific field in a specific field or a

1 specific occupation that are related to the increased number  
2 of hours.

3 DR. KRESS: And I'll just say I get that. I just  
4 think we're going at that issue through students, which seems  
5 really wrong. We're not talking in most cases about students  
6 who can pick up and move across to another state where there  
7 are fewer clock hours or fewer credit hours associated with  
8 any of these professions, and then come back to their home  
9 state to be licensed in that profession. So, I just wish we  
10 would focus those energies on the states rather than on the  
11 students by denying them aid.

12 MS. MILLER: Brad.

13 MR. ADAMS: Yes, I have to agree with Anne and a plug  
14 here. Again, I don't oversee any cosmetology schools, so we  
15 really should have had someone that's a cosmetology expert on  
16 this committee. And I'm just surprised the Department did not  
17 make any meaningful changes to this section. I think it's a  
18 really bad idea, and it'll have consequences for institutions  
19 that are in states that have minimum licensure requirements  
20 above the national median. I think it's a crisis waiting to  
21 happen. The states, not the Department, should set the  
22 licensure requirements, but it seems like the Department seems  
23 to have rejected that idea and think the Federal Government  
24 knows better than the states in this item. And I'm not really  
25 sure personally how many hours it takes to be a good  
26 cosmetologist, but I don't think the Federal Government does  
27 either. And so why would we not want states to control this  
28 requirement? And why does the Department think they know

1 better than the states on what it takes to get a good  
2 cosmetologist to give a haircut.

3 MR. MARTIN: I don't have anything else to add there.  
4 I would say that the Department is not certainly not stepping  
5 in to say what the adequate number of hours is to become, in  
6 your example, a cosmetologist. It could be any other any other  
7 any other profession. There are, I think, it calls into  
8 legitimately calls into question the number of hours in some  
9 of these states where they can exceed by twice what the number  
10 of hours is and several other states or even the median. So  
11 that is I don't know that it could be easily defended why it  
12 takes that many more hours in one state as in another state.  
13 So that's and students are paying for that and obviously  
14 taking out loans for that. So, we are concerned for that area.  
15 But I know.

16 MR. ADAMS: And I understand that response, Greg, and  
17 I agree this is a GE issue at the same time. And as we saw,  
18 cosmetology schools are the ones that are going to potentially  
19 perform the worse than GE. And I get it. But at the same time,  
20 why don't you ask those states why they set the threshold so  
21 much higher? I have no idea why they did, but that seems like  
22 that would be the better question than asking this committee  
23 to determine that a national median makes more sense than the  
24 states and what they determine as is necessary to be a good  
25 cosmetologist or in another program. And I've got serious  
26 reservations on this. And I just think we should have gone  
27 back to the original language, as we discussed in several of  
28 the sessions prior to making all these changes. Thank you.

29 MS. MILLER: Thank you. Jessica and then Barmak.

1 MS. RANUCCI: I have a more, yes, I understand that  
2 the sort of high level policy conversation you guys are  
3 having, I have a more specific question and concern. Which is  
4 that I understand your reasoning that rewriting this about  
5 Title IV eligibility for the program because schools can offer  
6 whatever, you're saying schools are allowed to offer programs  
7 that are non-Title IV. My question is that I think this  
8 language is susceptible to two readings. One is that if a  
9 program doesn't meet this requirements, no student within that  
10 program can ever receive Title IV. I think the other reading  
11 is that any student in that program can receive Title IV up to  
12 the maximum, but then can't compete with Title IV. I think  
13 that one is extremely problematic. That would just funnel  
14 students into private loans or institutional loans or non-  
15 completers it would leave them with Federal debt they can't  
16 repay. I think that that's not really a position that the  
17 Department should be taking here, regardless of its position  
18 on the high-level policy issues that you guys have been  
19 discussing. So, I guess Steve or somebody maybe if you could  
20 clarify which one of those this language was intended to mean.

21 MR. MARTIN: I can clarify for sure that it is the  
22 second interpretation that the school may offer a program and  
23 we don't we're not capping the length of the program. The  
24 states can do that. I shouldn't say they can offer a program  
25 any length. They this would be capping the amount. This would  
26 be capping the portion of the program that would be eligible  
27 for Title IV. It would not be saying students could not enroll  
28 in these programs.

