

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
AFFORDABILITY AND STUDENT LOANS COMMITTEE  
NEGOTIATED RULEMAKING SESSION 3, DAY 4, MORNING  
December 9, 2021

On the 9th day of December, 2021, 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.

P R O C E E D I N G S

MR. ROBERTS: Good morning, everyone, and welcome to day four of week three of this negotiated rulemaking session hosted by the Department of Education. My name is Brady Roberts. I'll be facilitating this morning and I would like to move us quickly into a roll call so we can begin the subject of the day. So I'm going to ask folks to turn on their videos and just briefly say good morning as their name and constituency group is called out. So first off, we have Dr. Heather Perfetti representing accrediting agencies.

DR. PERFETTI: Good morning, everyone.

MR. ROBERTS: And her alternate, Dr. Michale McComis.

MR. MCCOMIS: Good morning.

MR. ROBERTS: Good morning, we have Ms. Jaye O'Connell representing FFEL lenders and or guarantee agencies.

MS. O'CONNELL: Morning.

MR. ROBERTS: Morning. And her alternate Mr. Will Shaffner.

MR. SHAFFNER: Good morning, everyone, 48 more hours.

MR. ROBERTS: Good morning. Next up,

we have representing financial aid administrators at post-secondary institutions. Mr. Daniel Barkowitz.

MR. BARKOWITZ: Happy holidays and good morning.

MR. ROBERTS: Good morning. Happy Holidays. And his alternate Ms. Alyssa Dobson.

MS. DOBSON: Morning, everyone.

MR. ROBERTS: Good morning. Representing four-year public institutions of higher education, we have Dr. Marjorie Dorime-Williams.

DR. DORIME-WILLIAMS: Good morning, everyone. Glad to be back.

MR. ROBERTS: Good morning. And her alternate Ms. Rachelle Feldman. Right. Next up, we have representing independent students, Ms. Michaela Martin.

MS. MARTIN: Good morning, I'll be on camera shortly.

MR. ROBERTS: No worries. Good morning. And her alternate Dr. Stanley Andrisse.

DR. ANDRISSE: Good morning, everyone. Pleasure to be here with you today.

MR. ROBERTS: Good morning Stan, likewise. Representing groups representing individuals with disabilities, we have Mr. John Whitelaw.

MR. WHITELAW: Good morning, everyone.

I'll be subbing for Bethany. She will hopefully rejoin us this afternoon.

MR. ROBERTS: Thank you, John. Good morning. Representing legal assistance organizations that represent students and or borrowers, we have Ms. Persis Yu.

MS. YU: Hello, everyone.

MR. ROBERTS: Hello, and her alternate Mr. Joshua Rovenger.

MR. ROVEMBER: Good morning, everyone.

MR. ROBERTS: Good morning, representing minority serving institutions, we have Ms. Noelia Gonzalez.

MS. GONZALEZ: Good morning.

MR. ROBERTS: Good morning, very early seven a.m. on the West Coast.

MS. GONZALEZ: Very early. And dark and rainy.

MR. ROBERTS: We're glad to have you and our other West Coast friends. Representing private nonprofit institutions of higher education, we have Ms. Misty Sabouneh.

MS. SABOUNEH: Morning, happy Thursday, everyone.

MR. ROBERTS: Happy Thursday. And her

alternate Dr. Terrence McTier, Jr.

DR. MCTIER: Morning.

MR. ROBERTS: Good morning.

Representing proprietary institutions, we have Ms. Jessica Barry.

MS. BARRY: Good morning, everyone.

MR. ROBERTS: Morning and her alternate Dr. Carol Colvin.

MS. COLVIN: Morning.

MR. ROBERTS: Morning. Representing states, state attorneys general, we have Mr. Joseph Sanders.

MR. SANDERS: Good morning, everyone. Glad to be here with you all.

MR. ROBERTS: Morning, Joe. And his alternate Mr. Eric Apar.

MR. APAR: Good morning, everyone.

MR. ROBERTS: Morning. Representing state, higher education, state higher education, executive officers, state authorizing agencies and or state regulators of institutions of higher education and or loan services winning the longest title for constituency group, we have Dr. David Tandberg.

DR. TANDBERG: Thank you. Pleasure to be here this morning.

MR. ROBERTS: Morning. And his alternate, Ms. Suzanne Martindale.

MS. MARTINDALE: Hi, good morning.

MR. ROBERTS: Good morning. Representing student loan borrowers, we have Ms. Jeri O'Bryan-Losee.

MS. O'BRYAN-LOSEE: Good morning, everybody.

MR. ROBERTS: Morning. And her alternate Ms. Jennifer Cardenas.

MS. CARDENAS: Hello, Buenos Dias. Good morning, everyone.

MR. ROBERTS: Representing two year public institutions of higher education, we have Dr. Bobby Ayala.

DR. AYALA: Good morning, ladies and gentlemen.

MR. ROBERTS: Good morning. And his alternate Dr. Christina Tangalakis.

DR. TANGALAKIS: Good morning.

MR. ROBERTS: Good morning. Representing U.S. military service members, veterans and or groups representing them, we have Mr. Justin Hauschild.

MR. HAUSCHILD: Morning, folks,

pleasure to be here.

MR. ROBERTS: Pleasure to be with you.

And his alternate, Ms. Emily DeVito.

MS. DEVITO: Morning, all.

MR. ROBERTS: Morning. Representing State Departments of Corrections, we have Ms. Anne Precythe.

MS. PRECYTHE: Morning. Good to be here. Thank you.

MR. ROBERTS: Morning, Anne. And we also have the constituency group dependent students represented by Dixie Samaniego and Mr. Greg Norwood. They won't be joining us this morning, but we will announce them when they join the meeting. We are also joined by two advisors who I will announce who have been providing expert feedback and guidance on subjects of PSLF and economic and or education policy. We have Ms. Heather Jarvis.

MS. HONG: Hello. Good morning.

MR. ROBERTS: Morning Heather and Dr. Rajeev Darolia.

DR. DAROLIA: Hello.

MR. ROBERTS: Good morning, Raj. Representing the Department of Education, we have Ms. Jennifer Hong.

MS. HONG: Good morning, everyone.

MR. ROBERTS: Good morning. And our colleagues from OGC, we have Mr. Brian Siegel among others.

MR. SIEGEL: Good morning.

MR. ROBERTS: Good morning. I also just want to say, because we are going to be picking up with PEP, we are also joined by Ms. Belinda Wheeler Wheeler, who served on the subcommittee.

MS. WHEELER: Good day, everyone. Good to be here.

MR. ROBERTS: Morning, Belinda.

Alright. Thank you, everyone so much. Oh, I see. Yes, we have Carol joining the table on behalf of proprietary institutions. So good morning, Dr. Colvin. I would like to pick us up where we left off yesterday on the Prison Education Program, and I'd like to first turn it over to OGC, to speak on some of the questions that were raised around the Clery Act. And as we do that, I just want to remind our alternate negotiators if you wouldn't mind just turning off your camera for the purposes of the live feed. So, Brian, if you are ready, would you care to respond to some of the questions that were raised yesterday on that issue?

MR. SIEGEL: Sure, I can do that. I



discussed this with with Daniel after the session yesterday, just so I fully understood his question and talked to our Clery Act compliance experts. The Clery Act compliance requirements are tied to campuses, so if an institution has a campus on a in a within a prison facility and owns or controls a building or property in that it would be covered by the Clery Act. We don't have a legal basis to exclude or to to exclude those institutions from requiring from complying with the Clery Act or to provide an exception for them. We also don't think it would be consistent with the requirements of the Clery Act, which basically are to provide information to students or faculty who work at the institution. We are, however, open to providing technical assistance to to the institutions which are in that situation and help them structure their situation in such a way to mitigate the burden on them, or to find a way to comply with the requirements without imposing additional burden. From our understanding this as a small number of institutions which are in this situation. Most institutions providing Prison Education Programs don't own or control property. So we think it's much easier and better, a better way to handle it on a case by case basis, working between the Clery staff and the institutions, rather than to try to provide a a

broader exception, which we don't have authority to do. I also note that if it's a campus. It has it does have requirements under other laws, including Title IX, that we don't have any authority to address either. So, you know, I don't, you know, we understand the issue. We appreciate the concern of the institutions. But trying to build an exception here, one is outside our authority and two, doesn't work for us. So if there are any questions, happy to talk about it and otherwise, I turn it back.

