

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 3, DAY 5, MORNING
March 18, 2022

On the 18th 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.

PROCEEDINGS

MS. JEFFRIES: Good morning, everyone, and welcome back to day five of session three. This is the final day of this negotiated rulemaking. So, we do still have some work to do today. So, I'm going to go ahead and do our roll call. And I want to remind everybody, including myself, who did not do it, the naming protocol for the screens. I can't spell today either. Okay. So, with that, let's go ahead. I'd like all negotiators and alternates and the advisers to have their cameras on. With that, we'll start with accrediting agencies, Jamie Studley.

MS. STUDLEY: Good morning.

MS. JEFFRIES: Good morning. And the alternate, Mr. Jaylon Herbin.

MS. STUDLEY: The alternate is Laura Rasar King.

MS. JEFFRIES: I'm sorry I skipped down. I apologize. I looked down. Maybe I should turn my camera off, Beverly. The alternate, you're right, is Dr. Laura Rasar King. I apologize.

DR. KING: Good morning, Cindy. No problem.

MS. JEFFRIES: Good morning. Civil rights organizations and consumer advocacy organizations primary, Ms. Carolyn Fast.

MS. FAST: Good morning.

MS. JEFFRIES: And for real, alternate Mr. Jaylon Herbin.

MR. HERBIN: Morning.

MS. JEFFRIES: Good morning. Financial aid administrators at postsecondary Institutions, primary Ms. Samantha Veeder.

MS. VEEDER: Good morning.

MS. JEFFRIES: Good morning. Alternate is Mr. David Peterson.

MR. PETERSON: Good morning, everyone.

MS. JEFFRIES: Good morning. Four-year public institutions of higher education, Mr. Marvin Smith as primary.

MR. SMITH: Morning.

MS. JEFFRIES: Morning. And Ms. Debra Stanley is the alternate.

MS. STANLEY: Good morning.

MS. JEFFRIES: Morning. Legal assistance organizations that represent students and/or borrowers, primary Mr. Johnson Tyler who will not be with us today and therefore Ms. Jessica Ranucci, the alternate, will be at the table all day.

MS. RANUCCI: Good morning.

MS. JEFFRIES: Good morning. Minority serving institutions, Dr. Beverly Hogan as primary.

DR. HOGAN: Good morning, everyone.

MS. JEFFRIES: Morning. And alternate is Ms. Ashley Schofield. And I don't believe Ashley is with us today either. Private nonprofit institutions of higher education, primary Ms. Kelli Perry.

MS. PERRY: Morning, everyone.

MS. JEFFRIES: Morning. Alternate. Mr. Emmanuel Gilroy.

MR. GUILLORY: Good morning and happy Friday.

MS. JEFFRIES: Good morning. Same to you. Proprietary institutions of higher education, Mr. Bradley Adams as primary.

MR. ADAMS: Morning.

MS. JEFFRIES: Good morning. And Mr. Michael Lanouette as the alternate.

DR. LANOUILLE: Good morning.

MS. JEFFRIES: Morning. State Attorneys General. Mr. Adam Welle as primary.

MR. WELLE: Morning.

MS. JEFFRIES: Morning. And Yael Shavit is the alternate. Doesn't look like she has joined us yet. State higher education executive officers state authorizing agencies and/or state regulators of institutions of higher education and/or loan services servicers, Ms. Debbie Cochrane is the primary.

MS. COCHRANE: Good morning, everyone.

MS. JEFFRIES: Good morning. And Mr. David Socolow is the alternate.

MR. SOCOLOW: Good morning.

MS. JEFFRIES: Morning. Students and student loan borrowers, Mr. Ernest Ezeugo is primary.

MR. EZEUGO: Morning, everyone.

MS. JEFFRIES: Morning. And Mr. Carney King is the alternate. It doesn't sound like Carney has joined us yet.

MS. SHAVIT: Sorry, Cynthia, yeah, this is Yael. I think it cut out right when I was trying. I'm having issues with connectivity. I'm going to stay off camera, but I'm here.

MS. JEFFRIES: Okay, great. Thank you for letting us know Yael. Okay. So two-year public institutions of higher education, Dr. Anne Kress is primary.

DR. KRESS: Good morning.

MS. JEFFRIES: Good morning. And Mr. William Durden is the alternate.

MR. DURDEN: Good morning.

MS. JEFFRIES: Good morning. U.S. military service members, veterans or groups representing them, Mr. Travis Horr as primary.

MR. HERR: Good morning.

MS. JEFFRIES: Morning. And Mr. Barmak Nassirian as alternates.

MR. NASSIRIAN: Morning.

MS. JEFFRIES: Civil rights, Ms. Amanda Martinez as primary.

MS. AMANDA MARTINEZ: Good morning.

MS. JEFFRIES: Good morning. So welcome to all of the esteemed negotiators, including, last but not least, the Department of Education, Greg Martin.

MR. MARTIN: Good morning.

MS. JEFFRIES: Good morning. We move on to our esteemed advisors, compliance auditor with experiencing auditing institutions that participate in the Title IV HEA programs, Mr. David McClintock.

MR. MCCLINTOCK: Good morning, everyone.

MS. JEFFRIES: Good morning. And labor economist or an individual with experience in policy research, accountability and/or analysis of higher education data, Dr. Adam Looney. Doesn't sound, doesn't appear as Dr. Looney has joined us at this point. Did I miss anyone?

MR. MARTIN: I think Steve Finley from the Department, Cindy.

MS. JEFFRIES: Oh, I am so sorry, Steve.

MR. FINLEY: No problem, good morning.

MS. JEFFRIES: You're sitting there very quiet. I apologize. Steve Finley is from the Department with from the general counsel's office. Alright. With that, like I mentioned when we started, this is your final day. The agenda today is to finish the certification procedures that you were working on yesterday, moving through that document, including consensus check and then moving to your final issue paper on 90/10 with the same process ending in a consensus check. I do want to remind all negotiators today that since this is the last day, let's please, when we use our three-minute comment to offer new concerns and/or amended language not to restate or indicate support of something already stated. Certainly, continue to use the chat for that and that there will be no public comment today. Greg, is there anything you want to add?

MR. MARTIN: No, Cindy, we can get started whenever you're ready.

MS. JEFFRIES: I'm ready. Take it away.

MR. MARTIN: Alright. I believe Vanessa is driving for us this morning, and so she'll be bringing up where we are in the paper. And there we are at 668.43. When we left off last evening, we were looking at the language in 668.43 A in (a)(5) romanette five. So, we and it was pointed out by a number of people that the language was inconsistent with what's in what's in 32. So, we've gone back and word smithed a little bit and I will present that here. You can see the changes that we've made. So, if an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation or as advertised as meeting such

requirements. A list of all states where the institution is aware that the program does and does not meet, excuse me, such requirements. So, we've tried to change the tax payer to be more consistent with what's in 32. So essentially, you know, so it's absolutely the case that if the institution offers the program and in a specific state, that they must be aware that it does meet the licensure requirements. So that would have to be disclosed as such. If they know it does not, they would also be required to disclose that. If an institution does not, is not aware, obviously, it wouldn't be offering the the program in that state. There could be an instance where maybe a student has never applied from that state. They've never made a determination. And in that case, the institution would not be required to disclose that. But I think this exchange does address that inconsistency. But I will open the floor for any discussion on this last piece in 43.

MS. JEFFRIES: Okay. Thank you, Greg. Negotiators, any comments? Questions? Concerns? Kelli.

MS. PERRY: Emmanuel was going to come to the table to ask a question. I couldn't type it as fast as I could just raise my hand, so.

MS. JEFFRIES: Perfect. Thanks, Kelli. Welcome, Emmanuel.

MR. GUILLORY: Hi. So, I guess I can ask the question, now?

MS. JEFFRIES: Absolutely.