1 MS. RANUCCI: No, I understand. I'm still not sure  
2 that answered my question. Are you saying any individual  
3 student who received Title IV can enroll in this program but  
4 not complete it with Title IV, or are you saying they can't  
5 get Title IV for this program in the first place?

6 MR. MARTIN: No, no. They could get Title IV for the  
7 program up to the number of allowable hours for this  
8 regulation. And then there would be no Title IV they would  
9 not, the school not be able to finance the additional hours  
10 with Title IV.

11 MS. RANUCCI: Right. And to be clear, there would be  
12 no loan discharge options, any options for completing the  
13 program other than trying to access their own savings or  
14 private credit?

15 MR. MARTIN: As written, there's no other there's no  
16 other Federal option for funding, no.

17 MS. RANUCCI: I think that's really problematic.

18 MS. MILLER: Okay. I see. Barmak and then Debbie. But  
19 we are 2 minutes to lunch, so Barmak.

20 MR. NASSIRIAN: Yeah, I want to echo Jessica's  
21 concern of leaving the wisdom of whether the Department should  
22 or shouldn't cap the maximum length of a program if it chooses  
23 to do so. It should really think about the idea of plugging  
24 students into programs they can conceivably finish with  
25 adequate financing and contemplate what is the likely backfill  
26 for that will be more predatory, problematic debt. I would  
27 also say, and I appreciate the Department's effort to attempt

1 to tamp down this sort of expansion of the length of these  
2 lengthier programs, which is often a kind of a protection  
3 racket for incumbents in some cases. If you decide to keep  
4 this, I would really encourage you to put a later effective  
5 date on this, to give the states time to adjust their  
6 respective laws to accommodate this. Because, again,  
7 particularly the way you have configured this, it could become  
8 a real problem of with all kinds of private label lending,  
9 back throwing, what the Department may cut off in some states.  
10 Thank you.

11 MS. MILLER: Okay. Debbie, we have one minute until  
12 lunch, you're up.

13 MS. COCHRANE: I will mostly echo what others have  
14 said about the concerns about this provision, but also just  
15 build a little bit more on to Barmak issues of timing. It does  
16 look to me like I think from B, you're basically saying as of  
17 June, basically July 2023, you would be looking at the  
18 national median in that period of time and then that whatever  
19 the national median is then would be quantified going forward.  
20 So, I just want to clarify that that is the intent here. But  
21 also, just most of the states, they do have these provisions  
22 in their own regulations, which they wouldn't change until the  
23 Federal regulations are final. When state regulations are  
24 final, institutions need to develop new programs and then they  
25 need to start enrolling students into those new programs and  
26 allow the students to finish out their old programs that they  
27 had been enrolled in. So, I think there's a lot of timing  
28 implications if you want to go forward on this, that in a way



1 that doesn't really adversely impact students, that that just  
2 need some more thought.

3 MR. MARTIN: So, would you be saying to give  
4 institutions an additional year to come to the states a year  
5 to adjust?

6 MS. COCHRANE: I would say I think giving the states  
7 another a year to adjust would be helpful. That would give  
8 them time to have the regulations in effect. I would also add,  
9 and I've submitted language to this effect before, but in  
10 romanette one A have something also about the limit related to  
11 the time of the students initial enrollment. So, you're not  
12 getting or not hitting those students who are they're just  
13 kind of enrolled in a period trying to finish out a program  
14 and then the rules change and their aid is suddenly cut off.

15 MR. MARTIN: Thank you.

16 MS. MILLER: Okay. With that, we are one minute past  
17 lunch. Bradley, you'll be up first after our break.

18 MS. JEFFRIES: Roz, he just put something in the chat  
19 that he has a very quick question.

20 MS. MILLER: Okay.

21 MR. ADAMS: Yeah, I didn't want to come back after  
22 lunch on this. So, if it's okay, we'll take a real quick  
23 minute. But my concern is the way I read this now is the  
24 national median if the states start changing their hours that  
25 national median is going to change, then you're going to  
26 continue to have this chase, the tail chasing the dog scenario

1 where the states are going to update theirs and then the  
2 median changes. So shouldn't we codify a number of if you're  
3 going to go down this path, which I disagree with, the  
4 national media shouldn't change every year is what I'm trying  
5 to say, because the states won't even know what they're trying  
6 to hit. Is anyone else reading it like I am?