MR. ROBERTS: Thanks, Brian. Hold on, because I do see a hand raised, so Alyssa, please go ahead.

MS. DOBSON: Yeah, I think that this is sort of a result of our concern of classifying these places as a location and, you know, agreeing that if it is operating in such a way that it fits the definition, as is currently written for secondary location, then that makes sense. But when it doesn't, when it's offered largely as distance ed and you don't meet those other thresholds Brian that you talked about, such as owning or controlled by then it shouldn't be classified as a secondary location to begin with. And then that does eliminate any spillover into these other issues and regulations that we're talking about, such as Clery. So

I think the best way to sort of fix this and make it clear for everyone is not to classify them as a secondary location if they are not.

MR. SIEGEL: I think it's important to note that the whether or not you determine you define them as a secondary location, it's whether or not they meet the requirements under Clery as a campus, you know, owning or controlling property, as you noted there. That's a second requirement there. So from my perspective, it's the second question rather than the first, which drives the Clery the Clery issue.

MS. DOBSON: So if you read further into different pieces and parts of Clery, especially geography is one area that I can think of, it does refer to your secondary locations as Clery geography, and so it's just going to get even more confusing and and appear as though you're not really complying with what is written.

MR. SIEGEL: Again, I think that's something we're happy to deal with on a case-by-case basis, we think there are ways to limit the burden on institutions. Again, we think it's, you know, from our understanding, it's just a small amount, a few institutions which will actually own or control property. But it looks like to us there it would be

helpful to have some discussions between those individual institutions and not address it in the Department and not try to address it through a regulation which could have which would likely have some unintended consequences.

MR. ROBERTS: Belinda, I saw your hand, is this related to the to the current topic of campus security? Okay, you're good. Okay. Great. So with that, if there's no follow up for OGC, I understand the Department just has a very minor technical edit that they just want to walk through very briefly. So Aaron, if you wouldn't mind sharing the document now and just walking through that very briefly.

MR. WASHINGTON: Yes, so under 668.237 because of the Department removed. Let's see. Well, we just had we just had to do a technical edit. So on the draft that you all received, it says 668.241 and in parentheses, it says five through seven A five to seven. But we, because we removed recidivism from the "must assess" to the "may assess" the numbers kind of got out of sync. So we just updated the numbers. So it's so it'll be 668.4 241 A1 four through six for reviewing and approving the method for credits to improve the methodology. And I'll just take you down to 241, just so you can see that we were talking about. So the

accreditor is going to be we're proposing to the accreditor review and approve the methodology behind the experience, credentials, rates of turnover for instructors, transferability of credit to at least one institution in the state of the state that most are likely to return and also the Prison Education Programs offers relevant academic and career services. So that was just the one technical, purely technical edit. And.

MR. ROBERTS: Much appreciated. So before we solicit and invite any final comments or questions on this, David, I see your hand. Anything else for OGC or as it relates to the technical edit? Okay. David, please.

DR. TANDBERG: Realizing that the twenty five percent, no more than twenty five percent is a statutory requirement, but previously appeared, at least from what I've heard, that the public, nonprofit institution wanted to go above twenty five percent or happen to be above twenty five percent because of enrollment shifts. The waivers were granted nearly automatically, therefore relieving some of the administrative burden on the education providers. But it sounded like from yesterday's presentation that those waivers are being proposed to not be automatic anymore and that there'll be a more robust process. I think I

share a lot of Heather's concerns about the amount of administrative burden that we're putting on these institutions and their ability to even provide these services if we continue to overload them. So many of these institutions are low resourced, understaffed on the administrative side, preferring to focus their resources on the educational side. I wonder, I don't, I don't understand the 25 percent threshold to begin with. I think that's likely why it used to be an automatic process because 25 percent was likely pretty arbitrary with no evidence would be my guess. I would propose we continue the process as it existed and not adding any more administrative burden to these institutions around an arbitrary threshold. So that's my proposal. I welcome comments from the Department or the subcommittee.

MR. ROBERTS: Aaron, Stan, or Belinda, any any response for David immediately?

MR. WASHINGTON: I'll let-

MR. ROBERTS: Or Aaron and Belinda.

MR. WASHINGTON: No, I'll let Belinda go, this was her, this is a subcommittee recommendation.

MS. WHEELER: Yes. Thank you very much. Thank you for your for your comments, David. I definitely understand how the system has worked with the experiments for the first round and the second round,

looking holistically with the subcommittee experts that were obviously through different areas, but then also the work that Vera has done in supporting these these sites during the experiment there, the the the level of quality that we've seen has been all over the place with with expansion, and some of it has been the highest quality that you could imagine. And, you know, as technical assistance that we have provided support, it's been really seamless. However, there's other situations where it seems that quantity has been emphasized more than quality, which is the reason why, you know, speaking with my constituents, I brought it to the table for the subcommittee this idea of scaffolding up to ensure that quality is maintained as an institution goes to that quantity part. So I I definitely I hear you. I definitely hear your concerns. Just know from a positionality of someone who used to be a Prison Education Program director at a small, understaffed, underserved financially HBCU, I understand firsthand a lot of those challenges with administrative things and things of that nature. Also, with the Vera hat, I also understand, you know, just this positionality in this space, and that's why I brought it to the subcommittee that we really need to focus on making sure that, you know, I definitely want education. And the subcommittee

as well wants educational opportunities available to as many people as possible who are incarcerated. With a traditional student if they don't like a quality of a program, they can literally withdraw from an institution and literally walk across the street to another campus and start a different program. Our students who are currently incarcerated do not have that luxury. And I think it's really paramount on us to ensure that quality takes precedence instead of quantity. And then, of course, there are those scaffolds that allow that institution to go up to that 75 percent. So, you know, I think we agree to respectfully disagree with each other. I appreciate you allowing me the opportunity to kind of put my insight as to why I brought that to the subcommittee and why the subcommittee did support very much.

MR. ROBERTS: David, any response for Belinda otherwise, I'll move on to Heather. Okay, great. Heather, please go ahead.

DR. PERFETTI: I would just add that I would share David's concerns about the process and the timeliness of that process, as institutions are managing student populations and may see some increases to ensure that they received the waiver response in a timely manner.



MR. ROBERTS: Thank you. Yeah, Michaela.

MS. MARTIN: A little bit off topic than what's being discussed here, my apologies, but there's a section there in which says that in the decision making process that key stakeholders have to be engaged and I understand that it's [inaudible] They can't be voting members, but I just really like on the record wanted to say that I hope that that is taken seriously and that folks really are engaged during this decision making process and heard and that that isn't just kind of ends up being a tokenized position. It's like a checkbox from the from the regulations. And I would look forward to hearing after how that ends up being incorporated as part of the process.

MR. ROBERTS: Stan, please.

DR. ANDRISSE: So thank you and pleasure again to be here with you all. I just want to make something maybe that's that's obvious kind of clear is, you know, this has been passed into law that, you know, these Prison Education Programs one way or the other in terms of how the regulations go has, will move forward. So I mean, I think there's still and I say that because, you know, as an advocate in this field, I know there are just two sides to, you know, different sides

to this issue. And some people just don't believe prison education need to needs to be a thing. Period. Prison should be a place for punishment. And you know, I just want to emphasize that this is going into law. I mean, we are debating on the regulations. I think I know that's probably clear to everyone, but you know, we want to here, try to make it go in as effective as possible. And, you know, so voting down does not take prison education away. It's going and moving forward. And you know, I would just reiterate that the subcommittee, which was made up of a group of diverse experts, is in support of the format that it's in. So, you know, voting down may not even do what you hope for it to do.

MR. ROBERTS: Thanks, Stan. I appreciate the segue. Anne, I think you're going to be the final comments on this, and then we will move to a consensus check on the language recommended by the subcommittee. Anne, please.

MS. PRECYTHE: Thank you, Brady. And I just wanted to to just take a second and say as an operational person, I wanted to respond to Michaela's comment in the correctional leaders across this country take higher education very seriously in our institutions. It's a very important process that we engage in, and I believe, we believe as correctional

leaders in being much more transparent than years past. And we rely on lots of additional stakeholders to help guide us through the processes. We're not education experts, so we need people who are impacted by our programs, as well as people who (inaudible) that can guide us to be a part of that. We look at education like we do health care, like we do food services, like we do a lot of other things. It takes a lot of outside people to help give us information and resources. So for what it's worth, just know that the relevant stakeholders would never be considered token, if you will. We rely on those kind of people, and I appreciate the additional guidance from the Department suggesting who are really credible people that we should consider consulting with. So thank you for that.

