DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

INSTITUTIONAL AND PROGRAMMATIC

ELIGIBILITY COMMITTEE

SESSION 1, DAY 2, AFTERNOON

January 19, 2022

On the 19th day of January, 2022, the following meeting was held virtually, from 1:00 p.m. to 4:30 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. MILLER: Alright, good afternoon, I hope you had a good lunch. We have a lot to get through this afternoon. Just some housekeeping, Ashley Schofield is now in for Beverly Hogan. And David Peterson is in for Sam Veeder for financial aid. So, they are at the table. Welcome them. And just another reminder that we have a lot to get through, and if we can make an effort to not repeat, that's also in the protocols, and what would be most helpful for the Department is if you focus on what should or should not be in, be in the papers. You're always welcome to put your information in the chat or your proposals in the chat, then send them to Cindy and she will give them to the Department for consideration. And finally, there was a request for a temperature check before we broke for lunch. So, at this time, we will not be taking a temperature check on that. And the reason is there's no regulatory text in that request. And, so, we have to deny that request at this time. Anything else for housekeeping before I turn it over to Greg?

MR. ADAMS: Yes, ma'am, can I clarify the temperature check I requested?

MS. MILLER: Okay.

MR. ADAMS: The Department granted

Anne's request to do a temperature check on whether or not the committee was comfortable going back to the 2014 GE rules as a baseline. I would like to request a temperature check on using the 2014 GE rules and apply it to all institutions by using the Direct Loan Agreement Quality Assurance Authority in Section 453 of the Higher Education Act. The Department just allowed this to go on, and so I believe my request was consistent with what just took place. Additionally, there was significant support for the philosophical idea of using the 2014 GE rule as a baseline. My request is simply asking whether we should use a different statutory authority and apply that 2014 gainful employment rule to all institutions.

MS. MILLER: Thank you for that. Greg, did you want to address that?

MR. MARTIN: Yeah, I'll address it and then I'll see if, I think Steve is still my attorney, right? If he has anything else he wants to add. The request for the earlier request for a temperature check on the on using 2014 as a baseline, you know, was in the context of regulations that are, that were, that were promulgated at the time and referred and did specifically refer to GE. Here we're talking more about in a sense and here, since there have been and the and the question was asked in, you know, what metrics should we impose for for GE? I think we're talking more about a philosophical statement at this point. Should, the existing GE, if it's posed this way, should the existing GE, I'm sorry, the former GE rules from 2014 apply across the board?

MR. ADAMS: [Inaudible] in Section 453, yes. Again-.

MS. JEFFRIES: David.

MR. ADAMS: [Inaudible] baseline.

MS. JEFFRIES: Adam, Adam, please, let Greg finish his statement. Thank you.

MR. MARTIN: Because we're talking another thing, too, is that, you know, as it's been pointed out, that your earlier point about that we would have to depart from GE in order to do what you suggested is somewhat at odds with the suggestion that we should use the 2014 rules to apply to all institutions, since that is since the statutory authority there is based on GE and that is solely applicable to programs that prepare students for gainful employment in a recognized occupation. So, at this point, we're not amenable to any more temperature checks regarding that. But I don't know if Steve has anything to add, but I will give Steve the opportunity to respond.

MR. FINLEY: Just to support what Greg said, I think that's just outside the scope of the discussion on this issue. I understand why you would want to make that point in your introductory comments, but this is just like a question about the composite score and financial responsibility that's not going to be included in the scope of these discussions, and we're already presented with a very ambitious agenda, you know, for talking points for the rest of the week.

MR. MARTIN: Thank you, Steve.

MS. MILLER: I hope that addresses your question. If you have any more to say, could you please put it in the chat? We really need to move forward at this time because it's still on question number one.

MR. ADAMS: And may I just say that we've, you know, granted temperature checks on noncodified regulations like misrepresentation and aggressive recruiting in the last issue paper. This isn't a philosophical argument. We provided you statutory language for what we could potentially use. And the question is using the same general metrics, but applying it to all institutions, and I'll request one one final time. But I would really like to do a temperature check to see what the committee thinks of this approach as a starting point.

MS. JEFFRIES: And let me just address that. You are free to submit that regulatory text to the Department for consideration, Brad. The last issue papers and all issue papers, with the exception of this one, have regulatory text associated with them, hence the temperature checks. This one does not. The fact that there was a temperature check taken on GE regarding the use of the 2014 reg text as a baseline, again, it had regulatory text associated with it for the committee to consider. So please feel free to submit regulatory text to the Department for their consideration. Those types of things are helpful and that is what they're looking for, and they're just trying to get that feedback and get as much of that text into them so that they can between sessions go back and draft some regulatory text, taking all of these ideas into consideration in drafting that. So, with that, Roz, I'm going to ask you to move on. I think that we were completed with question one and ready for question two, if I'm not mistaken.