MR. GUILLORY: Okay. So, this is in regards to the changes that, well were not made regarding paragraph 32 around the state licensing requirements. And so, we got some questions from our members and I think they're pretty valid. And pretty much those questions are what happens to currently enrolled students? So, when this goes into effect, the students who are already in the program or have been accepted to the program, but institutions under current regulations have to disclose whether or not those requirements meet state licensing requirements or they don't, or undetermined that they do. What happens then? Will there be a transition period or institutions to come into compliance with these new requirements to meet all state licensing requirements? Also, my second question is how are institutions supposed to know when a student moves or seeks employment in another state to ensure that they meet the state licensing requirements of that state to be employed in that state? So once again, an issue that could arise is that a student who's in Florida doing online courses at the University of Alabama decides to move to Wisconsin. Well, University of Alabama needs to make sure that the state license requirements in Florida are met, but in order to seek employment, that student may not want to seek employment only in Florida, they may want to seek employment in Wisconsin. And so, with how the regulation is drafted, because state licensing requirements need to be met in the states where students seek employment and that could be very, very tricky for institutions to know exactly how to do that. And currently, right now in 600.9, institutions are only required to disclose to students if that state license requirements are met. So those two questions are questions

that I have for the Department if they are still unwilling to make any modifications to paragraph 32. Thank you.

MR. MARTIN: I. With reference to the states employment. I mean, we look at 32 in each state in which the institution is located or which in which the institution is located, or which the students enrolled in the institution are located. The institution must make these, hold on one second here, these must make the determination that the program is indeed eligible. It doesn't require that if students leave the area, they're located in to seek employment elsewhere, that obviates obviously the student went once, once the student could leave the state in which he or she is located to seek employment elsewhere. We're not requiring schools to be to be aware of that. We are requiring that it meets the certification requirements where the student is located or in the state in which the institution is is located. So, I don't think, I don't know that that's as much of an issue. What was the other question? I forgot the other question that you were asking.

MR. GUILLORY: Yeah, Greg, just a quick response to that, I think the concern is in romanette two, when it says seeks employment in that state, qualifies to take any licensure or certification exam that is needed. So, one can interpret that to mean in that state, to mean, if the students in Florida taking classes from University of Alabama, then it's only the state of Florida, only. But then it could also be interpreted to mean that the state and whatever the student seeks employment. So that could be Florida, that could be Alabama, that could be Wisconsin. I think there's just some

grayness there. And with the proposal, once again, that Barmak and Carolyn put out, at least that was clarified a little bit more. And then with our proposal that we have put out, we kind of allowed for this to be a little bit clearer. So, I just wanted to reiterate that. But the other question I had was around the transition period. So, for institutions that will now have to comply with this because this is new, what happens to currently enrolled students or students who have already been accepted into the program where this institution did not obviously, they only disclose whether or not the program meets state licensing requirements or we're unable to determine whether or not they missed that license requirements. Is there going to be a transition period or how do we make sure students comply?

MR. MARTIN: As far as the transition, as far as the language goes, the Department has determined to stay with the language in 32. However, we we will be, we are amenable to a transition period. So, we can discuss that, what type of a transition period that would be. And if somebody wants to suggest something, then we would have to obviously have a discussion on that. But I don't want to put any words in anybody's mouth, so I'm not going to do that. But I will open the floor for any suggestions about what type of a transition period might be in order.

MS. JEFFRIES: Okay. Thank you. I want to note that Barmak Nassirian is at the table this morning representing service members and veterans. And with that Barmak, your hand is up.

MR. NASSIRIAN: I certainly defer to the Department's judgment on what it wants to do on 32. But I do think Emmanuel's concern question number one, it is going to prove vexing, and Carolyn and I don't have any pride of authorship in the language we submitted. Quite candidly, that language was , the work was the product of very hard work by other people who know a lot more about this stuff. But that language would have handled all of these issues with regard to inter-state movement, with regard to changing state standards, that even if the student doesn't move to go to changing state standards, that could alter eligibility of programs because it tied eligibility to the bulletin year. So, to whatever extent the Department decides to take another look at some point, I would encourage it to do that. I would also point out that to the extent that you do decide to keep the existing language in 32, you need to alter 443 C because 443 C doesn't make any sense anymore in light of the in light of the changes that are in the current draft, just as a conforming change. Thank you.

MS. JEFFRIES: Okay. Thank you, Barmak, for that. Jessica, you are up next.

MS. RANUCCI: Thanks. I'd like to reiterate the point that I made in a different section, but I think it also applies here that I think we all have an interest in not straining students mid-program who are unable to finish with Title IV. And I think that the concerns that are raised by Emmanuel, obviously there are institutions size concerns, but I think those same concerns apply to the student, which is if this were to apply on day one and if it were to be judged in sort of this moving target as a student moves through the

program, that there really opens up those difficulties for institutions. And how do you do this in difficulty for students and maybe their life circumstances would somehow render them ineligible for Title IV. And so I think that the proposal from Barmak and Carolyn or some other language that would sort of set this at a point in time at enrollment is important and that it's on the one hand, it preserves the important consumer protections that I understand are behind this from the Department's perspective, and that we don't want students to go into these programs without understanding the employment and licensure opportunities, but on the other hand would protect students in that they wouldn't get stranded mid program and so , I agree. All that to say, I agree with Emmanuel, but I think it's also an important point from the other side.

MR. MARTIN: As far as implementation. I mean, generally with something like this, it would be, you know, we would have to determine the implementation rules. So you're saying it would be applicable, make it applicable to students who enroll in a program on or after a certain point so that it wouldn't pertain to students who are currently enrolled in the program, correct?

MS. RANUCCI: Right. I think there's two separate problems that Emmanuel raised and that would solve one of them, from my perspective, which is the transition period. Yes, I think it should not cut off aid for students who were mid program as to the effective date. I think as to the other a problem it's a problem that would exist in perpetuity that Emmanuel is describing about students who, for example, move

mid program. And I think that that needs a different fix that wouldn't necessarily be fixed by the effective date. That would tie the consideration to a point in time that is closer to enrollment so that if life circumstances change, that those students would not be stranded. Emmanuel, you might have a different perspective, but that's how I see it.

MS. JEFFRIES: Thank you, Jessica. Emmanuel.

MR. GUILLORY: Jessica, I agree with your perspective. And I just I wanted to uplift in the comment because I know that everyone who's watching can't read the comments. But my colleague Kelli, I think she made a good suggestion in grandfathering the students who are currently in the program. So they're grandfathered with the current regulations and then whatever is new, which would, I guess go into effect July 1st of 2023, there would be, you know, maybe a year to come into compliance with the new standards or some sort of transition period to then make sure that the next enrolling class into the program, institutions abiding by these new rules, they know exactly what they need to do and everything is pretty clear. But grandfathering the current students is students who have already been accepted to some of these programs. I think it's a wonderful idea. So, I wanted to to lift that up.

MR. MARTIN: Yeah. I think we can, I right now certainly agree that it would not affect any students who are currently enrolled in programs that would be students who enrolled on or after if we said the effective date of the rule. But or is this suggestion that even if we did that, that it would be effective on or after a certain date, I mean, the

implementation date, which would normally be July 1 of a given year that there would be a time period after that for, before it would be implemented. Is that the suggestion?

MR. GUILLORY: Yeah. So, I would say if this is implemented July 1st, 2023, which that's the goal. Right. So, you're going to get these regs out by November 1st of this year, ideally [inaudible] July 1st, 2023. Well, by that time, students have already been accepted for the 2023, 2024 academic year, ideally, or at least some students have already been accepted for that program. So, it seems to make the most sense that this would kick in for those students who are being accepted for 2024, 2025 academic year because 2023 2024 would have that process is already happening.

MR. MARTIN: Okay. Alright. So, we give them another, it would give them another additional year to do that. I do want to clarify one thing. As far as location goes, I wanted to point out that we do have, and this came from our our rules that we did in all these years escaped me, but the last time we negotiated rulemaking, we did distance innovation, and that was in, I believe it was in '18 or '19. Anyway, I wanted to point out in 600.9 (c) (2) the and read this language to you. For purposes of this section, this is in state authorization, just to clarify there. For purposes of this section, an institution must make a determination in accordance with the institution's policies or procedures regarding the state in which the student is located, which must be applied consistently to all students. The institution must, upon request of the Secretary with written documentation, provide the Secretary with written documentation of its determination

of the student's location. An institution must make a determination regarding the state in which the student is located at the time of the student's initial enrollment, and in addition, in an educational program, and if applicable upon formal receipt of information from the student in accordance with the institution's procedures that the student's location has changed to another state. So, we require this to be, we do give its institutions a fair amount of latitude in making this determination. They just have to have a policy or procedure to make such determination. So, I want to point that out. As far as offering an additional year as you as you suggest, let me ask before we move on what kind of support there is for that around the around the table in general? Can I just ask for brief comments on whether or not the rest of you would be amenable to something like that?