7 MR. MARTIN: We have the language so that as  
8 determined by the Secretary for the year of the effective date  
9 of the regulations.

10 MR. ADAMS: So, if that changes every year, then the  
11 states are going to have to change every year. That's not  
12 going to be good.

13 MR. MARTIN: I have to go. I don't think that we  
14 propose that to change it. We don't want it to become a moving  
15 target for institutions. That's not our intent. That's why we  
16 have this regulation changed and we'll set it in the year that  
17 the regulations are become effective.

18 MS. MILLER: Okay. Dave, is it okay if we or did you  
19 want to respond?

20 MR. MCCLINTOCK: I don't want to respond. I just want  
21 to ask you a question. If I ask it before lunch, it might be  
22 something people can think about that are better experts than  
23 me. I do not test individual student files and programs as  
24 much as I used to. The impact of this if a program is longer,  
25 if the state requirements have more hours than the median and  
26 the student is attending, does that mean they would get 100  
27 percent of their financial aid up until they reach that point  
28 when the hours end up? Or would it get prorated over the

1 entire length of the program? So, if it's 110 percent in their  
2 state, they get aid up to 100 percent point and then they pay  
3 10 percent at that point forward? Or does it get pro-rated  
4 throughout? I'm just asking for clarification.

5 MR. MARTIN: Yeah, that's a good point. You know, we  
6 haven't codified that yet, but it would be the way I would  
7 view it and my colleagues can correct me if I'm wrong later,  
8 but it would be up to the number of hours that that that the  
9 that we're allowing the program to be funded with Title IV.  
10 So, you wouldn't take the entirety of the program and then  
11 prorate the number of hours eligible over that period the  
12 entire time, if it were if it were, if the school was able to  
13 offer it through 900 hours, but the program itself was 1500  
14 hours. The student would get 900, would get aid 900 hours. You  
15 wouldn't take the 900 hours worth of aid and prorated over the  
16 1500. And just to clarify, again, I know I already said this,  
17 but just I want to make clear that I make it clear that it  
18 would that the that the meeting is not a moving target that is  
19 published in the Federal Register. Based on based on as said  
20 here the year the effective date of these of these regulations  
21 and would not change.

22 MS. MILLER: Okay. Jessica and Debbie. Your hands are  
23 up. But I'm afraid if we keep going, we won't have enough time  
24 for lunch because we do have to be back at 1:00. So, if that's  
25 okay, you two will be the first up Jessica then Debbie after  
26 the break. And with that, can we end the live feed, please?

1 Department of Education, Office of Postsecondary  
2 Education

3 Zoom Chat Transcript

4 Institutional and Programmatic Eligibility Committee  
5 Session 3, Day 4, Morning, March 17, 2022

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

8 After roll call, David Socolow will finish out  
9 changes in ownership/control for state agencies.

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

12 Well done on your Irish accent David. I am  
13 impressed.

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

15 Yael will be starting this morning at the table for  
16 state AGs.

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

19 Can you please send us that language via email.

20 From Jamiene Studley--Accrediting Agencies (P)  
21 she/her to Everyone:

22 would it be possible to send us the language/post it  
23 in the chat/keep it on the screen?

1 From Cindy-FMCS Facilitator to Everyone:

2 I am in the process of sending the updated document  
3 you just saw to all of you. Give a couple minutes.

4 From Cindy-FMCS Facilitator to Everyone:

5 You should all have it. Let me know if anyone didn't  
6 receive it.

7 From Jamiene Studley--Accrediting Agencies (P)  
8 she/her to Everyone:

9 Thanks, received

10 From David Socolow (A) State Agencies to Everyone:

11 +1 to the profound disappointment expressed by  
12 several negotiators. I oppose this revised language defining  
13 "nonprofit institution." The Department should instead use the  
14 definition on page 3 of the Session 2 issue paper.