MR. MARTIN: That's correct, Cindy. What I'd like to do here is to take, you know, you'll note to question two and question three are somewhat related. So, I'd like to take them together in the interest of time, and I think that they're closely related enough that we can do that. And I would ask that that the negotiators confine their responses to addressing the question itself. I know we all that there are strong feelings about GE in general and applicability in general, but I'd like to restrict comments to the to the nature of the questions themselves. So, question two is how should the Department address programs with low earnings outcomes, even when they might already have low median debt levels? And these would be programs that may have passed under the 2014 gainful rule. But, because the debt levels were low, even though the students had relatively low income or the graduates had low income, they would have passed. And in conjunction with that, obviously to do that would require, probably require the use of additional metrics unless that metric we use by itself, but so we're asking what are the benefits of using a combination of metrics versus a single metric and including whether a program prepares students for gainful employment and a recognized occupation? And the pros and cons of using these multiple metrics versus a single metric and just for, you know, a little bit of historical context. If we go back to 2014 and look at the metric, the rates metric that we used, it had two aspects to it. There was a discretionary income rate and then an annual earnings rate, but they were part of the same part of the same metric. So, we would be considering here. This is we're putting it up for consideration whether or not the Department should look at other metrics and what should those be. So, I'll leave it open for discussion at this point.

MS. MILLER: Barmak, I see your hand.

MR. NASSIRIAN: So, addressing question number two, I think Adam Looney's suggestion of having a baseline comparison earnings comparison to high school graduates is a particularly constructive idea. And I would suggest that unlike the 2010 GE reg, that any additional again, we want to preserve the 2014 rule at the core of what we do here. But any additional metrics should be additional requirements. They should be conjunctions, not disjunction. It shouldn't be that you get to pick which metric you want to pass. It should be that you should pass all of them because they're intended as safety nets. This is particularly applicable to veterans, many of whom end up exhausting their GI Bill benefits at the institution and then have to take on additional debt. It is very unfair to simply judge the performance of that program on the basis of how much debt they incurred. The fact is they exhausted their GI Bill benefits, so I think an earnings metric as an additional requirement to the to the 2014 regs makes a lot of sense. I want to emphasize the other metrics. We have to put some things up front to prevent victimization, only to find out years afterwards that we made a mistake.

MS. MILLER: Okay. Thank you. Johnson.

MR. TYLER: Yeah, I just think having multiple metrics that you're measuring is going to create, with complexity comes a little more accuracy. There's just not some bright line that's all up or all down. And so consequently, having a combination of factors seems like a more equitable thing, more fair thing, and more precise thing. And I think the 2014 rules have that in them.

MS. MILLER: Okay. Seeing no other hands. Jamie, I'm sorry, I couldn't see you.

MS. STUDLEY: No, it went up toward the end. Briefly, I wonder if the Department has any indication of what kinds of programs might be affected. Some would be programs that where graduates should have a good income level, but I'd hate to leave us with no early childhood education teachers or to understand what the impact would be on fields where the institution has done its best to keep the debt low. Recognizing that the field is a relatively low paid one, obviously all of these can act to misrepresentation and fair promotion and description to students about what they can expect. But and I'm not asking for a fancy data request, but I think to answer that question, it would help to know what kinds of whether there are entire fields that would be hard to continue to support and schools are not in a position to reorient to, this is another one where there are big social issues involved. We have some fields that are poorly supported out there in the world. We have some people who are not paid in equitable ways. Trying to understand whether these choices would make those situations better or worse would be important to those the decisions that we will have to make later in the process about what additional measures to use and what consequences we think they might have. So, anything the Department can do to tell us where that those effects might lie could help us know when additional measures would be protective or potentially risky.

MR. MARTIN: Thanks, Jamie. We'll take that back. I'll ask to see what we can provide. So, you're looking for something to do with like how it would affect, for instance, a profession like early childhood care like that type of thing?

MS. STUDLEY: Yeah, I mean, that was that was an example that comes to mind where I know that or at least I believe I know that earnings may not be strong. And if high school graduates include a wide range of fields, this one may be called out by a rule. And I just want us to be able to understand whether that's something we want to do, need to do, whether those as often happen with GE, whether it becomes the responsibility of the programs and the field in general to reduce costs, reduce debt. This one would not be debt related, whether we have the ability to have the institutions adjust to get higher rates or whether we would have consequences that could be troubling. I see Anne made a comment that suggested from the community college perspective, that's something worth understanding better as we try to make these decisions.

MR. MARTIN: I'll take that point back, I don't know what we have currently as far as any data that would point to that is. But I will go, I will certainly find out. Thank you.

MS. MILLER: Jamie, if you could put that in the chat for us. Emmanual, I see your hands is up.

MR. GUILLORY: I just had a question for the Department and wondering when you say low earnings outcomes over what time period is that the 2014 rule had a three-year earnings data that began, and I know for me, three years out, I wasn't making as much as I am now, obviously, because I've now been working for 13 years since I graduated with my master's. So, I was curious when we're talking about low earnings outcomes, is that at a five-year mark, is that at a 10-year mark, you know, just kind of what's the timeframe there?

MR. MARTIN: Well, we haven't determined that yet. We're still considering what that ought to be. I think that's a good point you raise that certainly earnings over a five-year horizon would, if we look at the five-year horizon at the end of that earnings, be higher. And of course, the downside to going with a longer horizon is that it delays the calculation, obviously, and delays the effectiveness of it. So, I think there's a lot of things on either side of that, but we haven't yet proposed a a number of years.

MS. MILLER: Carolyn, and then Anne.