MR. ROBERTS: Thank you, Anne, couldn't find my unmute button. So John, I see your hand, but I really would love to move us to a consensus check. Is it-

MR. WHITELAW: It's 10 seconds.

MR. ROBERTS: Go for it.

MR. WHITELAW: I just wanted to express our strong support for this, that folks in the disability community stand behind the work done by the subcommittee and we are strongly in favor of this.

MR. ROBERTS: Thank you, John. And so with that, what I'm going to ask everyone to do is really clearly and in front of your screen indicate a thumbs up, indicating strong support. The sideways thumb indicating you can live with the subcommittee's recommended language or a thumbs down, which means you have strong reservations against consensus. If that is the case, we'll provide you an opportunity to expand more on that. But with that, please, if everyone could show me their thumbs and I will announce them as they appear on my screen.

MS. MARTIN: For the record, Stanley is, Dr. Stanley is taking the vote for independent students.

MR. ROBERTS: Understood, thank you, Michaela. Alright. Jeri thumbs up, Anne, thumbs up. John thumbs up, Joe, thumbs up, Jaye thumbs up. Persis thumbs up. Heather thumbs down, Bobby, thumbs up. Noelia thumbs up. Carol thumbs up. Stan thumbs up. Justin thumbs up. David sideways thumb. Marjorie thumbs up. Dr. McTier sideways thumbs. Daniel thumbs down. So we have two folks who are not in consensus right now. I would welcome if Daniel, if you'd like to come off of mute and share your serious reservations, then Heather I'll ask the same.

MR. BARKOWITZ: So first of all, I want to express there's a lot to like in what's in front of us. And I, you know, I am voting no with some concern that I don't want to express a no to the work of the subcommittee. I appreciate very much the work of the subcommittee and I appreciate much of the work that's been done. The additional location piece and some of the concerns and I know Heather will share on the accrediting side, our concerns for my constituency so I can't get beyond them. That doesn't mean that I don't expect the Department will issue regulations very close to what we have in front of us. I have significant concerns that you won't see the participation you want or any of us want because of those limitations. So that's the reason for my my no vote.

MR. ROBERTS: Understood. Thank you. Daniel. Heather, please.

DR. PERFETTI: Yes, so I'm certainly also want to express appreciation for the quality of what the subcommittee brought forward and I think from working with my constituency groups and also hearing from some institutions and having some additional conversation this morning with the Department and trying to offer some alternatives, the Department is seeming immovable on some areas that I think can easily help get

those with reservations to consensus. And I think that those are also areas that the subcommittee expressed some concern in some of the regulatory language. So I do think that there are some areas that could be adjusted in a way that is beneficial for all constituents involved. I think the lack of clarity in process and institutional requirements, including the annual reporting, has raised concerns and has not been addressed and then echoing Daniel's concern that institutions will exit this space if the regulatory burdens seem too great is also a major concern. So those are the primary areas for the rationale behind my thumbs down here.

MR. ROBERTS: Understood. Stan I see your hand, but I just want to say this is always the intent with consensus checks. If there is proposed regulatory language that would move you to, at minimum, a sideways thumb. It's always recommended and encouraged you share that language with the committee, with the intention that it is there. If there is time at the end of the week, we will return to issues where we are not in consensus to discuss that further. But with that, Stan, please.

DR. ANDRISSE: Alright, so that is what my question was going to be. So, so thank you

Heather and Daniel for giving your reasonings. And I was just wondering, Heather, you mentioned that there was a conversation where you provided potential language remedies. Could that be shared with the committee?

DR. PERFETTI: It was around topics. There was some conversation about whether time should be spent on some suggestion suggested revisions, and they did not appear to be likely to be considered by the Department.

MR. ROBERTS: Mr. Steve Finley, who, just as a reminder, is with the Department of Education in their OGC Department, so please, Mr. Finley, go ahead. I believe you're muted right now, apologies.

MR. FINLEY: I think I put my hand down instead of unmuting, but I appreciate that reminder as well, it helps to to understand I'm speaking for OGC. I think the Department has has addressed the concern about the Clery question. You know, as Brian noted earlier, it really is the definition of campus where that modification should be made to make it clear that as long as the site is not under the institution's ownership or control, it's not a campus and it's not subject to Clery. It does need to be an additional location for purposes of the Department's tracking of these sites, given that there are separate requirements

that attach to these locations. But it seems like if there is still residual concern for Clery, that perhaps that could be addressed in guidance.

MR. ROBERTS: Daniel, please.

MR. BARKOWITZ: So again, the example that I provided to Brian yesterday in caucus, and I'll just, I'll state this publicly, for the record, is a Florida college who I know was in the pilot program, who had a separate building at the prison in which, at the Carswell institution, at which they were providing instruction and that building was under their control. It was done under their ownership. So I, you know, I think the question is how. And again, it's maybe too much for the two days or day and a half we have left, but how we define control is a really important one. So it's not that they do not own the building, they do not own the space but they are ceded the space and it is within their control. So that is that is the real concern I have. And Steve, I appreciate the Department's movement, and I would love to see that in in in guidance. And you know, and that is one of two issues. The more minor one is the second approval, but I could live with that. It's really the the first that is my stumbling block.

MR. ROBERTS: Thank you, Daniel.



Heather.

DR. PERFETTI: So wanted to add to the comments earlier and as a follow up to Stan as well, I think that some of the areas that we were talking with the Department about earlier today related to the shifts in the language that still held true to the statute because we understand that much of this is governed by statute. But perhaps removing what is not governed by statute into a different category that was not a requirement, but was optional in terms of the assessment and evaluation relating to that best interest of the student section. There are certainly pieces of that that are reflected in the statute, but there were some additions into that section that go beyond the statute. And those becoming a list of options for evaluation versus mandated requirements for evaluation seems a better approach.

MR. ROBERTS: Michaela.

MS. MARTIN: It's because I know we're about to move on. I just wanted to give like a huge, huge thank you to Dr. Andrisse and Dr. McTier, both of which are both on the regular committee and on the subcommittee, which means they're putting in like double hours and a lot of effort for for all of this. And I think that you all did really great work and to

everybody on the subcommittee, but especially those folks that are on both committees that so much I can't I can't even so thank you.

MR. ROBERTS: Thank you, Michaela, and yes, thank you very much for the work of the subcommittee. Any final thoughts from the Department on this issue?

MR. WASHINGTON: Yeah, what I wanted to okay Brady, can I speak?

MR. ROBERTS: Of course, yes.

MR. WASHINGTON: Okay, I wanted to share my screen again and ask. I wanted to share. You all can see that. Here is the proposed language that the Department could offer to get to hopefully allay some of Daniel's concerns with campus security reporting. So I'll try to make my screen smaller. We'll find the appropriate place to put this in the regulations. But it would say a campus does not include a federal, state, or local penitentiary prison jail reformatory, work farm, juvenile justice facility, or other similar correctional facility. No part of which is owned or controlled by an institution. So this is not this is not the I'm sorry, Brady, I just want to clarify this is not the specific regulatory citation where the language would go. It's just we can find the best place in the regulations for

it to go to clarify.

MR. ROBERTS: Any feedback for the Department on this new proposed regulatory text?

MR. BARKOWITZ: I appreciate it. I still think I'm stuck with the question of control, so you know, and we're are the only holdout I may actually move to sideways here, but there are other issues I know Heather has. We have concerns about reporting as well. There's there for me, secondary concerns for their concerns. But but I appreciate Aaron this attempt. It still doesn't address. I need to know what happens if I'm in control of the space at a carceral facility and what that means so campus. I do appreciate the carve out and I appreciate where the Department is trying to go and I would support this language, but it doesn't move far enough for me to change the vote.

MR. ROBERTS: Any additional feedback for the Department?

MR. WASHINGTON: Oh, no, I have nothing further.

MR. ROBERTS: Anything for the Department. Stan, please.

DR. ANDRISSE: So I I still am a little unclear on on Heather's reservation in terms of is it is it that we should more clearly note which was

statutory and which was regulatory in terms of the best interest section? I mean, so I mean, I know I know we we want to move forward from this and I don't want to hold this up. But I'm just wondering is if there is language that you could provide to the committee to where we can maybe help you know wordsmith it and maybe move to a place of comfortability?