MS. JEFFRIES: Greg, do you want comments, or do you want like a pseudo temperature check?

MR. MARTIN: Just any comments people have?

MS. JEFFRIES: Okay. Alright. Barmak.

MR. NASSIRIAN: I would certainly support the transition period, but I also want to point out again that even a transition period doesn't address the issue that the Emmanuel raised because the student can be based on the definition of location from your state authorization rate, the student can be located somewhere where the program does meet the necessary state criteria and the student could move to a state where the program does not meet the criteria. And at that point, the program would become ineligible, and the

student would become ineligible midstream for Title IV. So you really do have a wrinkle here that I would again suggest you resolve by dealing with at least by limiting the the licensure or the requirements of section 32, by tying it to the to the start of the program, that when when somebody starts in a program that is eligible, that the application of that potential location change does not alter that, at least that individual students continue their eligibility for aid. That's going to be a problem. People moving, as you know, Greg, in our area, it's really easy to move out of Maryland, into Virginia, into the District so there are plenty of folks who could easily change change their state, their location from one state to another.

MS. JEFFRIES: Greg, you're on mute if you're speaking to the committee.

MR. MARTIN: My mistake. I'm very sorry about that. Hold on one moment, please. So going back to the definition where we say an institution must make a determination regarding a state in which the student is located at the time the institution's initial enrollment in the program. So, we don't view it as something where if the student changes location during the program, that it becomes ineligible. I want to point that out. As far as a transition period is concerned, I, we, just hold on one second here, just bear with me one moment, please.

MS. JEFFRIES: Sure, no problem. We could take a couple more comments if you'd need a minute.

MR. MARTIN: Yeah, go ahead. That would be fine.

MS. JEFFRIES: Alright. Okay, Jessica.

MS. RANUCCI: Thanks. I hear what you're saying, Greg, but I just looking at the chart, it looks like Barmak just said something and me and Emmanuel and then Debbie said something in the chat, and I think Kelli agreed and Carolyn and Ernest, Beverly. So, I think there is large and Brad sorry, not to leave you out Sam, there is a lot of support here for clarifying that language, and I think it sounds like there may not be a substantive disagreement with the Department, but I think that everybody here thinks the same thing, which is this should be determined at the time of initial enrollment. And to the extent that language isn't clear, perhaps it could be more clearly worded. As to the transition period, I'm not opposed to in principle Emmanuel, but I think a lot of this look that I would be most concerned about or not really on academic year schedules. And so, it seems to me I would want it to be the shortest amount of time that you actually need. I would think students who are accepted as to July 1st would all be enrolled by October 1st. I don't I don't do your job. I'm not exactly sure what date would be reasonable. And so, it seems to be like shorter than a year with preserved needs for schools that are on a more traditional academic year cycle, while not allowing schools that are not to evade this. So.

MS. JEFFRIES: Thank you, Jessica. Greg, I see you're off mute. Are you ready or you want more comments?

MR. MARTIN: You can say more comments.

MS. JEFFRIES: Okay. Alright, great. Emmanuel, you're up next.

MR. GUILLORY: I want to respond to my colleague, Jessica. I completely agree with you and what you said. And you actually took the words out of my mouth in a lot of ways, and it doesn't necessarily have to be an entire full year per se. It's just a matter of having time for students who are then being admitted into the program for the next semester or academic year, or however that institution kind of sets that program up to then be held accountable to this standard. And it's not for students who have already currently been enrolled for this award year or academic year or semester or whatever the case may be, but actually having a buffer period to just ensure that compliance is, and everything is communicated clearly. Just to reiterate, Jessica, if that is the case for the Department, that it is based on initial enrollment, and it should just mirror that language should be mirrored more so here, at least they're being consistent because it arguably is not consistent here. So.

MS. JEFFRIES: Thank you, Emmanuel. Greg I'm not seeing any other hands. There are a couple negotiators who did put in the chat that they were in support. I specifically saw Brad and Kelli plus one on the transition in the chat. There may be others. Go ahead, Greg.

MR. MARTIN: Yeah, I'll speak to the issue of location. So, you know, in 32 we say the student in the state in which the institution is located or which the student is enrolled by the institution is located, and the definition of that is in state authorization. So that is our definition, and

it is applicable across the program. So, it absolutely does apply. So, it's sort of like if we reference, if we say something like, you know, eligible student. Well, we actually have a definition of an eligible student that that is applicable throughout our regulations. The same thing here. So, it is based on your initial determination of where the student is located, and that's according to your your policies and procedures that you have in place to determine where student is located. We don't prescribe that. So, I just want to clarify that. As for transition, what's being asked here is for a transition more than just it would apply to new students enrolled on or after effective date. I need to think about that. You know, Cynthia, could you give me just give me 5 minutes offline.

MS. JEFFRIES: Sure. Okay. Adam, we'll get to you, or did you want to say something to Greg before he takes his?

MR. WELLE: Yeah, I was just hoping he could repeat that comment just from a minute ago, about 32. He I believe, Greg, you stated that the reference in 32 to the state in which the student is located references another definition within the reg. And I was wondering if you could just point us to that definition. And I think you were implying that definition solves this issue of the assessment of the student state is seeking at the time of initial enrollment. So, I'm just wondering if you could clarify that or if I'm getting that wrong?

MR. MARTIN: No, that is the definition found in, and I'm having a difficult time, hold on, let me just ask my-

MR. WELLE: And maybe you could find it after the break that you could give- [interposing]

MR. MARTIN: It's 600 point, it's in 600.9 [inaudible] I'll see if we can maybe even pull it up on the screen. Just give me the time to go back and look.

MS. JEFFRIES: And Steve has his hand up so maybe he can help.

MR. FINLEY: Oh, yeah. I was just going to address what Greg's saying. There is an interplay between this provision and the state authorization requirements in 600.9. Under 600.9, institutions are supposed to keep track of where students are during the course of their enrollment. But the issue here is, I think the one Barmak raised is to whether the student's eligibility for the program would be based on the student's location and the institution's location at the time of enrollment. And I think that's what we're going to try to clarify in our offline discussion.

MS. JEFFRIES: Okay. Thank you, Steve. Greg, we'll go ahead and take that break for you if.

MR. MARTIN: Okay. Yeah, before we go, I just want to point out to everybody before we go to break, I just I have it in my chat, but I'm having difficulty with my screen. So, I did what we always do now is just simply Google it on your phone because the phone is so much quicker than anything else. So yeah, it is in 600.9 C. And that is the state authorization requirement. So, I just want to point that out. But yeah, we'll go offline for a few minutes and thank you very much.

MS. JEFFRIES: Emmanuel, I'm going to ask you to hold your comment. The Department has asked twice to go offline to do some 5 minutes or so work on this. So, if you could just please hold your comment until they return, unless it's something new.

MR. GUILLORY: Very quick. Maybe we should.

MS. JEFFRIES: Is it new?

MR. GUILLORY: It's new.

MS. JEFFRIES: Okay.

MR. GUILLORY: Maybe we should just reference that here, like just provide a reference to that here. And I think that because you removed it, just you're trying to address something else and you removed it, but readding that somehow would maybe make that clear for institutions to know that it's based on the location.

MR. MARTIN: So, you want the reference to 600 point to 600.9 in the text?

MR. GUILLORY: Or you could just say initially enrolled. Students initially enrolled by the institution are located or something like that.

MR. MARTIN: We'll consider putting in a reference to 600.9, I think we can probably do that.

MS. JEFFRIES: Okay. Alright. Thank you, Greg. We'll go ahead and take that break now. Brady, get the room set up for them. If we could go off the broadcast that. Okay. It

looks like everyone is back. I'm going to turn it over to Greg.