MS. FAST: Yes, I just wanted to echo Barmak's point that if we were to add a metric on, it should be an additional metric that institutions would have to pass rather than sort of an option like either or like either [inaudible] or because that could potentially cause some concerns. One of the things that is nice about the 2014 debt to income ratio metric is that it also creates an incentive for schools to be thinking about how they can decrease the debt of students. And so that's something that I wouldn't want to be lost in the rule, which could happen if there was sort of like an option like, well, either satisfy A or B. On the other hand, I do like the idea. And so that's so ending the sentence there. I think there should not be a A or B. It should be A and B if we're going to layer another metric on top of what already exists in 2014. But that being said, I also would like to say that I do think that looking at income compared to high school graduates is a valuable thing to be looking at because we want to understand, is there value in this program? And I think that is a good way to determine that. And I am sensitive to the concerns raised by others on the committee that certain occupations just have lower earnings. And that certainly makes sense. But if, in fact, that there is no gain relative to a high school student for participating in a program, you do kind of wonder what is the value of that program? So certainly that would be, it seems to me, to still be a valuable metric to be considering.

MS. MILLER: I'm going to get this right one day, sorry. Thank you. Anne.

DR. KRESS: So just a couple of points

to go back to Jamie's earlier discussion. I think one of the challenges and I think to sort of answer one of Carolyn's questions, what's the value of this program? I think it's important to recognize that in a number of these professions, higher ED has no control over the various licensors and certifications that are required as a barrier for entry into these professions. Childhood education is a great example. And, so you know, we definitely recognize that the wages need to be higher. But that is not what the marketplace is providing, even though it's requiring folks to have a certain level of certification that they can typically only get by engaging in postsecondary education. So, I mean, there's a real market mismatch there. The other thing I just want to go back to is the earnings comparison of a high school degree to someone getting out of the gainful employment program. And I just want to caution us that the devil's always in the details. And so, when you're looking typically at an average high school graduate’s wages or earnings annual earnings, you're looking at an aggregate potentially of years of experience that this person has accumulated in the marketplace that has value. Whereas when you're looking at a graduate from a GE program, it is typically their first wage, not their wage multiple years out. That's another argument, maybe for figuring out what's the right apples to apples comparison here. So, you can really see the delta that's provided by their participation and postsecondary education. Those are details that can be worked out as we go through this, but I just want to flag that for everyone.

MS. MILLER: Thank you, Anne. Okay, Brad.

MR. ADAMS: Thank you. Now, I believe we should support low-income metrics in combination with other metrics in evaluating an institution’s program success versus a single metric or threshold that suggests a one size fits all approach. It doesn't account for different standards or different parts of the country for different types of programs.

MS. MILLER: Thank you, Brad. Okay, I don't see any other hands on this. Are we ready to move to question three, Greg?

MR. MARTIN: We are, I think, actually on question four because I put two and three together. So just in talking about, you know, a combination of metrics which might be necessary if we were going to look at earnings specifically. So, I move on to question four, what are the benefits of allowing institutions multiple consecutive years of failing a metric based on post-college earnings? What are the risks of allowing multiple consecutive years? What factors should the Department consider in specifying how passing and failing metrics in consecutive years are related to the trigger of sanctions? I'll open it up.

MS. MILLER: Barmak.

MR. NASSIRIAN: So, to go back to the 2014 reg and my recollection of that rather painful experience, post facto, I would characterize the Department's approach at that time as so overly cautious, mainly because it had just lost a significant round in court and hadn't made the political decision to act decisively. So not only did they really water down the standards themselves, they then attenuated the rather sort of weak standards that they did agree on, by introducing this time element into it. So, the short answer to the question, obviously, the risks are entirely on the cohort of students that are plugged into a program that is given multiple chances, the benefit of every doubt before a final judgment is rendered about its inadequate quality. Now you know I can understand you don't want a sudden death, perhaps, but the idea of extending it, I think it extended under the 2014 reg to as long as seven years, which is ridiculous again, emphasizing that this is a condition of eligibility, not a post facto sort of weeding out. So, to whatever extent we can fortify the upfront stuff, a little bit of extra time on the back end makes sense. But it does require some significant meaningful metrics on the front end before programs establish eligibility in the first place.

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

MR. ADAMS: Thank you. You know, allowing an institution multiple consecutive years could help account for abnormal variances and normal market fluctuations. It would be interesting to do an analysis on how the COVID-19 pandemic impacted people's ability to earn an income in 2020. You know, the previous rule from what I recall was very historical-looking, it was looking at debt from '08 to '12, depending on how many people you had in your cohort and then comparing that debt and call it 2017/2018 to an income in 2016. And it didn't allow for institutions to make changes, so there may be deficiencies. So, I think maybe we consider old institutions accountable if they fail, but maybe still maintain Title IV eligibility, submit a development or develop and submit an improvement plan similar to what we do with accrediting agencies when we have issues so that would [audio].

MS. MILLER: Thank you, Brad. And I don't know if it's just me, but your sound is coming in just a little bit muffled. Just wanted to make you aware of that. Ernest.

MR. EZEUGO: Yeah, I would just, kind of following up on Barmak's comments here, and in many ways, even in response to some of Brad's comments on this point, reiterate and kind of take this opportunity to ask the committee to kind of think about and consider reframing this, reframing what multiple consecutive years of failing the metric means here, from a conversation about numbers to conversation about the lives of people who are affected. I think it's easy to and, you know, to have an expression of sympathy towards [inaudible] points, I think it's easy to consider the ways in which the numbers may fluctuate over the course of several years. I think that doesn't change the fact that, you know, whether it be in kind of in reference to an event one time, kind of a rare event like this pandemic, or whether it can just kind of be as a way of operating and then as a matter of business, each year that you know, the Department would consider a college that is failing its students has serious repercussions, for as Barmak mentioned, cohorts of students that go through a problem, and it's in many ways kind of unconscionable, unconscionable to think that any number of years of waiting to see if that changes beyond what is absolutely necessary and fair would be something that the Department would consider kind of taking into consideration here. So again, I just want to really reframe this conversation around like an understanding that each year, something like this passes or courts or students that we are actively failing under the guise of thinking through, you know, some of these inclinations of, well, maybe there will be change here or maybe, you know, we're in a rare event and thinking about the consequences of that.