DR. PERFETTI: Yes Stan, so I offered the suggestion, and this is just one issue that I have, but I'm happy to explain it. I on page, I think it's 10. There are assessment criteria that are listed. Some of those are by statute and some of those are not. I asked the Department this morning if they would consider moving those that are not required by statute under the provision that speaks to recidivism, which is a "may" versus a "shall". And there I don't. I don't want to speak for them. But but there did not appear to be the willingness to do that. So it's not a matter that I had to craft language. It was asking for those that are not mandated by statute to be more reflective of a laundry list of other criteria that the correctional facility and officials can consider, and also that institutions and other stakeholders can consider in assessing whether the program is operating in the best interest of students. And I believe that Terrence, who was with us

this morning, also indicated that there were conversations at the subcommittee level around the the possibility of other criteria that may be beneficial to consider, but those weren't included. So it's really a matter of all of the following have to be considered moving some of those that aren't required by the statute in a more optional kind of reflected space in the regulation.

MR. ROBERTS: Aaron, your response?

MR. WASHINGTON: I so the regulation specifically states that all of the following must be assessed and the and the reason the Department came back to the table with the language in small (b), which says the oversight entity makes the best determination through the feedback process with input from relevant stakeholders and in light of the totality of circumstances, was specifically to address that concern. We wanted to clarify that not meeting one of the requirements is not disqualifying, but it's an assessment of the totality of circumstances. The Department believes that it is in the best interest of students to assess all of the indicators under the "must" column. That assessment will help the Bureau of Prisons, the institutions, the accreditors, all stakeholders involved in the holistic process, determine

whether these programs are in the best interest of students. Not meeting one indicator does not mean that the program cannot continue to participate. It is an assessment of the totality of, its assessment of each of the indicators and reveal the totality of circumstances. Based on that assessment, so. Wanting to being wanting to ensure that we're taking many, you know, a holistic totality of the program into account, the Department believes that all of those indicators are necessary to at least be assessed to get a the best picture of the best to ensure the program is in the best interest of students. So I'll stop there.

MR. ROBERTS: Thank you, Aaron. So not not seeing any more hands. Just to currently recap where we are not in consensus on the recommended language of the subcommittee right now. But of course, if there is time to return to this issue and who are holdouts like to suggest preambulatory language or regulatory text that would move them to a minimum sideways thumb, meaning they can live with the recommended language. We would always encourage that. But with that-

MR. WASHINGTON: Brady, I'm sorry. Brady, one more question. Can I, I just want to clarify, Heather are you are you saying if we move, if are you saying if the Department were to move complete the

completion indicator to the "may assess" that would that would that be sufficient?

DR. PERFETTI: No, I think I indicated that that's one issue of several others, and I'm certainly happy to send those forward. We had talked about them this morning, but I'm happy to send them in writing forward. And if we can circle back to this with some language with Stan and Belinda's input and other members of the committee, I'm hoping that we can we can do that and address some of this.

MR. ROBERTS: That's appreciated. So before we go to PSLF, I just want to give us a quick 10 minute break just so we can we can prepare for the PSLF discussion and we'll return promptly, let's say a 10:55, so a 12 minute break. We will see everyone then. Welcome back, everyone, I hope you enjoyed your break, thank you again to the committee and the subcommittee for all their work and discussion on these issues. And again, I do want to reiterate the intention always is an issue we are not in consensus on, we will have time to reexamine things. So the Department is always happy to entertain and look over new proposed text. And so with that, I want to move us pretty quickly on to issue papers four and five on PSLF and Jennifer, it's my understanding you just want to walk through that a little bit.

MS. HONG: Just before we take the vote, again, thank you to the subcommittee on PEP. I know that they worked really hard to get us where we're at right now. And also before we take this vote on PSLF, I just wanted to. I did want to circle back to acknowledge Michaela's comment Tuesday afternoon during the public comment period regarding the very compelling personal testimony we've been hearing about individuals experiences struggling with student loan debt or the aftermath of coping with what amounted to a worthless degree. I think all of us have been affected by this testimony, and it's and it's disheartening to hear. I know you are affected Michaela, and I think it's important to acknowledge that. But it is Thursday of the third session in this unique process of negotiated rulemaking. Just want to bring us back here. I think the fact that we're here, we're having these conversations and making real and significant changes to improve these programs is a major undertaking and commitment on our part. Throughout the past few months, we've advanced the language before you based on the discussions from this table and the public testimony. And these changes have been substantial. In other words, we're not we've not only made suggested changes throughout these discussions, but we've demonstrated our commitment every



step of the way, including the prep work and outreach that went into this rulemaking. Even outside this rulemaking, the waivers we provided under the COVID emergency have already provided real relief to students and families. Most notably, the PSLF waiver, which as we speak, is providing cancelations for public service employees across the nation and specifically on PSLF just to review again, we've pored through both written and oral public comments to make the changes that we've proposed. As a result, we've expanded the definition of full time to be more encompassing and to ensure we include contracted employees and a broad definition for non tenure track employment. We even inserted the conversion factor and contact hours for faculty, as suggested by this committee. So thank you for that. We've clarified the definition of military service to ensure that organizations that serve our military and veterans qualify for PSLF. We've added several other definitions under the regulations to ensure we capture service provided by school-based services, public health professionals, public service for individuals with disabilities and the elderly. We've clarified our definition of employer providing a process of attestation on a form approved by the Secretary. Notably, we've greatly expanded what can be considered a

monthly payment, including flexibilities for multiple installments, conformance with our repayment plans and including time and deferments and forbearances as monthly payments. You may recall one of our public commenters at our last session talked about her struggles with the overlap of her payment and transition from one employer to another. We responded. We clarified the language to provide that the individual qualified by employment at any point during the month for which that payment is credited. We've included language to ensure that payments on Direct loans prior to consolidation count toward PSLF without the clock restarting. We provided for an automated process for data we may receive on federal employees and military service or any other entities in the future that we may receive on a data match. We've included a reconsideration process for borrowers that have been denied. Notably, we've also included Hold Harmless procedures for borrowers that have been steered into forbearances during their months of employment with a qualifying employer. We will include those periods of forbearance or credit for forgiveness. And we've included language for FFEL lenders to provide more detailed reporting to the Secretary on the program. So I mean, these changes are not insignificant. We we believe that these proposed

changes could make real differences in the lives of public service employees seeking forgiveness under the program. We appreciate all the feedback to get us to where we are today, and we look forward to reaching consensus on this issue.

MR. ROBERTS: Thank you, Jennifer. Before I invite final comments on this subject, I just want to just briefly go over how we're going to take the consensus check, it's going to go issue four, which is improving PSLF application, the application process and then issue five, which is related to definition so we can walk through that one more time. But at this point, I welcome final comments on this. Joe, please go ahead.

MR. SANDERS: Hi, thanks Brady and thanks Jennifer, for the recap on the Department's efforts here. At this point, I would like to call a caucus of all non-federal negotiators to go through issues four and five. And in particular, I want to make sure that we have our experts in the room, and Heather specifically.

MR. ROBERTS: Alright, let's pause the live stream and we can sort out the technology. Oh, wait, Jennifer before we do that, please.

MS. HONG: I just I just want to bring to your attention that we have a very significant

Borrower Defense proposed language rule that we have, we still haven't gotten to where we're a little behind. And I just I if you're going to take if you want to take a caucus, please do. But if we could just be mindful of the time here, really appreciate it.

MR. ROBERTS: And so with that, if you just want to pause the live stream, you can get everyone. Welcome back, everyone, and I hope you enjoyed that break period while the committee was in caucus. Thank you to the committee for being expeditious in that caucus period, so I would now like to invite any final comments for the Department in the committee's consideration before we move to a consensus check on issue papers four and five as they relate to Public Service Loan Forgiveness. Marjorie, please.

DR. DORIME-WILLIAMS: Yeah, thank you, I just have a really quick clarifying question with respect to the Hold Harmless procedures. There's a subsection that has a strike out where it says, excluding periods of in-school deferment. So are we to understand that to mean that if a borrower had deferment while in school, those deferments would count towards their 120 months or payments? Is that am I reading that correctly? Sorry, and it's on page nine.

MR. ROBERTS: Do you want a second

Jennifer?

MS. HONG: Yeah, can you go on to Daniel?

MR. ROBERTS: Sure. We'll get back to that one. Yeah. Daniel, please.