MR. MARTIN: Thank you, Cynthia. And I thank you for your indulgence with the break. And I was having trouble with my computer and different different things on top of each other. So, I just went out and got back in again. So, that definitely helped. And so, I really appreciate that. So, for 32, we we will certainly incorporate a reference to the 600.9 there. So, to make it clear that it is the locations of determination at the time of enrollment by the institution in accordance with its procedures. And as far as transition goes. At this time, all I can commit to, we will certainly take a look at it, but all I can commit to at this time is that we would not, upon implementation date, it would be only for students who enroll in the program on or after the implementation date such that it would not affect any students who were currently enrolled in the program and would not result in any loss of eligibility for student who was enrolled at the time. As far as beyond that, an additional transition period, I am not in a position to commit to that right now.

MS. JEFFRIES: Okay. Thank you. Thanks, Greg. Kelli Perry is back at the table for private nonprofits. Kelli.

MS. PERRY: Thank you. So, I have a question about the definition 600.9. Because I need to make sure I'm understanding it correctly because it does talk about the student's initial enrollment, but it also goes on to talk about upon formal receipt from the student, that the student's location is changed to another state. So, and it also references policies and procedures. So, is this saying that if

you make reference to 600.9 that if a student formally notifies an institution that they're moving to another state, that that institution then needs to obtain licensure in the state that the student is moving to?

MR. MARTIN: I don't believe that is what it means. I'm going to ask my colleagues to confirm that with me. So, if you just hold on a moment, I'll try to get some confirmation on that. You're talking about in the definition, an institution must make a determination regarding the state in which the student is located at the time of initial enrollment in the educational program, and if applicable, upon formal receipt of information from the student in accordance with the institution's procedures that the student has changed to another state. I don't believe we would see that as necessitating having to in the middle of a program, change eligibility. This more has to do with the procedures of the institution. And if the student at the outset of the program informs the student that he or she is is changing states. But let me get some I know that that language does seem a little bit amorphous. So let me get some let me get some more clarification on that.

MS. PERRY: Thank you.

MS. JEFFRIES: Alright. I'm not seeing any more hands, Greg. With questions. So. How do you want to proceed?

MR. MARTIN: Okay. Well, let's proceed to, that's what I was trying to get some clarification. Here we go. Hold on one moment, please.

MS. JEFFRIES: Sure. No problem.

MR. MARTIN: Okay. Okay, bear with me one moment. I'm going to. Steve, do you have any comment on that language?

MR. FINLEY: Yeah, we're still clarifying. So, under 600.9, institutions are expected to remain updated if they learn that the student has moved to another location. And that would at least trigger a conversation with the student as to whether the program in which the student is enrolled meets the licensing requirements of that state. I don't think it's supposed to trigger a loss of eligibility under this related provision, but we're waiting for confirmation on that. But it does trigger an updated conversation with the student, which is consistent with what's already in line with 600.9.

MS. PERRY: But I think the way that it reads, it would trigger an eligibility. I mean, obviously, you're the one that has to make that determination. But the way that it reads is that if a student notifies an institution which they are required to do and they then say, okay, so let's say the institution moved to Kansas or the student moved to Kansas, and the institution doesn't meet the legislative requirements in Kansas. So that student then ultimately becomes ineligible because we can't provide that service.

MR. FINLEY: And that's what we're going to try to clarify in this discussion. So, we understand the concern that's being raised.

MR. MARTIN: Right. I'll just beg everyone's indulgence for, I hate to call another break just after I called a break, but that's not something you really want to do at this point. But.

MS. JEFFRIES: But I mean, if you need it, you need it, Greg.

MR. MARTIN: Yeah, you know what? Let's just go, I hate I don't mean to do this, but could I go offline for just, I just need about not maybe just call it 5 minutes, that's all.

MS. JEFFRIES: I do want to bring to your attention a comment in the chat that Adam Welle is proposing that we come back to this once you've come up with a language that incorporates the language in 609.9. Just so that you're aware that that comment is there. Okay?

MR. MARTIN: Thank you.

MS. JEFFRIES: Mm hmm. Okay. So, Brady, do you want to and we'll go off the livestream, please. Okay, welcome back. It looks like everyone is back with us. So, Greg, I'm going to turn it over to you.

MR. MARTIN: Thanks, Cindy. And I again, thank everybody for their indulgence and for whatever negative effect this process might have on my nerves. It does make me a lot sharper person in the end, I think. So, it's good. It certainly keeps you on your toes in thinking. So we're going to bring up some new language here but I want to make it clear that it is not the Department's intention to require that once the determination is made at the time of enrollment, it is not our intention to require after that the institution account for changes in location that occurs subsequent to that determination in accordance with the institution's policies. So, I'm going to ask my colleague Vanessa to bring that

revised language up on the screen for you. So, what we're proposing. In each state in which the institution is located or in which the student is enrolled by the institute or in which students enrolled by the institution are located as determined at the time of initial enrollment, in accordance with the requirements of 34 CFR 600.9 (c)(2) the institution must ensure each program is eligible for Title IV program funds. So, you can see here that we are so there's no confusion that we are restricting this to the determination made at the time of initial enrollment by the institution in accordance with the institution's procedures and policies and procedures for doing so. And that what is in three that we had to put in there for authorization for state authorization purposes that involves the formal receipt of information that students change location is not applicable in in this in in 32. And so, with that I will, like we can take any comments related to this particular provision and then I want to move to a consensus vote.

MS. JEFFRIES: Sounds good, Greg. Thanks. So, the Department is open to any comments on the change in that particular section that they just discussed. And then after that, we will move to consensus.

MR. MARTIN: Before that, I want to thank the negotiators for for reviewing the reg and bringing to our attention the inconsistency and thank you.

MS. JEFFRIES: Thank you. Alright. So, Greg, I'm not seeing any hands, so.

MR. MARTIN: Okay, we can move to a consensus vote on issue paper six.

MS. JEFFRIES: Okay. So, we're going to go ahead and take the consensus check on issue paper six, certification procedures. Please hold your thumbs up. We will call out each individual vote as we move on. And as in the previous past, we will ask any dissent to please clearly list your serious reservation, clearly list it, and briefly offer what it would take to get you to consensus. So, with that, could I please see a show of thumbs? Alright. Jessica is down. Ernest is down. Barmak is up. Carolyn is up. Anne Kress is down. Kelli is down. Sam Veeder is sideways. Jamie is sideways. Amanda is down. Brad is down. Adam is thumbs up. Debbie is thumbs up. Marvin is sideways and Beverly is sideways. Okay. So, we have Jessica, Ernest, Anne, Kelli, Amanda, and Brad that demonstrated dissent. So, I'm going to start with Ernest. If you could please clearly articulate a list of what your concerns are and what it would take to get you to consensus on this.

MR. EZEUGO: For sure. So, I want to start by saying. I really greatly appreciate a lot of the things the Department is trying to do in this reg. I strongly support the consumer protection language that's been offered up in this document. I think the fix to 32 is really important. You know, I even appreciate a bit of explanation that was given on the transcript withholding piece yesterday. I have to be honest in that there were conversations and things brought up in the chat afterwards. And generally, I feel like and I can understand why this is the case, but generally I feel like we

really tried to rush through the transcript withholding piece, which honestly I found a little bit concerning since I mentioned that that was something of great importance to my constituency, but then also to me personally. Look, in full disclosure, I am almost, I'm pretty confident maybe the only person in this room who does not have a postsecondary credential in significant part because of the conflict that transcript withholding played in my life. And while I appreciate and I think the language offered by the Department and I would even urge them to consider starting at that point covers a lot of the concerns and issues around this, I am still struggling to understand where the Department doesn't have the authority on transcript withholding to act on such withholding as part of the PPAs that it does on, say, [inaudible] happened last session. If the question is about like what the legal Federal interest is in doing this, I would turn back point cite you know the CFPB's comments on this. We know that schools, we know that institutions like transcript withholding in part because it helps lock students to those specific institutions. I'm pretty sure we've even seen examples of where transcript withholding has been used to push students into institutional loans to continue their education at an institution or private loans that have less safe terms terms of Federal student loans. Ultimately, I still feel like that undermines the government's investment in these students. I mean, when an institution has the latitude to lock a student's entire academic history and record and their educational progress away and, in some cases, even conceal the fact that a student has done everything necessary to earn a

degree, that just to me it feels like grounds to take stronger action on for personal reasons.