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

MS. AMANDA MARTINEZ: Just trying to add a different point here, I think students and those cohorts of students have been waiting for years and we've seen the impacts of having a longer time period of really the Education Department not doing anything or not using its authority or its past authorities to really regulate in this space what is done. What we have seen is completely millions of students trying to do their due diligence and going through the process, and what do we have? Still, millions of claims of Borrower Defense claims, you know, still waiting, so we know what the risks are. The Education Department has seen years of students being stacked with debt, being trying to have their claims, finally be waiting for their claims to finally be administered of the wrongs they've been done. So really, any risks of trying to extend a time period, I think there's a reasonable time period, but any, you know, longer time period or is really going to end up in this current reality that we are in, in which students are just going to be stacked with debt for the rest of their lives. They're going to be, they've been waiting for the Education Department to actually protect them. And really, the Education Department has really not done that and has really been on the side of institutions in this matter. So, the risks are extremely high. And I hope that that point is extremely clear today. There's evidence to back that up and students are continuously being mistreated currently and are only, you know, their future does not look any type of, even given the additional economic crisis that we're in today. So, the Education Department should really take those risks at hand. And I just want to make sure they're hearing that.

MS. MILLER: Thank you, Amanda. Debbie.

MS. COCHRANE: Yeah, this seems to be

an area, I know there are probably many, where some analysis might be very helpful in informing what the timeline should be. Certainly, you don't want to delay consequences for programs that we know are failing the standards that are set out, but also, you know, anomalies do happen and occasional shifts happen. And so, I think it would be very helpful to actually see an analysis of the constancy of earnings in particular, as well as that from programs from program graduates or whatever the whatever the metrics are moving forward and just looking at the level of stability. I think that would help inform what the right time period is. And I know the prior rules had a phase-in period where to kind of get at some of those issues related to kind of using older data comparing to new data. My hope and assumption at this point would be that nothing like that is needed at this time just because I know you know institutions and programs did make changes in response to that rule. And the story goes that those changes have stuck. So, I think if that is true, then we wouldn't need a phase-in program. But I thought that was a relevant precedent to point out.

MS. MILLER: Thank you, Debbie. Emmanual.

MR. GUILLORY: I just want to quickly

add that I think that the 2014 rule is fair in the three-year window where you if you fail two out of three consecutive years, then you lose Title IV eligibility for the following three calendar years, which is a little bit more stronger than the cohort default rate process, where it's three years for the three-year cohort default rates. If you are above 30, then you lose eligibility for the next two fiscal years. So, I just wanted to reiterate the 2014 rule I think does set a pretty decent timeframe.

MS. MILLER: If you'd like to put that in the chat, please feel free to do so. The same goes for you, Debbie. Are there other hands? I don't see any other hands, so I think we can move to question number five.

MR. MARTIN: Okay, we're going to move to question number five. Before we do, I just want to point out as a reference for people that if because so many of you have brought up the 2014 rule and elements of it, of course, you could go back and reread the whole rule. But I will point out that there was an excellent Dear Colleague done on this. I will remain silent as to the authorship of that letter that came out in 2015. And in all fairness, it does, whether it's excellent or not, is a question for all of you to answer. But it's 15-12 [inaudible] 15-12, so you can get that on our Partner Connect formally IFAP website, either will work. If you pull up 15-12, it will walk you through the elements of the of the ‘14 rule. So, I think if you, for anybody that doesn't have a background in it, I find it even helpful now to go back and review things as opposed to looking at the rule. It's a very compact and I think a fairly decent overview, so I just point that out. If people are looking for a reference, well, that was where the consequences of, you know, the two out of three years or something if you want to find the reference for that. Again, that's [inaudible] 15-12. Alright. Moving on to question five, how should the Department balance the burden of institutional reporting requirements with collecting data as detailed as was required under the 2014 gainful employment metric? We have a couple of examples there. For instance, the cap on median debt at tuition fees, books and supplies of the student required institutions to report that figure for each student. What was the benefit of the inclusion of that cap? We also asked a reference to the inclusion of institutional and private debt required institutions to report additional debt amounts for each student. That would be that we don't have on NSLDS. What was the benefit of including those types of loan debt? If the Department did not include the additional reporting of institutional and private loan debt, might institutions have an incentive to increase nonfederal borrowing? And how might the Department mitigate such concerns? So just a little bit of context here that we're in looking at the 2014 rule. For those of you who are reasonably familiar with it, you know that there was a great deal of institutional reporting required that was necessary to calculate the rates. These, this question keys to a possibility for the Department to maybe move in the direction of more of an administrative calculation with information or data we already have and the program level data we now have on NSLDS is much more robust than what we had when the previous rule was negotiated. So, we do have some capabilities we didn't have at the time, but these questions are referencing items which we which we currently don't have the ability to capture, such as the, you know, to do the cap on median debt and tuition fees, books and supplies. We'd have to have those figures for each school, which previously were provided under the reporting protocols. Likewise, we included institutional debt, private loan debt as well, and we had to have schools report that to us via, it was through NSLDS, but not the normal NSLDS reporting mechanism. So, we're just asking that question within the context of if, you know there's administrative ease, simplicity versus some things you might lose in going in that direction if that burden were to be eased, so we are just asking for input as to how we might balance those things off.