15 From Jamiene Studley--Accrediting Agencies (P)  
16 she/her to Everyone:

17 + Kelli's concern about the branch issue.

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

20 +1 to Kelli's concern

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

22 +1 to the branch issue

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

3           this is difficult to go so fast when we cannot see  
4 the change on the screen

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

7           Only things in blue changed

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

9           Just to clarify, the yellow and bold are new in this  
10 paper for week three and the blue is new since yesterday,  
11 correct?

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

14           that is my understanding

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

16           Thx!

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

19           Here is my proposed language to add to the distance  
20 education issue we discussed in 6 at the top of the document  
21 "Effective [one year from the effective date of these  
22 regulations]"

23           From Emmanuel Guillory (A) PNPs to Everyone:

1 +1 Kelli

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

4 I will be returning to the table for certification.

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

6 I am coming back in for state AGs

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

9 For 668.14 Program participation agreement, request  
10 to take it issue by issue rather than by the entire section.

11 From Johnson Tyler (p) legal aid to Everyone:

12 Jessica is back at the table

13 From Jamiene Studley--Accrediting Agencies (P)  
14 she/her to Everyone:

15 This is a positive addition.

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

18 +1 Laura

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

21 i would recommend we keep 668.14 (26) comments  
22 separate from 668.14 (32) comments.

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

3 Agree - going issue by issue would be helpful.

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

6 Agreed with Laura and Brad.

7 From Jamiene Studley--Accrediting Agencies (P)  
8 she/her to Everyone:

9 Yes--please separate discussion issue by issue

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

12 +1 Anne

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

15 +1 Anne

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

17 +1 Anne

18 From Jamiene Studley--Accrediting Agencies (P)  
19 she/her to Everyone:

20 + Anne. While getting states to change the levels  
21 where they might be excessive is an important solution but the  
22 timing could pinch students.



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

2 Then, again, address this to the \*states,\* not to  
3 the students by cutting off their aid.

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

6 +1 Anne

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

9 +1 Jessica

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

11 +1 Jessic

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

13 Jessica

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

16 This is going to be very harmful for students.  
17 Students can start the program, then lose their aid and not  
18 complete.

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

20 +1 Laura

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

1           +1 Jessica. It is not a good idea to permit students  
2 to enroll in a program. then cut off Title IV in the middle of  
3 a program

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

6           +1 Laura. This is putting students in a bad position  
7 where there are differences between state and federal hours  
8 requirements.

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

10           +1 Jessica

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

12           + 1 Jessica

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

14           Are there any other situations in which ED allows  
15 Title IV funds for a student to begin a program, knowing that  
16 they are ineligible for Title IV funds for the published  
17 program length?

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

19           +1 to later effective date

20           From Jamiene Studley--Accrediting Agencies (P)  
21 she/her to Everyone:

22           + Anne again, plus Jessica's and Barmak's points:  
23 the burden falls on students but this is not the right vehicle  
24 for getting to better state min hours reqts

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

2 +1 to Barmak's suggestion to allow states time to  
3 adjust their hours requirements before this takes effect

4 From Jamiene Studley--Accrediting Agencies (P)  
5 she/her to Everyone:

6 + Debbie also

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

9 i have a quick question related to this issue

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

11 +1 You need to grandfather students enrolled prior  
12 to implementation.

13 From Jamiene Studley--Accrediting Agencies (P)  
14 she/her to Everyone:

15 Lake Wobegone issue

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

18 It looks to me like a single FR notice, not an  
19 annual one.

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

21 @Debbie, that's my read, too.

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

3           They could publish a new FR notice each year.

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

5           Agree with Debbie. Seems the language doesn't allow  
6 for adjustment to the median over time and as hours change in  
7 the states.

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

10           How will students know when their hours cut off?  
11 This is very bad policy. So harmful to students.

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

13           Could the Department please be prepared to answer my  
14 question from the chat after lunch?