MS. JEFFRIES: Ernest, you have 30 seconds.

MR. EZEUGO: Thank you. For the reason [inaudible] I've heard from my students and just kind of legal reasons. It's absolutely a tactic that I think that bad actor institutions, to the point that we're all trying to solve, can use to hide wrongdoing. Plus, I would add that, you know, it definitely encourages students to pay back these private institutional loans rather than Federal loans, which also, I think, kind of serves the kind of contrary to the Federal interest as well.

MS. JEFFRIES: Earnest, your time is up.

MR. EZEUGO: That's all I would say. Thank you.

MS. JEFFRIES: Thank you. Alright. Anne, you are next. Please clearly articulate a list of your concerns and a resolution that could get you to consensus.

DR. KRESS: Sure. Thank you. And again, I support a lot of what's going on in this issue paper. But the two-year colleges, community colleges concerns are with number 26 and the licensure program length issue. As I stated earlier, my real concern is that I understand the Department has issues with the length of some of these professionally licensed programs at the state level, but that's really where this needs to be directed. As written, it's going to punish students who have no choice over what state that they take these license programs in. The students we're talking about

can't simply pick up from one state and move to another in order to engage in a shorter program length that meets the Department's expectations. So, a few solutions to this language. One would be to revert to prior language. Another would be simply to revert back to saying greater rather than lesser in the text, which was changed in this iteration. And then finally, something to think about since the goal seems to be to motivate states to shorten the program length. And I get that, and we support that. But to give a transition period that would allow for all of the steps that need to occur for program link to be shortened to take place, recognizing that you have state actors, board actors, institutional actors, and that we would want students to be grandfathered in during that process. Again, completely understand the desire to have as efficient and expedient program lengths as possible. But as written right now, the folks will be punished if that doesn't happen. It isn't the individuals who are designing the programs, it's the students who are in them.

MS. JEFFRIES: Thank you, Anne. Next. Kelli, can we get to a list of the areas that are of concern to to you as well as what it would take to get you to consensus?

MS. PERRY: Sure. Thank you. I'll echo Anne's comments in 26. I think the change from greater to lesser was a concern, is a concern, of our constituency. And then the second thing is the language of 32. We were able to get on board with what was proposed by Carolyn and Barmak and what I was hoping that the Department would consider that language. The language as written does not work and we would need the we

would need romanette three removed from that from that language.

MS. JEFFRIES: Thank you very much, Kelli, appreciate it, Amanda, you're next.

MS. AMANDA MARTINEZ: So, I would like to align the issues of paragraph 26 the issues with paragraph 26 as eloquently already described, but I would say that I think the Education Department's policy goal here to ensure programs show a reasonable relationship. I think the session two's language, while I don't have the solution to the problem or what specific language I would be looking for, I just think that section three is language in paragraph 26 ultimately puts unintended consequences on students. And I don't think that's necessarily the solution or the intention of the Department. I think they're trying to solve a problem, which I think there is a problem here. I think they have an interest in ensuring programs like teacher programs aren't going to prevent providing too many hours that are unnecessary. So, I think that there's a true problem there. I think it really needs, the Department should go look back and try to be creative in whatever new solution that they're proposing. I don't have the answers to that, but I do think section two language is a bit more, it doesn't put the harm on students there and it really targets the clock hours. But ultimately, I'm not an expert there. I just do think that 26, as it reads now, is not is not the way to go forward. Also, paragraph 32, I strongly support paragraph 32. That's not what I have issues with. I think supporting student of student consumer protection is is well needed and it's lacking in our current higher education

Federal system. So just leaning on institutions and across the board states to to go to bat for students, I think states have a role here and just simply simply leaning on institutions to do that and trusting them. I think they've proven time and time again that we cannot trust them, at least from a student perspective, and even more so from students who are historically excluded from higher education. We really can't trust their institutions because they really weren't made for them. So, ensuring that the bar is raised and that we empower our states who want to go to bat for students, especially historically marginalized, I think that's a great path forward in the right direction. And the Federal Education Department has a role there. So, I strongly support that. That's not where my dissent is. My last dissent is really with paragraph 33. Again. It's a good attempt and I really appreciate your attempts here and working, working with what you have. I just think the legal reasoning, we have to go back. I would really strongly urge you to go back and rethink your your legal strategy here and try to try to be more look at different options versus maybe a limited, narrow scope.

MS. JEFFRIES: Thank you, Amanda. Brad, you're next. Need your list of concerns and your potentials to get you to consensus.

MR. ADAMS: Yes. And thank you. And I sent in comments in week two and so I'm going to reference the sections where I've got problems. But really to get me the consensus, it would be going to that language that I've already sent, and I won't reread that to everybody on the committee. So, in 668.13 3 (c) (1) romanette one F, where it

gives the Secretary complete discretion to put anyone on a provisional certification for any reason, that was that was one of our concerns. Also, I second, what Anne and Amanda have both said around 26 on the state hour cap issue we really thought we should just leave it as is and all the changes we think are not necessary. Lastly, the entire provision within 32, we've got concerns with I think the pre-accreditation issue got solved, although I've got to double check that. But the whole reciprocity arrangement issues that we've been discussing and consumer protections we've got problems with. So those are the main three areas of concern. Thank you.

MS. RANUCCI: Those that have been raised. But I just want to state them much more specifically so that I hope the Department understands this is not a vote that I want to be making because I really think that they're important things in here. I would specifically point to this state authorization and consumer protection language. I really applaud the Department for that. I do not want to down vote a proposal with that language in it, but I'm doing it for two reasons. One is on 26, there are two separate issues, one of which was very clearly articulated by Anne and Kelli. And I think it's not a deal breaker for me. I understand your position. The issue that's a deal breaker for me is the Department, in deciding that these programs should be ineligible instead of just excluding students from eligibility, has designed a method where students come into a program that they cannot finish the Title IV, where the Department knows that the institution knows that the students aren't going to understand that. And you said yesterday there's no other place in the Title IV program where that happens for students. And I just

cannot support a proposal that sets a precedent that we're going to have programs that we know from the outset can only be partially funded by Title IV. And I hope the Department really takes a look at that again, because I just I don't think anyone here thinks that is in the student's best interest. I would be fine reverting to the session two language. I also, to be clear, am fine with the Department's stated reasoning for that, which was that non-Title IV students should be able to participate in those programs. That's fine. My concern is with Title IV students who can start but not complete with Title IV. As for the transcript piece of the second thesis. So sorry. Just to be clear, I would be fine. Reverting to the second proposal. I think on the transcript withholding piece, I echo Ernest and Amanda's position and I was disheartened by, I think that the legal justification that seems inconsistent with what the Department has done before and the lack of fulsome discussion about it. I appreciate that the Department is taking steps to solve this problem, but I do have concerns that the language in 33 is potentially worse than not having language at all, to the extent that it's a tacit approval of all other transcripts withholding. And I would hope that the preemption arguments would lose, but I do think that it would pose preemption problem. Thanks.

MS. JEFFRIES: Okay. Thank you, Jessica. Did I miss anyone that dissented? I don't. Okay. So that concludes issue paper six certification procedures. We're now going to move on to issue paper seven, which is your final document on the 90/10. So, with that, Greg, you want to start walking through that?