MS. MILLER: Thank you, Greg. Okay, Brad.

MR. ADAMS: And before going into A, B, or C, I would like to request the Department that if we could automate as much of the processes as possible, that would be greatly appreciated. I remember going through the process back in 2016 and getting the first the spreadsheet of completers and then having a process to appeal if there were inaccuracies. And then three or four months later, we got the list of debt tied to those completers and there was a process to appeal. All of this was via Excel spreadsheets, by the way. And then the third step in the process was then getting the salary information that came from the Social Security Administration. And all that being said, that, you know, there was good merit in intent, I believe with the calculation. But the way it was rolled out was very burdensome on institutions. It did require a lot of hours and a lot of money to comply, and I just would like to look at any way possible of automating as much as possible. I think [inaudible] had several articles. It would be interesting to hear from them what their thoughts are on this, but they've had several articles about some of the issues that were that occurred back in that timeframe. So that would just be a general comment to automate the extent possible. It was a lot of work on Excel, the previous time.

MS. MILLER: Okay. Marvin, I see your hand up and Yael, I also see your hand up, I just want to make sure that I'm addressing a request that was in the chat from Jamie to further explain the figure. How detailed was the reporting debt to person or debt to student using the definition or something more? And Jamie, if you'd like to clarify what you meant in that take, take a few seconds to do so.

MS. STUDLEY: It's really both Greg and Brad and possibly others may have some experience. We don't have to make the final judgment today, but just trying to understand whether median debt, which seems essential to the calculation, is really hard to do. At first, I read it wondering whether the school had to total out books and supplies, and I was prepared to say, oh, well, maybe that's not needed, but I know that if you don't have that, you have behaviors that can go, to avoid the rule, you can have behaviors in raising fees if they're not reportable to avoid having it in a tuition number. So, I understand why the Department needs a total debt per student or a total debt for the cohort. But I'm just wondering why it's hard? Does it have to be done just for this? Because it does seem like a necessary element to be required.

MR. MARTIN: Well, I wouldn't say, you know. It's hard for the Department to calculate. There was a burden on the Department, obviously, as there was on schools with doing the calculations and receiving the information from institutions. The cap on median debt, tuition, fees, books, supplies. I'm going back and trying to remember the rule. The institutions were required to report the actual figures for student tuition and fees. Books and supplies, they just had to report the allowance because it would have been too complicated to have that for each student. I think that was how the old rule was set up. The question here is if we went to an audit, it's like asking if you go to an automated system of doing it, it might not be possible. Well, we can't capture this information with what we currently have in NSLDS or COD, which are two primary systems, right? So, I mean, does this cap benefit schools because we're looking at when you're looking at the debt where we're capping that debt, at the amount of tuition fees, books and supplies, which in many cases, the debt goes beyond that because students borrowed for things other than those costs, right? So that was a benefit to the schools as far as the calculation goes. But this is just recognizing that in automating something you might not be able to get that. So, we're asking you know, what was the benefit of that cap I just gave you? Just kind of gave that answer away, pretty much. But so, I think there is a question on either side, what do you give here to get simplicity, to get to automation, especially with the Department's current capacity to obtain information? Is it, you know, if you do the calculation without that cap, what would be the outcome of that? Or would that be something people would be willing to have in exchange for simplicity? Now, it might be in the future, the Department can develop mechanisms to get the information necessary to do this through existing systems, but those systems would have to be modified and that certainly would not be able to occur overnight, or probably not even at the point where these regulations would become effective.

MS. MILLER: Marvin.

MR. SMITH: I'm really glad you're asking the question, because I do think the burden of institutional reporting has dissuaded public institutions from even entering this field, and even if they are providing short-term certificate programs, they're not going through the steps of making low-income students eligible. And so, I agree with Brad that the burden is enormous on schools and the public institutions are just not even going through the process. And I think that ultimately hurts low-income students who aren't eligible for aid at certificate programs at the publics. So, I am very interested in, you know, Adam, I think, just put something in the chat about this automation options and maybe we lose some, you know, very specific numbers, but do general numbers do the same thing and is that feasible? And so, I'm interested in Adam's perspective, but I'm just making the observation that the burdensome requirements, I think, are ultimately hurting low-income student access to certificate programs at large publics.

MS. MILLER: Thank you for that. Okay, Yael, I think you were next.

MS. SHAVIT: Thanks. I just wanted to quickly make a couple of comments on points B and C just to state that we feel strongly that reporting of private and institutional debt is critical. Our interactions with students and many investigations just regularly demonstrate that private and institutional debt loads are main contributors to federal loan default. I've personally spoken with many students who have felt unable to make IDR payments because of the weight of the private loans that they also had to repay. So that's one point and also, you know, institutional debt has been a big and recurrent problem that we've seen consistently and I share, I shouldn't say share, but to respond to C, yes, I think failure to require disclosures of private loan debt and institutional debt create a serious incentive for institutions to push private loans.

MS. MILLER: Thank you, Yael. And I see everyone in the queue, but I wonder if this is a good point to call on the advisor, Dave McClintock. I see some nods. Dave, please.