MR. BARKOWITZ: Maybe I'm trying to answer Marjorie, so maybe Jennifer this will help. What I read in that is that you can't qualify for months when you're in school based on that because it's not, in-school deferment is not a deferment that counts under earlier in the section. So the restriction is if you choose to pay while for in-school deferment, even if you're working full time, there's no way that could be counted. That's that sort of what I understood it to be. The Department may have a different read on it, but again, in-school deferments, not a deferment choice that counts as a payment period. But maybe I'm misinterpreting.

DR. DORIME-WILLIAMS: Okay. And sorry, go ahead, Jennifer.

MS. HONG: I don't even know how that got in there. That strikethrough. I mean, I think that was probably just internally. We don't need to make that explicit.

DR. DORIME-WILLIAMS: Okay. And so

then with those count for this, for what comes after for making additional payments later on or is it just we're not talking about in-.

MS. HONG: Yeah, we're not talking about in-school deferments.

DR. DORIME-WILLIAMS: Okay, thank you.

MR. ROBERTS: Persis, please.

MS. YU: So my comments are about both the both four and five altogether, and I think, you know, first of all, one of the things that's important to recognize and we've raised this over and over again is the link between Income Driven Repayment and Public Service Loan Forgiveness. The reason why it's so important to get people captured into Public Service Loan Forgiveness is because Income Driven Repayment has absolutely failed to get borrowers out of their debt. Right now, the best case scenario you get cancelation twice as long and it has and and frankly, close to no one has ever actually achieved that, right? And so it's so important, especially for our most low income public service workers to be able to get folks into affordable payments that provide a reasonable pathway out of debt. And we haven't done that for Income Driven Repayment, and we're not doing that for Public Service Loan Forgiveness. You know, we know that low income workers

are not looking at the tax status of their employer when they choose their job. So maintaining this distinction between for profit and nonprofit is both contrary to the statute and harms the most low income workers. We know that low income folks and all folks really, we've heard this over and over again have been steered into forbearances, and that's what we're not counting. The problems that we have seen for the lowest income and most vulnerable borrowers have not been addressed in either Income Driven Repayment or in Public Service Loan Forgiveness. And so that will be the basis for my vote.

MR. ROBERTS: Thank you, Persis. Not seeing any other hands Jennifer, would you mind walking the committee? What is actually subject to the issue number four consensus check? Oh Brian, I see your hand. Go ahead.

MR. SIEGEL: Yeah, just want to remind committee members that once we have a consensus check or consensus vote, if the Department, if the committee reaches consensus, we are bound to publish the the reg language approved by the committee on which we reached consensus as proposed rule that that will be. There's a small exception for if we change language, we have to explain why. But we've never done that. We've never changed language that that a committee has approved, and

it's been very helpful when we've been asked by other offices or other parts of the government to change language, to say we can't because it was approved by the committee. So if we get consensus, we publish the language as approved. If we don't reach a consensus, we're not bound by anything that was included that we included in the proposed language during these negotiations. So if there are changes that we made to accommodate concerns, they may or may not show up in the proposed rule. I don't know. I can't say they will, I can't say they won't. But there could be significant changes from what you see here in the proposed rule if there isn't consensus. So just wanted to make sure that you all know and most many of you are experienced negotiators, you've been through this before. But just wanted to make sure that was clear to everybody before the consensus votes are taken.

MR. ROBERTS: Thanks, Brian. Jennifer if you want to cue up issue number four for us.

MS. HONG: Great, Aaron, did you want to queue up the language, did you want me to project the language and just point to it? That'd be better? Yes. So issue number four is everything on page four, starting from page four, qualifying repayment plan till the end of the regulation deals with the application process.



Yeah, right there, starting from qualifying repayment plan to the end of the rule is issue number four.

MR. SANDERS: So they're transposed. Four is on the bottom, five is on the top.

MS. HONG: Yes, all the definitions are for issue five are at the beginning.

MR. ROBERTS: Alright. If you wouldn't mind unsharing, Aaron, just so I can see everyone's profiles very clearly. Alright. So I'm now going to ask to see thumbs on the consensus check for issue paper number four on PSLF. I'll read them off. Waiting just to see a few more. Justin (inaudible) Justin sideways thumb, Marjorie sideways thumb, Bobby sideways thumb, Heather sideways thumb Daniel sideways thumb Joe thumbs down. Jaye thumbs down. Noelia thumbs up. I'm sorry. Jaye Jaye sideways, my apologies. Yeah. John thumbs down. David sideways thumb. Jeri sideways thumb. Carol sideways thumb. Persis thumbs down. Misty sideways thumb. Michaela thumbs down. Jennifer thumbs up. At this stage, let's move directly into issue number five and then we can solicit additional guidance for the Department. So Aaron, if you want to reshare that document.

MS. HONG: And issue number five is everything from the beginning to where issue four begins

on page four. To qualify repayment plans, just basically all the definitions, including eligibility, full time employment. I see Raj has his hand up.

MR. ROBERTS: Oh do you, Raj? I'm sorry if you want to turn on your video, please..

DR. DAROLIA: That was a mistake. That wasn't.

MR. ROBERTS: Alright. Thank you, Aaron. Now, again, to take an official consensus check on issue number five as it relates to PSLF, please, I would love to see your thumbs. Right, Justin sideways thumb, Marjorie thumbs down. Bobby, I think that's a sideways thumb, Heather sideways thumb, Daniel thumbs down, Joe sideways thumb, Jaye sideways thumb, Noelia sideways thumb. John thumbs down. Persis thumbs down. Carol sideways thumb. Jeri sideways thumb. David sideways thumb. Misty sideways thumb. Michaela thumbs down. Jennifer thumbs up. So we are not in consensus on issues four and five for PSLF. Any new guidance or suggestions for the Department before we move to IDR? Michaela.

MS. MARTIN: Just I just wanted to reiterate that I just really didn't think that it went far enough that when we're going to try and capture public service, we cannot limit it to 501(c)(3). And

like any kind of corporate designation.

MR. ROBERTS: Thank you, Michaela, Joe.

MR. SANDERS: Yeah, I'll be brief because I think the Department knows where I am on this, but I don't think that we have done enough here to reduce the sky high denial rates. I think we need to think bigger. It's about time and public service, and that has to be the focus in order to get people to qualify. I'm concerned that payment counting is going to continue to be an issue once the waiver is done, and I'm concerned that FFEL loans are going to be continue to be a problem once the waiver is done. One idea that I haven't put forward that I'll mention here now is although I know the Department does not want to bind itself, if there could be some sort of acknowledgment of what the Department is going to do with the data that they're collecting, I think that that would be a big step forward in terms of taking some kind of step to help FFEL borrowers once the waiver is done. Potentially, this could look something like if there's a data match and the Department recognizes that someone both works in public service and has a FFEL loan, that the Department will send them some kind of a notification saying you are in the wrong loan type for

Public Service Loan Forgiveness.

MR. ROBERTS: Thanks, Joe. John.

MR. WHITELOW: Yeah, I want to comment on Brian's remarks before the vote, and I'm sure it was not intended this way, but it sure sounded like a veiled threat, and I think that's not helpful. I'm just going to say that telling us if you vote no, we we we will we can do what we like and that means we might do less. It's just not. We know this. There's no there's no other point I I took that as a an attempt to. I'm not sure that it was intended that way, but to sort of coerce us into voting for consensus, and I just think it's not helpful. That's not that. That is not going to make me vote yes when I'm going to vote no. And I just, you know, it felt coercive even if that was not the intent. And I apologize for going out on a limb and saying that. But that was how I felt when it was said.

MR. ROBERTS: Brian, I'm seeing your hand up.

MR. SIEGEL: Yeah, I just want to say that was not the intent, and I'm sorry if it was taken that way and I tried to to, my goal there was just in the past we have had questions as to whether we're bound by what's on the table when we take a vote. And I just wanted to make sure that the committee knew that we're

not. I understand that many of you are experienced negotiators. There are some who aren't. So that was my intent. I apologize if I said it in such a way that it was perceived as a threat, that's not what I intended, so I apologize.

MR. ROBERTS: Alright, and thank you to the committee for their deliberation on this. I'd now like to move us to IDR, and it's my understanding the Department would like to respond to the committee's suggestions from earlier this week.