MR. MARTIN: Sure. A couple of things here before we start with that. I am aware that there has been some language offered and some discussion involving A 3, revenue generated from programs and activities. What I'd like to do is walk through that. When we get to it, we'll walk through it and walk through the paper and then we'll be discussing these sections. And I know that Brad has some language, and I would ask him to discuss what he suggests there. At the end of the paper, if the Department has an offer of different language that I would put that up. But I think I'll walk through the paper first. But before we we do that, I want to draw everybody's attention to the fact that you do have appendix C in this round. So, you've looked at appendix C, appendix C to subpart B and I just want to introduce that briefly as that is the appendix C is the accounting protocol for how institutions are to actually calculate 90/10. So, what is in Appendix C is meant to reflect absolutely what is in the regulation. It's simply the protocol for actually doing the calculation. So. I'm not going to walk through every line item of it. Your advisor, David McClintock, who has a lot of experience in working with certainly current appendix C and has looked at the revised appendix C. has I know he has some comments he wants to make, and I want to give him the opportunity to do that. So, David, can I ask you, did you want us to put up the new appendix C for you? Is that what you intended? So, we can show when you discuss when you make your comments?

MR. MCCLINTOCK: Yeah. It might make sense to pull up maybe even the current version and people have it copy it. I assume you want to do it now. You know, appendix C wasn't in

the issue paper, so I wasn't sure when to ask the clarifying question.

MR. MARTIN: I think we could do it now, David, just because I want to get people aware of it. This is current appendix C. Did you have an old appendix C you wanted to show people?

MR. MCCLINTOCK: It was, Cindy circulated it to the group so we can only pull up one at a time, maybe pull up the old one and people have a copy of the current and we can do it that way. And some of it, Greg, I just want to make some clarifications. I know you've been, the Department's been, making changes to many issue papers and working through things. So, I know there's been a lot to update in the if you could pull up maybe the the old appendix C that I sent around. Oh, sorry. I switched to suggestion.

MR. MARTIN: No, I wonder if Vanessa can pull up the old appendix B.

MR. MCCLINTOCK: And if you can just scroll down just a little bit, Vanessa.

MR. MARTIN: There we go. This is the current appendix C, just to be clear. Okay. Go ahead, David.

MR. MCCLINTOCK: So, yeah, no, that's fine. And just I just want to clarify. So, in the appendix C that was circulated as an update to the calculation, there's a couple of key differences, and I just want to make sure that they were not intentional and you will make the adjustments. So, the third to last line and the chart we're looking at, it

refers to a revenue adjustment here. And in the updated charts in the appendix that was circulated, it seems to have been changed to refunds paid to the student. And the difference is if you received any funding or it's Federal or non-Federal funding above the institutional charges, whether or not you've paid that money to the student, it does not get included in the 90/10 calculation. The way that it works. And I just want to make sure that's still the way you intend the 90/10 calculation to work. So, it's not money paid to the student, it's the excess cash received. Is that right?

MR. MARTIN: That's correct.

MR. MCCLINTOCK: Okay. And then similarly, the new calculation does not have that line for the Title IV funds return due to the R2T4 the CFR reference there is to the refund calculations. And so, you'll be adding a line in there just to comply with the current calc because that [audio] Okay.

MR. MARTIN: Yeah, I'll take these, we do have our accounting expert who actually did the new appendix. So, she is monitoring this. So, as you go through these, Dave, Rhonda will probably be looking at this, I'll let you know, but yeah, continue.

MR. MCCLINTOCK: Okay. And again, I think they're unintentional changes. I just want to clarify it. I guess a suggestion or question I would have is having gone through 90/10 calculations with schools, I think it would be easier just the way it gets tracked and record it to include all those Federal funds, even the new sources into a single

section. The new appendix C hasn't broken out into a couple of different categories. And the way schools are going to do the calculation and say, okay, here's all the charges that have occurred and start applying those Federal funds in order and breaking it out into two pieces could add some complexities. It won't change the rate. It just might make the calculation easier.

MR. MARTIN: Thanks.

MR. MCCLINTOCK: Yep. But I think those are really the two main clarifications. I just wanted to make sure that I understood.

MR. MARTIN: Thanks, Dave. I'll try to get some I'll try to get some some some feedback on that.

MR. MCCLINTOCK: Okay, Thanks.

MS. JEFFRIES: Okay.

MR. MARTIN: Alright. Vanessa, do you want to put up the language again? Thanks. Okay. So, we're looking at 668.28. This is non-Title IV Federal revenue or 90/10. And in A general here in (a) (1) romanette one, we have updated this language here to reflect the intent or updated the wording, rather to reflect the intent of the language. And you'll see here that this is for any, so in romanette one, for any audit submission for proprietary institutional fiscal year beginning on or after January 1, 2023, Federal funds are used to calculate the revenue percentage include total for the program funds and any other educational assistance funds provided by Federal agency directly to an institution or a student,

including the Federal portion of any grant funds provided by or administered by a non Federal agency, except for non-Title IV Federal funds provided directly to a student to cover expenses other than tuition and fees and other institutional charges. We did correct that was originally books and supplies. And as it was pointed out, books are supplies may or may not be institutional charges. So, we had that discussion, I believe, at the last session. And so, we have cleaned up that language to make it consistent with the treatment of institutional and non-institutional charges. So, it would just be other institutional charges there. And moving on to A, see where we are here, (a) (2) romanette two A, we just fixed a typo here in the heightened as it changed to heightened cash monitoring. And in B, we have made some slight revisions to the language here for clarity. So, in B, for institutions under the reimbursements or heightened cash monitoring methods in 668.162 C or D 2, make disbursements to those students by the end of the fiscal year and report as Federal funds in the revenue calculations, the funds that the students are eligible to receive before requesting funds. So that was the some clarifying language made in that section. And the next change is in 5 on page three, so we'll go there. Thank you, Vanessa. And here we have added the word principal to clarify that it is consistent with current practices. So, this is revenue generated from institutional aid. And the institution may include the following institutional aid as revenue. For loans made to students and credited in full to the student's account at the institution and used to satisfy tuition fees and other institutional charges. The amount of principal payments made on those loans by current or former students at the

institution or rather that the institution received during the during the fiscal year. And I will stop there for now and entertain any comments or discussion about what we have discussed thus far.

MS. JEFFRIES: Thank you, Greg. Brad.

MR. ADAMS: Thank you. I've got just a couple of questions in here in one, romanette one. And I've asked this a couple times and we really do need to get an answer on it because the HEERF money is going to it could essentially run out past the effective date of this work or issue paper of July one of 23. We really need to know, is HEERF money considered Federal money?

MR. MARTIN: HEERF money is not counted under 90/10.

MR. ADAMS: Thank you. We would still like to see in that Federal Register a statement that basically says that any any new fund sources that occur during the year take effect for the institution in their next fiscal year following the publication in the Federal Register. Our concern is that if something like HEERF were to come up in the middle of the year and it was counted towards the 90 that we would not know that, and it would impact us potentially negatively. So, I'll just leave that comment that was issued in week two as still there. I see Mr. Finley's hand up, so I'm going to let him speak now. Or actually, I'm sorry, the facilitator. I'll defer to you. Sorry.

MS. JEFFRIES: You're all good. It's alright. I'm not territorial. So, go ahead, Steve.

MR. FINLEY: I just wanted to maybe ask a clarifying question and then explain why I'm asking it. And the question is, when you're asking about HEERF funds and whether they count, are you talking about HEERF funds that were paid directly to the institution for the institution or HEERF funds that the institution received on behalf of its students that were used to pay fund to pay charges for those students to the institution?

MR. ADAMS: Both.

MR. FINLEY: I'm not clear whether the funds paid to the to the students that were used to pay student charges. I think we need to discuss internally whether those are accounted for 90/10 or not.

MR. ADAMS: Proprietary schools weren't allowed to use any HEERF money for institutional charges. So, I mean, I'm sorry for student credit balances.

MR. FINLEY: Okay, so that's not really an issue then.

MR. ADAMS: It's not an issue for us. No. Only the nonprofits got that opportunity.

MR. FINLEY: Yeah. Thanks, Brad.

MR. ADAMS: For that second question, you know, I've still got a little concern on the way the, I guess it is in I'm sorry two romanette two how it's worded there. Again, our main concerns are that we follow institutional policies around requesting funds and that we follow those policies. So, I

understand the comments that the Department has made in the past around what they perceive as gaming the system. But again, we want to just make 100 percent sure that if we're following our own institutional practices, just because the charge was eligible to be pulled down, we're not going to get dinged for not pulling the money down. Again, I've given you examples over the last two sessions where our fiscal year end quarter starts right before that fiscal year end. And administratively, it would be impossible for us to get all the money in by that fiscal year end within a day or two. And so, I just we're still concerned with the wording here.