MR. MCCLINTOCK: Yeah, thank you. I just wanted to share. You know, obviously, working with a lot of the financial aid departments that bore the brunt of this as you put together the metrics, it's important to understand what schools are already tracking and the information that they have available. I think that's what created a lot of the difficulty before you're using a student information system. And if the data wasn't recorded in a way that is easily exportable, that's what created a lot of the additional work for the Departments. Now I realize that not every school records things identically. But if you can find common information that would be expected, I think it would alleviate just some of the difficulties that schools had in addressing it and submitting the information to the Department.

MS. MILLER: Thank you, Dave. Okay. Barmak was next.

MR. NASSIRIAN: With regard to complexity, and Lord knows the 2014 reg was quite complicated and did in fact require collection of significant new data elements that institutions did not previously track. You know, the fact that an institution doesn't track something already should not preclude us from requiring that if it's needed, but it's also important to recall that a lot of the complexity was the work of institutions themselves, which sought safeguards and safe harbors and additional bites of the apple. So, to the extent that some of the mandatory requirements of 2014 say, subsection A, the cap on tuition fees, books and supplies, was intended as a safe harbor for institutions to mitigate the amount of median debt that would be recorded, you could make it. You could make that discretionary. Just like challenging the average income through surveys was discretionary. The Department didn't mandate that you do that. If you wanted to challenge the reported income, you could. You could organize a survey based on the parameters that the Department published. So, some of these can be made discretionary, and I think the vast majority of institutions wouldn't have to worry about them. But I agree with Yael's point that the one thing you cannot make discretionary is any amount of additional outside financing, much of it at very high rates without the protections of Federal Student Aid, that institutions could then be incentivized to package their students with. So, I think there may be some room for simplification and making some things a choice for institutions, but some of these are unfortunately required.

MS. MILLER: Thank you, Barmak. Johnson.

MR. TYLER: And I'll be very brief. I have many cases where students are being sued in state court on private debt on institutional debt. It's a real problem. It affects people's lives hugely. It needs to be accounted for in a metric. So [inaudible].

MS. MILLER: Thank you, Johnson. Debbie.

MS. COCHRANE: I, too, will be pretty brief on A. My understanding and my recollection of the prior rules was that the reporting to institute a cap was actually voluntary and it would seem like the kind of thing that the Department might be able to do some analysis on what who reported, what was the impact in terms of the actual metrics and outcomes on that. So that would be helpful to see. I did put that in the chart as well. And then just to echo the point on private institutional loans, I just did some quick looking at some numbers and you know back when the Department first began, all the GE negotiations in 2009-10 private loans or nonfederal loans were 7 percent of loan volume in a given year, and in 2019, 2019-20 it was 14. So, the share of debt that was private and institutional debt doubled in the time period that the Department's been negotiating GE, so really underscore the inclusion of those figures.

MS. MILLER: Thank you, Debbie. Next, we have David from the FA administrators.

DAVID: Yeah, I just wanted to take the opportunity to speak a little bit to some of the things that have already been said, specifically some of the burdens that we in the financial aid community experience and trying to implement GE has, I truly do believe, has impacted access to some of these programs at our institutions. And so, I really strongly encourage all of us to consider that. The goal of all of the financial aid programs has always been access in my mind, and I don't want to lose out on that because of some burdensome regulations. Having said that, one thing I would encourage us all to do is really take advantage. There's a lot of data that institutions have to provide, whether it be in IPEDS, whether it be state, state ready [phonetic] formats. Let's try to think about things that we can do to take advantage of existing systems for this information and more importantly, whatever we come up with today in this neg reg, whatever we come up with, we have to be consistent. I think the biggest challenges for schools is, okay, we're looking at this data today and now, two years from now, we're looking at a whole another set of data. We have to really maintain some consistency to make it important or to make it valuable to both us as people who are protecting the federal dollars, but also make it important to students in helping them making choices based on this information. So that's all I had to add. Thank you.

MS. MILLER: Thank you, David. Brad.

MR. ADAMS: Thank you. On two, on point A in terms of the cap, kind of alluding to what Greg mentioned, if it's not capped and includes cost of living, that's going to be difficult for institutions to comply with. As you know, we are not allowed to limit the amount of funds the student borrows to cover just tuition fees, and I would call it required materials versus just general supplies. Sometimes students buy things that aren't required, but I would be comfortable adding in the required comment to fees and books again. What's the real cost of obtaining that degree? In terms, but in terms of folks that end up on the higher stipend side, it's the folks getting the larger Pell Grants typically, if they choose to borrow their full Federal limits within direct loan programs, and it's the grad PLUS loan that's not capped, it's just subject to cost of attendance. So those are where your largest stipend balances occur. In terms of point B, you know, I'm curious on the Department. And this is maybe a question for Greg, I'm not sure, does the Department have access to private loan servicing systems? I believe that was the issue with it in the prior rule, and I just don't know enough about that piece of it, but I do think there may be just in terms of the access to the data on point B from a partisan point of view, I'm not sure what the Department would have access to that.

MR. MARTIN: Well, what we have access to is what's in NSLDS, which is only Title IV loan debt. We don't have and the reason we had to have schools supply that information to us under the reporting requirements is that we don't have access to institutional debt or private debt. We have no mechanism for obtaining that other than to have it reported to us by institutions. The only way we could do that would be through protocols such as similar to what we used in 2014 or the other option would be to include some way to have that reported under the normal reporting protocols currently perhaps in what's in NSLDS. You know, what the usual reporting is in NSLDS. Again, that would take systems changes. I don't want to for a moment suggest that could be done quickly or I don't even know the extent to which it could be done. We could look into doing it. That's all I could say. But the reality is currently we would have no other mechanism to collect institutional debt or private debt other than to have the schools separately report that to us. So that's why we did it in that way in 2014, and that hasn't changed. And while I'm on the topic of institutional and private loan debt, I know Debbie, you gave us some statistics and we'd be interested in knowing your sources for that. If you could give those to us in the chat, please. We'd be very grateful for that.