MS. HONG: Thank you, Brady. So turning to IDR, just as a summary where we are with that, we've again in our attempts to conform PSLF and IDR, we've included again the deferments and forbearances toward monthly payments for IDR and including the Hold Harmless process as well for borrowers that have been wrongfully steered into forbearances. So those months of forbearance steering will count as monthly payments. We've included defaulted borrowers into IDR and that zero dollar payments can count toward forgiveness. We've included that the clock will not reset for payments after borrower consolidates. They will be able to count those payments prior to consolidation. And also, we've included an auto enrollment into IDR, but a critical feature of the plan

that we propose is lowering monthly payments for borrowers. We believe the marginal assessment will target benefits for those who have the lowest incomes while providing benefits to those who earn more. So, I mean, I realize that these changes may not be as comprehensive as many of you would have liked, but we will take your suggestions going forward. We feel like these changes will be important to borrowers going forward as well. That being said, many of the red lines that you suggested were captured in previous proposals that we ultimately did not include in the proposed text, but we did consider them, and we appreciate the thoughtfulness that went into some of those proposals. One thing we did change and it was an oversight in the proposed language was that we had meant to include under section H on page six for interest subsidy language. We want to make sure that that that language now includes subsidy on unsubsidized undergraduate Direct loans in addition to subsidized Direct loans. And that was a comment that you did put in in the red line. But we had intended to provide that for them from the outset. We also made a change that Daniel pointed out to include Americorps forbearance on page eight. So we're putting forward our proposed text with those two changes forward without the red lines for consensus check.

MR. ROBERTS: Okay, I'll open it up to the committee for final comments for the Department. Persis.

MS. YU: Well before we get to final comments because I have many final comments, but I have a clarifying question for Jennifer on on the change to the interest subsidy. I appreciate that we're now counting subsidized loans, but want to clarify that it is still just for zero dollar payments and not for anyone with any any sort of payments. Is that correct?

MS. HONG: That's correct, and we can look at the language right now just so you can have a peek. Aaron, if you can cue the IDR language on page, page four. I'm sorry, page six, paragraph H under interest subsidies. Under four, H four. During all periods with amount equal to the amount of accrued interest of the borrower's undergraduate, Direct Subsidized and Direct Unsubsidized loans and undergrad. And undergraduate, Direct Subsidized and Direct Unsubsidized consolidation loans.

MS. YU: Thank you for that clarification.

MR. ROBERTS: Thank you, Persis. Anyone else, any any questions or comments? Yeah, Michaela.

MS. MARTIN: So we're not even considering changing the name like none of the suggestions that we've put forward, not even just the name, but like in general, like there's been no substantial or even just surface changes or conversations. And so like, I understand we're going to consensus and I just usually you'll ask after, but that like I have to vote no, like, I appreciate that we're trying to lower payments. But I cannot support policy that just gives people a lifetime of debt like that is so overwhelming for me to have to consider, not to mention that if I vote yes and say, okay, we lower payments because like, that's something right, that then it silences me and my ability to further advocate and say that I don't support the rest of the policy.

MR. ROBERTS: Jennifer, see your hand.

MS. HONG: Yeah, I mean, I think I think there were a lot of great ideas. We just couldn't we couldn't make those changes in this moment, and we'll we'll certainly take a look at the suggestions further or contemplate them further. And we understand that this is not where the negotiators wanted the Department to land. But we'll continue to consider there your feedback as this process continues into the NPRM, including the name change suggestions.



MR. ROBERTS: Thanks, Jennifer. Jaye.

MS. O'CONNELL: Thanks, so I have a few remaining questions that I'd like to outline. More from, I guess maybe it's a little more practical. I just want to say, you know, dating back to 2009, we've been tracking and counting qualifying payments on FFEL loans toward forgiveness. So we get that we support it, but we don't fully understand the statutory authority that Brian referenced under 493 C B 7 how it's expected to work practically as we account for our loans and qualifying payments on the underlying FFEL loans. So. So the first thing is under the the 685.209 K 4 5, this is the provision where we count the underlying FFEL. Do we continue to count our payments as we do in FFEL regs? And that would be section 682.215 F. And if that's so, I'd like to add the F to that reference in the regulation. That's my first question. The second one is I'd like to illustrate with an example sort of how The Department views FFEL borrowers with mixed let's go with the undergrad and grad loans. Oh, how borrowers with mixed repayment timelines like how is that supposed to work? So. And I think this also speaks to giving the the plan to undergrads and not grads. So if you have an undergrad loan that has 10 years of repayment forgiveness credit and then they've subsequently taken

out graduate loans that have only five years of qualifying payment credit. When you combine those loans through consolidation into DL, how much does that new consolidation loan get? We've, on FFEL we have counters on loan

MR. ROBERTS: Thirty seconds.

MS. O'CONNELL: okay, so I guess those are those are the two questions, and I'll get back in line.

MR. ROBERTS: Any immediate response from the Department? Otherwise we can we can come back to those. Not seeing anything, Jaye. We'll come back to those, but but Marjorie, please.

DR. DORIME-WILLIAMS: Thank you again, I think for all of the work that the Department has tried to do on this, I just need to come back again to this issue of graduate borrowers. It's really problematic for a number of reasons. One, some graduate borrowers are also undergraduate borrowers, so we're actually adding complexity and increasing the likelihood for confusion in making these distinctions between when you got your education and for what. I think again, we need to treat borrowers fairly. Some graduate borrowers have no undergraduate degrees undergraduate loans for a myriad of reasons. And so these individuals are now

being penalized and punished in a way that doesn't make sense. And I think the Department hasn't actually answered why we're creating these distinctions between borrowers. And then finally, where we started again, this doesn't address issues of equity in education or educational outcomes. There's been numerous evidence and research presented that speaks to why many borrowers have to get additional education and additional degrees beyond the fact that they're simply professions you cannot enter without those additional degrees, which connects to PSLF, as Persis pointed out. And I think we're further disadvantaging students who are already marginalized, including students of color, women, and the same low income students that we say we're trying to help. So I just want to go on the record saying that again, making it really clear that that language is problematic and doesn't do I think what the Department said that the aim was, was to make this simpler, to make this a plan that all borrowers are going to go into. And so I just I have to go on the record and say that again.

MR. ROBERTS: Thank you, Marjorie.

Persis, please.

MS. YU: Thank you. I want to just start with this idea that Michaela started with and our disappointment in the Department's reluctance to accept

really meaningfully any of the suggestions that we have made. it is very hard to accept that the Department's assertion that it is negotiating in good faith here. You know, we we have given you substantial feedback and received basically nothing, you know? Where is the data that we requested on numerous pieces about who is in these plans, how you know, how are their payments being applied? What are the constraints that the Department and that this administration is under when it's making these determinations that it just can't do this right now? What is the basis for that? We we don't, you know, we have not been given the information through this negotiation to really make meaningful choices to provide, you know, feedback. This is the first time we've seen language and it was, you know, take it or leave it. This does not seem like it was truly a negotiation in good faith. And I think that that is very disappointing and it kind of belies the purpose of this entire process that if you were to give us the, what are your constraints, we could tell you what is the higher priority, but it has been take it or leave it this entire time. We haven't even gotten the data I requested for an update of the 32 borrowers number. How many borrowers have ever received cancelation under Income Driven Repayment? We don't yet know that number. We know

it from about a year ago, it was 32. It's abysmal. We've seen with the Public Service Loan Forgiveness, the the Department and the administration has taken strides to right a lot of the wrongs through the PSLF waiver. There are a number of folks who were left out of that waiver. And the PSLF regs have attempted to remedy some of that, although much of it is still lacking. But we have not seen the same kind of attention on Income Driven Repayment on low income borrowers who Income Driven Repayment has not been serving. So what are the constraints that the Department has been working under that has made all of our recommendations that we have been providing. We have provided pages upon pages of recommendations and aside from just hearing that the Department and the administration is not prepared to do this right now. We have not been given the feedback that we've needed to provide you with meaningful recommendations moving forward. I will reserve the rest of my comments till after Justin goes.

MR. ROBERTS: Thank you, Persis.

Justin, please.

MR. HAUSCHILD: Yeah, thanks so much.