MS. MILLER: Brad, you have 30 seconds.

MR. ADAMS: So, you know, the Department, I don't know, maybe you can respond to my concern that should we add some language here about making it following institutional policies or normal course of businesses here that we should be able to be okay under two romanette two.

MR. MARTIN: All I can I say, it's not the Department's intentions to do a gotcha where a program start is right on that cusp and where it was it's not that. For instance, if it's the institutions policy to post disbursements and then draw. And that happens a couple of days later and put that in the next fiscal year. I think. I mean, I don't know. You know, I understand in saying you trust the Department's discretion is basically just saying that is a matter of trust here. We feel we need this in order to stop this practice of intentionally delaying those draws of funds in the next into the next year in order to affect the 90/10 calculation. We would not be amenable to putting anything in

here that would inhibit our ability to do that. I hesitate to go in the direction of, you know, school policy, because some schools could conceivably hide behind that policy in order to continue doing the practice, continuing with the practice that we're seeking to end here. So that's our concern. I don't know if Steve has any additional comments on that, but I'll ask.

MR. FINLEY: I don't have anything to add right now. Thanks, Greg.

MS. JEFFRIES: Okay. Thank you. Before we move, David, to your hand, the advisor, I just need to make a couple announcements. Will Durden is at the table for community colleges. Emmanuel Guillory is at the table for private, non private nonprofit institutions. Carney King has joined the table for students and student loan borrowers. And Jaylon Herbin appears to be at the table in place of Carolyn Fast. Is that correct? Jaylon. Okay. Alright. With that, Dave, take it away.

MR. MCCLINTOCK: Yeah. Greg, I just want to build on what Brad was saying just from an auditor perspective. And here's how I would envision evaluating this. The way it's written, it would be very difficult to determine if a student is meeting it or not. As an auditor and understanding, I think what the Department is trying to do. Schools have terms that begin throughout the year. Right. And have a pretty consistent timing of when they draw down funds. Do they wait two weeks after a drop/add period? Do they wait 30 days? So, I think as an auditor, we could establish what is their policy as far as when they draw down aid for a term and then comparing what they do at year end to those other processes, at least it

would give a benchmark as an auditor for something to compare it to. The way it's written, it would be difficult, I think, to determine.

MR. MARTIN: So Dave, if I hear you correctly, you're saying that if institutional policy was such that they waited us to a certain point to draw the funds, as you pointed out, maybe to wait for an add/drop to be over or something like that could be considered, if, in following that policy, the draw was occurred in the next fiscal year, right? But you're saying would give you something as not or to a standard to apply it and to say that well, clearly, the institution applied it here, but here it's obvious that they went four or five weeks to get over into the next fiscal year, right?

MR. MCCLINTOCK: Yeah, I understand what we're trying to do is purely delaying drawdowns only to pass 90/10 and I understand the reasoning. The example is yeah, a lot of schools wait until the drop/add because otherwise you pay Pell to a bunch of students, and they change their enrollment status and you have to adjust it. So as long as they're following similar timing. I think it would meet the requirement if there's a little tweak to the language to imply that, I think it would really help as an auditor to understand it.

MR. MARTIN: Yeah, I can understand that concern. I'm trying to think of any way we can incorporate something that would address that. We're coming down to the wire here. I will take that back. And we probably will have a lunch because we're getting up to that hour. So so maybe I can take that back and see if we would be amenable to a change there to

clarify that without undermining the intent of the regulation. I can't promise anything, but I will take it back.

MS. JEFFRIES: Okay. Adam, you're up next.

MR. WELLE: Yeah. I was hoping to talk about A 5 at the bottom of page three. So, unless if there's more discussion on the topic that we're on right now, I can wait and let Brad speak.

MS. JEFFRIES: I'm not sure that we've gone that far, right? Brad, Brad, is your comment.

MR. MARTIN: No, we went to we went through A 5 I believe. So, comments on A 5 were applicable.

MS. JEFFRIES: Yep, I was on the wrong page.

MR. ADAMS: My comment is on three romanette three. So, I'm fine if Adam wants to jump to five, I'm good either way but I'm done with the subject we just talked about and I'll wait on that.

MR. MARTIN: I don't mind the jumping around. It doesn't bother me, we we covered all of it.

MS. JEFFRIES: Okay, so, Adam.

MR. WELLE: Sure. So. The state AG reps circulated a memo on this earlier this week. But I just want to say, if I do, I'm glad the Department inserted the provision around, including only principal payments. I think without that it would incentivize institutions to impose higher interest rates on these types of loans. And this is consistent with the

purpose of 90/10. We propose changes to this section to clarify that these institutional loans that are covered by A 5 would include ISAs income share agreements that are offered by institutions. These income share agreements, these are financial products that defer a debt obligation. They create a debt based on payment of a finance charge over time. They should fall under this section for institutional loans. The CFPB, which enforces the Truth in Lending Act, which has provisions around private education loans like this, has taken this position. Other regulators have taken this position. The Department of ED recently clarified this position just a matter of a week or two ago. So, I think consistent with that income share agreement should be covered within this section regarding institutional loans to the extent those ISAs are offered by institutions their affiliates. I think that would be consistent and avoid confusion about how income share agreements are treated under this provision or the separate provision that the Department has proposed. I do appreciate the the intention of the separate provision, which we haven't gotten to yet on page four regarding income share agreements and that there's some consumer protections around those income share agreements. I would submit, however, that to the extent institutional loans are regulated by state law, it's not preempted by Federal law. These are not Federal loans. So, state protections around deceptive practices, usury, state licensing, those are in place, Truth in Lending Act, those are in place for these types of loans. And so, you know there would be a lot of the consumer [inaudible] that are pretty minimal, that are identified in the separate section would be

covered by a Truth and Lending Act, the Dodd-Frank Law, other things like that. So, I would strongly urge the Department to-

MS. MILLER: Adam, you have 30 seconds.

MR. WELLE: -wrap the income share agreements, make, clarify that income share agreements are covered within section A 5. Thank you.

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

MR. ADAMS: If you want Dave to go ahead, he's got his hand raised. I'm okay with that.

MS. JEFFRIES: Okay. I thought. I'm sorry. Go ahead. Dave, I thought your hand was a residual.

MR. MCCLINTOCK: No, I'm sorry. I did think there, well, I have one clarification I just want to make two now. So, something that Brad said, proprietary schools currently were able for HEERF two and three if they participated with written authorization from students to use those funds to help pay down balances. So, the HEERF one was not the HEERF two was it's not part of 90/10 now because we're talking about in the future obviously for that inclusion. And then just to clarify as well, I think it's good the Department added the word principal to make it more specific. It's always only, our interpretation, it always has only included principal again because of the clarification of the institutional charges that are included. And an interest expense is not an institutional charge that can be incorporated in the calculation. But certainly, adding the word principal makes it even more clear, I would say.

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

MR. ADAMS: Alright. I'm going to ask a question on three, romanette three, and then I'm going to request a caucus to get us up through lunch, if that's okay. My question is around the fact that when Congress approved the bill to change the wording as part of COVID to change the wording from Title IV funds to all Federal funds to move to the 90, they didn't approve any changes for the 10, and I don't think that was their intent. And so, my question is really, what's the Department's interpretation? I know opening up this issue paper allows you to make other changes, but why we're taking out the components of three romanette three everything that we're deleting here, when I believe Congress's intention was to clean up the 90 side of the balance sheet? And then after you respond, Greg, I do want to request a caucus for the last 10 minutes before lunch.