MS. COCHRANE: I'll send it now.

MS. MILLER: Thank you. Johnson.

MR. TYLER: You know, just to talk about the burden of reporting on the private student loan debt, having defended a lot of these cases, the process involves a school verifying the person is there and eligible for a student loan, otherwise you don't get bankruptcy protection. So, I think the schools just need to create a field where every time they get pinged by a bank, if offering a loan, that they record that amount and have it in their database so they can report it.

MS. MILLER: Okay. Thank you, Johnson. I don't see any more hands. Does Greg, does the Department have what they need on this question?

MR. MARTIN: Yeah, I think so, it was a good discussion, I heard a lot of interesting points of view there, so thank you very much.

MS. MILLER: Can we feel free to move on to the next?

MR. MARTIN: Yes, I think so. We'll move on to question six. And this one is how should the Department address the presence of income that is unreported to IRS? This is essentially a tipped income. We did it before by if you'll recall the '14 rules, we had a survey of a state process schools could use or most schools use a [inaudible] state, state earning system appeal or schools could use a [inaudible] earning survey appeal that we had built into the regulations, whereby they could survey graduates to determine what their what their earnings were if they believed those earnings were above what was reported to the IRS. So, we're asking here, how should we address that in upcoming regulations? That that whole idea of there being some fields where tipped income might be significant and might not be recorded.

MS. MILLER: Barmak.

MR. NASSIRIAN: I have always found this one of the most ridiculous topics to discuss in a federal proceeding. How do we accommodate tax cheats? People who don't want to, I mean, this just blows my mind that we are actually sitting here attempting to write regs to accommodate unreported income with a straight face. Having said that, look, we have the language we have in the 2014 reg. I tend to see this candidly as a red herring, increasingly because people use credit cards. Very few people leave cash tips anymore. So, I don't know how real this issue is, but they've made the mountain out of a molehill, and I wouldn't address it beyond what the 2014 reg already does.

MS. MILLER: Thank you, Barmak. Brad, you're up next.

MR. ADAMS: Thank you. You know, I know we've been trading some chats back and forth, Emmanual and I with Adam, you know some of the things I would like to Department to consider when it comes to looking at the difference of five years versus three years post-graduation. In addition to that, I would like to look at whether or not an average annual salary should be used over a period of time instead of a singular year, just to take out any potential impacts. Could be anything from, you know, unpaid FMLA to unforeseen national regional economic downturns like we are just experiencing in COVID. I think when you tie it all to one calendar year, one singular event within a cohort of folks, especially for healthcare programs, you know, I think that can be problematic at times. In terms of the untipped income, colleges obviously can't control whether or not students report their tipped income. I agree with Barmak that that's unfortunate and I think that's why now they're looking at, the IRS is looking at Venmo and other payment apps as another mechanism of the way people get around reporting income. That's not for me or us to decide on this committee, but it is a problem and it's not a problem the schools can control, unfortunately. My thoughts. Thank you.

MS. MILLER: Thank you, Brad. Johnson.

MR. TYLER: Yeah. I mean, I think it's a problem for people to remain in the gray economy because it keeps them out of the middle class. I had a successful hairdresser who had a very unaffordable mortgage that he took out because he couldn't document his income and he became a victim of another scam. And he couldn't get a modification because he did not have any tax returns that made any sense, and yet he had a lot of income. I think we need to support people being in the real economy because that is how you get financial stability in America.

MS. MILLER: Thank you, Johnson. Okay. I don't see any other hands.

MR. ADAMS: I'm curious if Johnson would have any thoughts around how [inaudible] get around that comment on, just curious on picking his brain on what we as institutions can do to ensure that folks are paying are filling out the IRS forms accurately. Just thoughts.

MR. TYLER: I mean, just, you know, some financial counseling, which is always important. I did notice, helping my daughter with and my son with their tax returns, they got tip income reported on their W-2 from the restaurants they were working at. So, it seems like there is a lot more automation in these areas.

MS. MILLER: Greg, I don't see any more hands, so are we ready to move on?

MR. MARTIN: I think so. Thank you, everybody, for your comments on that last question. Our next question is question seven, how should the Department address programs that are too small or just have too few students completing the program in a given year to have their program, debt, or earnings information disclosed?

MS. MILLER: Barmak.

MR. NASSIRIAN: Well, the 2014 reg, as you know, kind of rolled them over until they reached an adequate end count for purposes of protecting anonymity with regard to SSA disclosures. That's pretty lousy statistical practice, one would argue, but that's the best know anybody could come up with given the singular reliance on income and discretionary income as metrics. Again, I believe we ought to preserve that, but there may be alternatives, for example, you could look at, people keep talking about the unit record system. The Department of Education already has the unit record system in the loan repayment system that FSA runs. You could always have additional standards that the meeting of which could satisfy the rule for institutions that didn't have enough enrollments to go through the regular rule with no repayment rate.

MS. MILLER: Thank you. Johnson.