I just really wanted to convey our extreme disappointment in this proposal, I think it's worth noting and the Department appears to have done so what

really seems to be overwhelming opposition to this IDR proposal, and while I voted in favor of the PSLF language because I think it addresses some of or perhaps even the majority of the most substantial obstacles to borrower forgiveness under that program for my constituency, I think there are very real issues that exist within that program still. And I think the Department's unwillingness to put forward an agreeable solution on IDR has exacerbated many of those remaining deficiencies and really colored the conversation around that topic and perhaps even the vote we took earlier today. So in our view, the Department has seriously failed to meet the moment here to build a plan that addresses what I think and others I would imagine would agree with are the well-documented qualitative and quantitative evidence that shows that the current IDR plans and I think Persis just said this, that really shows the current IDR plans are insufficient and which suggests that this plan will probably be unable to rectify in terms of insufficiencies. So I just want to make our position on this on this issue abundantly clear, particularly in connection with the PSLF. So thank you.

MR. ROBERTS: Thank you, Justin.

Persis.

MS. YU: Thank you, and what I'd like to do is I'd like to go back to the stated questions the Department has asked us through the process to go back to what we've been told the priorities of this process would be. And this is to really reiterate the point that Marjorie was making earlier. But in the first issue paper, we have solution number six. Data shows that underserved populations and communities of color face higher rates of student loan struggles than others. What design factors and changes can be better support, equitable access and success in repayment? So we care about racial justice here. I care about racial justice. I believe that this administration cares about racial justice. Yet this proposal is not responsive to the reality that faces borrowers of color. Borrowers of color are disproportionately going to take on Parent Plus Loans and be graduate students. And I wanted to just point out like, what a disparity this really is like looking at. I want to point us back to the article on MarketWatch from last month that discussed the experiences of black women with student loan debt versus white undergraduate men, right? And the data that shows that a white man with an undergraduate degree on average earns seven dollars an hour more than a black woman with a graduate degree. And so mapping that out, like, let's

look at what that means for what they will pay under these plans, right? So a black woman in a family of four making \$50,000 a year is going to have over, in REPAYE have to pay monthly over \$100. The white man, with an undergraduate degree making \$50,000 with a family of four, will pay zero. How is that equity? It is not equity. It is not fair. It is a failure of a racial justice analysis to exclude graduate borrowers and Parent Plus borrowers, Parent Plus borrowers right now have to do ICR, and unfortunately, I wasn't able to get my calculator up faster, but that is an even higher than 100, you know, \$109 a month. So we're really just on the dollar amount by income there is a racial disparity here and that is unfair and we need to address it. Turning next to on the first page of the issue paper, although IDR plans reduce monthly payments, borrowers who pay less in the rate of accumulating interest see their balances grow, sometimes significantly. We've heard a number of public comments talk about that. We have expressed a lot of serious concern about the impact of growing loan balances and what that does for borrowers' success longevity wise. You've done something for a zero dollar borrowers, and I appreciate that. But it really fails to help a lot of low income moderate income borrowers, right? And it creates just this financial



cliff and financial cliffs, as we all know, are just bad public policy. We need to have. Thank you. I'll return.

MR. ROBERTS: Thank you, Persis. Joe, please.

MR. SANDERS: I previously expressed most of my concerns here, so I'm not going to belabor the point, I'm adding plus ones where I hear of supporting other people's comments. I'm just going to put a big picture framing out here. I think EICR should have been a clear best choice plan for everybody in order to alleviate the alphabet soup of IDR plans that creates confusion and keep people out of the programs, to be honest. So I think that EICR is very far from a best choice plan, and it's only going to add to the confusion surrounding IDR. I don't think that this is the overhaul that IDR needs, and I urge the Department to seriously consider the items that we provided in the line by line because I think instituting those could get this to where it needs to be. Thank you.

MR. ROBERTS: David, please.

DR. TANDBERG: Yeah, thank you. I think we're really at a crossroads here. I've paid attention to negotiated rule makings for a number of years now and participated in a past one. I don't know that I've seen a moment where a committee and the

Department are so far apart that the committee is in such large agreement regarding a clear direction that they think policy and regulatory language should go. And I find that somewhat concerning. We have a collection of experts here who have offered line by line edits. I think Persis has become the unofficial spokesperson of our concerns and I think did a really excellent job laying them out. And I I feel like more explanation is needed from the Department regarding why they're unable to consider the specific points. I don't know what's holding them back. And I think the committee deserves a bigger explanation, if and in particular, if these proposed blind edits aren't going to show up in the final publish regs are going to be. You know, we're we're speaking for very large constituencies who are all have a vested interest in this program, and I think we need to just better understand that the gap between the committee and the Department.

MR. ROBERTS: Does the Department want want time to respond to that?

MS. HONG: I, you know, I will just say that, you know, what I'm hearing is that we've made substantial improvements to the PSLF program and they're still thumbs down on that. This is a negotiation. We've been here in good faith and as I mentioned before, we

had priorities with IDR. We face some real legal challenges, some some hurdles that we just simply couldn't rectify in time for this session. That being said, there are some real gains here in terms of I realize it's not comprehensive enough for this committee, but to completely write off all the conforming changes that we made between IDR to PSLF to ensure that those changes are similar. That to include the deferments in the forbearance to to provide a pathway for defaulted borrowers. Those are big wins and I understand that didn't go far enough for you all. And we are going to continue considering this. We simply this was a very ambitious agenda. I think we all have the same interests at heart here in terms of borrowers and student low income, high need borrowers. I understand. I understand all the comments that were made here. We'll take them into consideration going forward in the NPRM. But I do I disagree with the fact that we, you know, to say that we have not done anything is, I don't think that's a fair assessment. And you have not, you've acknowledged that we've done so in PSLF and we still gotten thumbs down on that. We've been here in good faith from day one. And you know, that's all I can really say in terms of IDR plan. But we've we have we have from from the time that we've received feedback

from you all, we have incorporated those suggestions, not all of them, not all of them into the text, but we have taken them very seriously and we'll consider consider them going forward as well. So I appreciate the feedback.

MR. ROBERTS: So conscious of the time I am inclined to, I would like to take a check on this and then return to this if there is time understanding that folks who are thumbs down will have the time and space to explain why they are dissenting to the Department into the greater committee and those who are watching on the live stream. But but I do see hands up, Justin and Persis. Is that check amenable to the committee understanding that you will be given time for for a dissent?

MS. YU: I mean, I guess you listen to us now or you listen to us later, so.

MR. ROBERTS: Fair enough. So with that in mind, I would ask for a show of thumbs for a consensus check on the IDR issue. I will I will announce the thumbs as I see them. Okay. Justin thumbs down. Marjorie thumbs down. Bobby thumbs down. Heather thumbs down. Daniel thumbs down. Joe thumbs down. Jaye thumbs down. David thumbs down. Jeri thumbs down. Carol sideways thumb. Persis thumbs down. Misty thumbs down.