MR. MARTIN: Okay. I have no problem with the caucus, so we'll let the facilitators deal with that when it gets time for that. I do want to say before I respond to you, Brad, I do want to respond, we'll get to this, we just haven't got there yet because we started with five and we did loans. But I do want to clarify that under section five, which is revenue generated from institutionally, we do address the income share agreements which are under five, romanette three. So, we haven't got there yet. So, I do want to point out that it is there. So back to your question, Brad. Why don't we remove those? Well, we go back to the spirit and intent of 90/10, which is that a schools programs be, and I'll let Steve to add to this, but that a school's programs be of such quality that

students are willing to pay some cash for those programs so that it wouldn't just be Title IV funds that cover those expenses for those eligible programs. And that does key just to schools eligible programs that students are willing to pay for those programs and schools offering and for which they are receiving Title IV funds. This income is ancillary and not related to that principle. So that is why we in these regulations made the changes that we did in romanette three. Steve, do you want to add to that at all?

MR. FINLEY: No, I think that's in general. I mean, the Department took a look at at the current regulations on how the revenues were counted under 90/10. And we've looked at experience we've had over the years of areas where it seemed like some revenue sources were being created to count on the ten side. And we tried to evaluate, as Greg just mentioned, whether that was consistent with what we thought the purpose was for 90/10. So that's why you're seeing these proposed changes now and you know, I think that's it to explain where we're coming from.

MR. MARTIN: I don't want to impinge on the time Brad has for the caucus, so I don't know what the facilities want to do, but we could take questions certainly after lunch or however we want to.

MR. ADAMS: I think I've got some proposed language that we will discuss during the caucus that may give the intent that the Department is looking for there. And do I need a formally request to have the caucus for the video?

MS. JEFFRIES: Yeah. Just hang on one second, Brad. Adam, can your comment wait till after lunch so that we can afford Brad the time that he requested for his caucus?

MR. WELLE: That's fine. I just want to clarify something on section five so that addressed Greg's comment a second ago. But I can wait till after the caucus.

MS. JEFFRIES: Okay. Alright. Great. Thanks. Yes, Brad, before we break the livestream, we need to have it on the record who will be in the caucus. Who you're requesting to attend the caucus. Then we will stop the live stream and Brady will finalize the setup of that caucus room and move everyone into it. Okay?

MR. ADAMS: Yes, thank you. I would like the representatives from service members and vets and then the Department negotiator, Mr. Greg Martin, to attend in the caucus. That's all I needed.

MS. JEFFRIES: Okay. So, do you want the alternate and primary?

MR. ADAMS: Yes, please.

MS. JEFFRIES: Okay. Is the Department okay with that?

MR. MARTIN: Yes. Brad, would you be okay if I brought counsel with me?

MR. ADAMS: Yes.

MR. MARTIN: Okay. So, add Steve to that, please.

MS. JEFFRIES: Okay. So, add Steve to it. Alright. So, we have both the primary and alternate from the service members and veterans representatives, the Department's negotiator, as well as the Department's general counsel. So, we can break live. We will take a lunch. We will come back at 1 p.m. Okay? So, for the rest of you with that, I think we can go ahead and stop the live stream. Brady probably already has the rooms ready.

Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 3, Day 5, Morning, March 18, 2022

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

I would suggest the students in current programs are grandfathered with only the disclosure requirements currently in place.

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

I believe the language in (32) is clear enough that it concerns either the state in which the institution is located or the state in which the student is enrolled.

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

+1 Barmak

From Anne Kress (P) Comm Colleges to Everyone:

+1 Kelli I think students impacted by 26 also need to be grandfathered in

From Jamiene Studley-Accrediting Agencies (P) She/her to Everyone:

+ Barmak and Emmanuel to look closely at this issue and conformation with other related rules

From Sam Veeder (P) FA Administrators to Everyone:

+1 Kelli

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

I would support changes to (32) that clarify that the students' enrollment (and associated licensure/certification requirements) is determined at the point of initial enrollment. If a student moves mid-program to a state in which the program does not meet requirements, the institution may not know that and certainly couldn't control that.

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

+1 Debbie

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

+1 Jessica

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

+1 Jessica

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

+1 Debbie

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

+1 Debbie's comment in chat.

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

Also +1 to Debbie's comment

From Beverly Hogan Primary/MSI to Everyone:

+1 to grandfathering the students

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

I support the transition period proposed by Emmanuel

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

+1 Barmak - "the start of the program" should be added.

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

I agree with Barmak. The change that is necessary would be to clarify that the assessment of a student's state is taken at the time of initial enrollment.

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

+1 to Barmak

From Sam Veeder (P) FA Administrators to Everyone:

+1 Barmark and I support the transition period.

From Beverly Hogan Primary/MSI to Everyone:

+1 to Barmak's comment. We need to ensure the students are not unintentionally adversely impacted.

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

+1 to transition period. Schools will need time to meet the requirements.

From Jamiene Studley-Accrediting Agencies (P) She/her to Everyone:

and of course schools would be wise to tell students clearly at the initial enrollment point that state rules vary and if they relocate or plan to seek licensure in a different state from their location at enrollment they should check the requirements

From Beverly Hogan Primary/MSI to Everyone:

+1 to Jessica. The language should be more clearly aligned with expressed intent.

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

Jessica's comment could be addressed by having the rule apply to students starting in the first enrollment period after the effective date

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

+1 to Barmak, that would solve it

From Jamiene Studley-Accrediting Agencies (P) She/her to Everyone:

+ 1 to Barmak and Jessica

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

+1 to Barmak and Jessica

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

can you put that definition on the screen so we can all see it

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

Could it be on or after July 1, 2024

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

I am back at the table

From Emmanuel Guillory (A) PNPs to Everyone:

Honestly, it is still unclear

From Emmanuel Guillory (A) PNPs to Everyone:

I am not sure why ED cannot make this more clear in these regulations.

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

I would propose that we come back to this section once ED has come up with language that incorporates the language in 600.9

From Emmanuel Guillory (A) PNPs to Everyone:

Our reading is that students will lose eligibility if they move

From Emmanuel Guillory (A) PNPs to Everyone:

This can easily be cleared up by clarifying this in (32).

From Carney King (A) Students and Student Loan Borrowers to Everyone:

Agree with Ernest. We are here to stop bad actors

From Jamiene Studley-Accrediting Agencies (P) She/her to
Everyone:

Thank you, Ernest, for that strong statement.

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

Well said Ernest. I really hope ED promises to address
transcript withholding in the future

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

I would finish by saying that I would absolutely be moved
to a yes vote if we could talk longer about the differences
the Department sees in its authority on withholding compared
to other things it's acted on, and considered maybe even
banning or speaking against the practice under a certain
amount owed to protect low-income students.

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

But I appreciate everyone's patience with me on this.

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

I agree with Ernest's concern and I urge the Dept to
consider what other ways it could take on that issue.

From Jamiene Studley-Accrediting Agencies (P) She/her to
Everyone:

+ Anne re greater v lesser or another solution that does not endanger students in the admirable effort to press states to review length of program reqts and reduce unnecessary hours

From Jamiene Studley-Accrediting Agencies (P) She/her to Everyone:

+ Jessica

From Amanda Martinez (P) Civil Rights to Everyone:

+1 Jessica

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

+1 Jessica

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

+1 Jessica

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

And +1 Amanda

From Amanda Martinez (P) Civil Rights to Everyone:

+1 Ernest!!

From Beverly Hogan Primary/MSI to Everyone:

+1 to Anne

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

Jaylon Herbin is coming in now

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

I agree with many of the concerns raised, despite my upvote, and I do hope ED continues to reconsider the issues raised by Ernest, Jessica, and Amanda.

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

Emmanual will be coming to the table for Private non-profits

From Beverly Hogan Primary/MSI to Everyone:

+1 to Debbie

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

Carney King will be coming to the table for the duration of 90/10.

From Jamiene Studley-Accrediting Agencies (P) She/her to Everyone:

+ Debbie, room for improvement

From Anne Kress (P) Comm Colleges to Everyone:

Will Burden will be coming to the table for Community Colleges.

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

+1 David

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

that is exactly how we do that at South College

From Travis Horr (P) Servicemembers & vets to Everyone:

+1 Adam

From Jaylon Herbin- (A) Consumer Advocate & Civil Rights to Everyone:

+1 to Adam's concern on adding ISA's here

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

+1 to Adam

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

correct Dave. It has always been just principal only portion of the payment, so adding this language clears this up