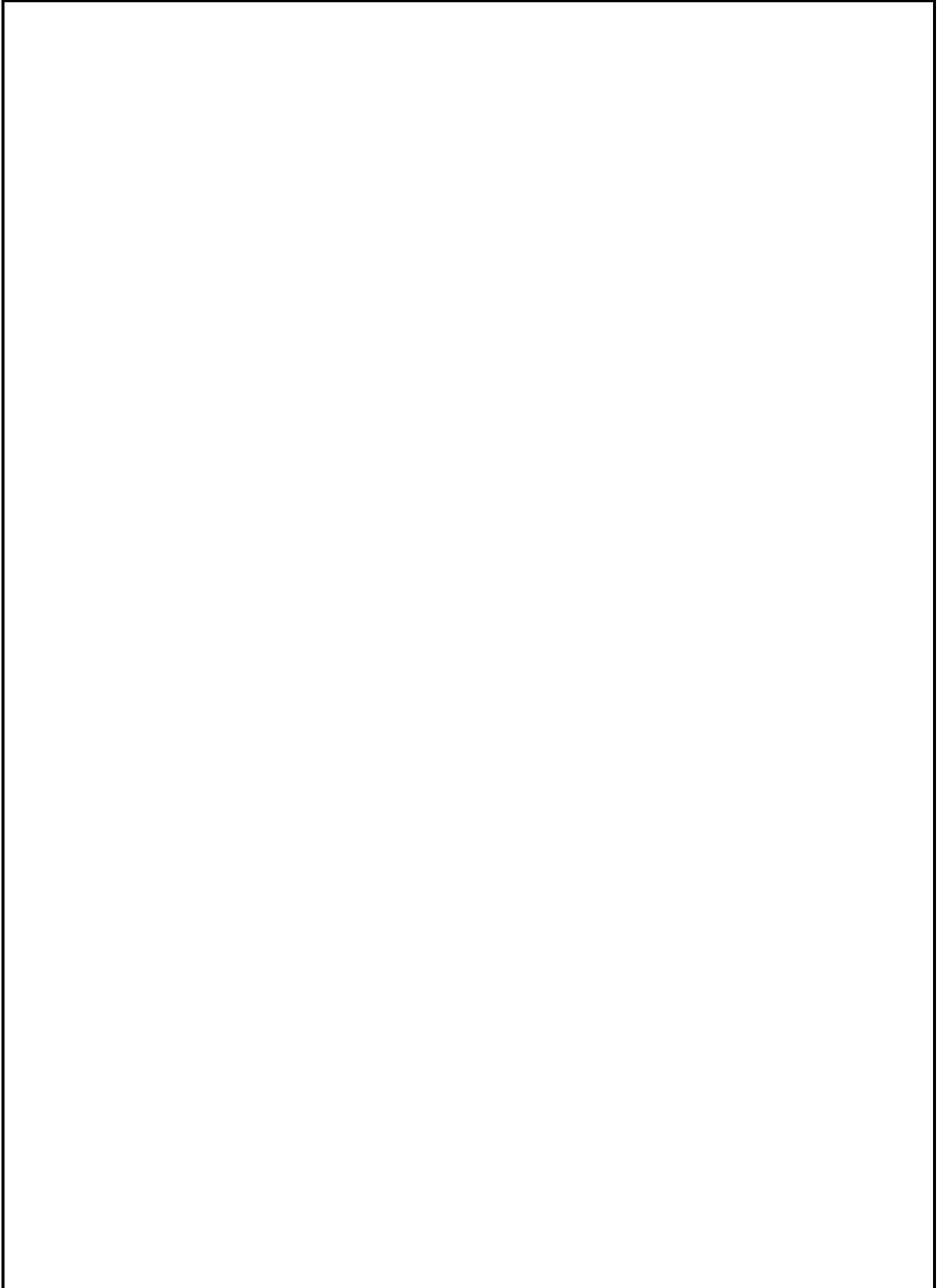
Noelia sideways thumb. Michaela thumbs down. John thumbs down. Jennifer thumbs up. What I would like to suggest now knowing that we are not in consensus. Oh, David, I see your hand.

DR. TANDBERG: Did you record? Excuse me, did you record Misty's vote correctly? I thought it was a sideways thumb and I think you said it was down.

MR. ROBERTS: I apologize. Misty was a sideways thumb.

MS. SABOUNEH: I was going to throw that in the chat. Thanks, David.

MR. ROBERTS: Oh, I apologize. But with that in mind, I would like to give people their opportunity to step away from the computer and we will resume at one with explanations from the holdouts and then move on to Borrower Defense. But thank you for your work in this morning's session.



**Appendix**

**Department of Education  
Office of Postsecondary Education  
Zoom Chat Transcript  
Affordability and Student Loans Committee  
Session 3, Day 4, Morning, December 9, 2021**

DISCLAIMER:

Note: The following is the output of transcribing from a recording. Although the transcription is largely accurate; in some cases, it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

From Will (A) FFEL Agencies to Everyone:

getting coffee brb

From Misty (P) Priv. Non-Profit to Everyone:

Dr. Mc Tier will be primary for the morning session

From John S. Whitelaw, A-Disabilty (he/his) to Everyone:

John W will be at the table this morning for Bethany L. She sends her regrets and will rejoin us this afternoon sometime .

From Heather-PSLF Advisor to Everyone:

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-12-07/guidance-ffel-and-perkins-loan-program-participants-limited-public-service-loan-forgiveness-waiver>

From Michaela Martin to Everyone:

7am is so painful

From Misty (P) Priv. Non-Profit to Everyone:

+1 to Michaela haha :)

From Daniel (P) - Fin Aid Admin (he/his) to Everyone:

In ONE BREATH!

From Jessica Barry, Proprietary (P) to Everyone:

Carol is subbing in for me this morning.

From Daniel (P) - Fin Aid Admin (he/his) to Everyone:

Stepping out so my alternate can speak.

From Will (A) FFEL Agencies to Everyone:

Offering a prison program may not be for every education institution.... I am sure they need to look at a variety of variables when making the decision to participate

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Will

From Michaela [P] Ind Students to Everyone:

thank you

From Josh (A), Legal Aid (he/him) to Everyone:

I don't want to take up time saying this so I'm putting it in chat. Notwithstanding the lack of consensus, my hope is that the Department utilizes the incredible work of the subcommittee and puts forward its proposal in the NPRM.

From Will (A) FFEL Agencies to Everyone:

+ 1 Josh



From Jen(she/ella): (A) Student Borrowers to Everyone:

+1 Josh

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

From Stan (A) Ind. Students to Everyone:

+1 Josh

From Michaela [P] Ind Students to Everyone:

+1 Josh

From David (P) - State hi ed agencies to Everyone:

+1

From Justin (P) Servicemembers and Veterans to Everyone:

+1 Josh

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Josh

From Daniel (P) - Fin Aid Admin (he/his) to Everyone:

+1 to Josh as well. As I said, there is much to like and I hope the Department uses this information to guide their NPRM.

From Persis (P) - Legal Aid (she/her) to Everyone:

+1 Michaela!

From Suzanne Martindale (A) state regulators to Everyone:

+1!

From David (P) - State hi ed agencies to Everyone:

+1 - huge thank you!

From Misty (P) Priv. Non-Profit to Everyone:

I'm back as primary

From Daniel (P) - Fin Aid Admin (he/his) to Everyone:

I don't want my objection on PEP to be a stop to moving the language forward as it is. I appreciate the work of the subcommittee but I cannot vote yes where we are.

From David (P) - State hi ed agencies to Everyone:

I support the caucus.

From Joe (P) State AGs to Everyone:

+1 Persis

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Joe payment counting

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+100000 John, the comment was very disconcerting

From Jennifer Cardenas to Everyone:

+ John

From Michaela [P] Ind Students to Everyone:

+1

From Bobby (P) - 2 Year Pubilc Colleges to Everyone:

+1 thank you Marjorie

From Jennifer Cardenas to Everyone:

+1 Marjorie

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Marjorie

From David (P) - State hi ed agencies to Everyone:

+1 Marjorie

From Joe (P) State AGs to Everyone:

+1 Persis

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Persis

From Suzanne Martindale (A) state regulators to Everyone:

+1 re data requests

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 data

From Bobby (P) - 2 Year Pubilc Colleges to Everyone:

+1 Persis

From Jennifer Cardenas to Everyone:

+ 1 Persis

From Michaela [P] Ind Students to Everyone:

+1

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Persis

From Heather-PSLF Advisor to Everyone:

+1 Persis

From Michaela [P] Ind Students to Everyone:

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From Joe (P) State AGs to Everyone:

+1 Persis

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

Thank you for following up with the specific language Persis.

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Persis - Thank you!

From Bobby (P) - 2 Year Public Colleges to Everyone:

+1 Persis Thank you

From Jennifer Cardenas to Everyone:

+ 1 Persis

From Misty (P) Priv. Non-Profit to Everyone:

+1 PERSIS!

From David (P) - State hi ed agencies to Everyone:

+1 Persis

From Justin (P) Servicemembers and Veterans to Everyone:

+1 Persis

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Persis

From Suzanne Martindale (A) state regulators to

Everyone:

+1 persis - negative amortization is an anomaly in the consumer credit world, and not justifiable policy

From Heather-PSLF Advisor to Everyone:

+1 Persis

From Justin (P) Servicemembers and Veterans to Everyone:

+1 Joe

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Joe

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Joe

From Misty (P) Priv. Non-Profit to Everyone:

+1 Joe

From Heather-PSLF Advisor to Everyone:

+1 Joe

From Joe (P) State AGs to Everyone:

+1 David

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 David

From David (P) - State hi ed agencies to Everyone:

i don't think anyone has said that ED has done nothing.

From Jaye (P) FFEL Agencies to Everyone:

Q1: Under 685.209(k)(4)(v) do FFEL holders count payments made prior to consolidating as qualifying payments as currently outlined in FFEL regs §682.215(f)?

From Jaye (P) FFEL Agencies to Everyone:

Q2: re: 493C(b)(7) If a FFEL Borrower has undergraduate loans with 10 years repayment forgiveness credit and graduate loans with 5 years repayment forgiveness credit. When the loans are combined together through Consolidation, how much forgiveness credit does the new Consolidation loan receive?