MR. TYLER: Yeah, I don't really have an answer to this question other than I, I became very aware of it in the key rulemaking because if the people drop out, then you're not going to get program completers and then you're going to get a number that's below’ I think the magic number was 30, but I don't remember, of completers. And I think that's really problematic if a lot of people aren't completing and then you can't generate the statistics. So, I guess I'm just saying, you know, to the extent that's a problem, I think you also should be looking at non-completers and see if that's a large number. And then maybe, you know, somehow take that into account.

MS. MILLER: Thank you. Brad.

MR. ADAMS: Yes, I would I think it'd be helpful. I'd like to ask the Department, I can put this in an email to Cindy as well, if they could provide program level enrollment data at the four to six digit CIP levels for all gainful employment programs. So, we see how many institutions and programs would be captured and would be excluded based on an ‘N’ size. I think it's tough to discuss whether or not 30 is the right number, 10, I'm not sure, you know, 50, whatever that may be. But, you know, in order to encapsulate 80 percent or so of the problem, or I should say problem, about 80 percent of the programs based on some 'N' size as a cut off, I think, would be very helpful for all of us because I don't know if any of us have the right number to say we should exclude X under this level.

MS. MILLER: Okay, thank you, Brad, and please put that in the chat [inaudible]. Barmak.

MR. NASSIRIAN: The 'N' size was not a politically negotiated number; that was a statistically rigorous number that the Department presented to the to the committee back then. So, I don't have a problem with the number 30. My real problem is that if you have programs that are too small, the attempt to aggregate multiple cohorts over potentially multiple years could really prolong the process of post facto judgment, which is the construct that the 2014 relied on. But I don't think that we should just look at. I don't think administrative convenience should be the driver of where you draw the line. It should be a statistical, it should be statistical rigor to ensure that whatever number we do use or the Department does use is statistically significant. And I believe 30 was very robustly debated and presented to us as a credible number.

MS. MILLER: Thank you. Jamie.

MS. STUDLEY: Mine is a general point on the broad question. In the in the interest of focusing on where the real risks are, I think it could be possible to you know at the margin, to look to not look at very small programs and to look at larger ones, but the enormous problem is that the responses to that could include just splitting programs into subcategories to avoid the rule. So, I think the more important, another way to come at the question would be, is there a way to be sure that that the rule covers a sufficient proportion of the total students at that institution? And if you could block off the avenue of distortion of creating tiny programs to avoid the rule, then I think you could be sympathetic to the fact that very small programs may have a, you know, it may be hard to get meaningful numbers in an ‘N’ size that is revealing. That's not an answer. It's either an additional complication or a way to understand what the real mischief is that we'd be trying to get at in being sympathetic to not looking at programs that are too small. So, I just ask the Department to think, how can we get at the universe that would need to be covered to protect the body of students? And are we looking at the right question, whether it's is it program size or total coverage at the institution? I realize the reporting is by program.

MS. MILLER: Thank you, Jamie. I don't see any other hands. We are catching up. Greg, can we move on?

MR. MARTIN: Yes. So, we're going to move to a question number eight. So, we're asking here what metrics are most important to be disclosed to prospective or enrolled students? What are the best formats for these disclosures? So, as you'll recall, the 2014 rules, how the number of disclosures institutions were required to make to students, and we're pretty prescriptive about how that had to be done. So, we're asking here what you think are the most important items to be disclosed and how should that be accomplished?

MS. MILLER: Barmak.

MR. NASSIRIAN: So, as a general proposition, the Department has historically overemphasized the dual roles of a regulator that consist of disclosure and prudential oversight. The Department has sort of shirked its responsibility with regard to oversight by overreliance on disclosures, in my humble opinion, which this is sort of the way I describe it, as it would do very little good. Were there to be toxic material on the shelves at the supermarket with disclosures under them that consuming them can kill you, we don't want toxic things on the shelves in the first place. So, to whatever extent the Department can again do enough gatekeeping in general, but more specifically with regard to GE, to ensure that the programs at least provide some minimum level of assurance of wholesomeness, then some additional disclosures may be helpful. In general, I’ve got to tell you, we do so many disclosures to students that they have ceased to have any impact. And the more you add, the less impact any one of them will have because they'll get lost in the shuffle. I do think that it's the public disclosures are meaningful for broader purposes, which is to say, for outside parties to understand the behavior of some institutions, maybe in ways that the Department itself doesn't have adequate resources to focus on. So, some disclosures are appropriate. But I would not rely on disclosures as a replacement for the Department doing its job of safeguarding students because the students can't safeguard themselves. They are not. You know, this is not like eating out where you eat multiple times and you kind of know which restaurant is consistently bad. People go through these experiences only once, and we have made it real easy for them to be to be defrauded, that one shot that they have, and then they're ruined for life. So, some disclosures are appropriate. I would not rely on them.

MS. MILLER: [Inaudible] so well. Thank you, Barmak. Johnson.

MR. TYLER: Yeah, Barmak said it very well, I just would say there's lots of social science evidence out there about disclosures not being paid attention to and saturation and stuff like that. There really are no substitutes for, you know, avoiding the product in the first place by not having it on the market.

MS. MILLER: Thank you. Carolyn.

MS. FAST: I agree that disclosures cannot solve the problem and should not be relied upon here. That being said, I do think there could be some usefulness in including a provision that looks toward giving students the opportunity to get really crucial information and potentially use it to compare potentially between schools. So, that means that we would want you looking for something that was very uniform and would provide an opportunity to do some comparison to students.

MS. MILLER: Thank you, Carolyn. Yael.

MS. SHAVIT: Sorry. I agree with

everyone saying that disclosures can't take the place of meaningful regulations. That's of course, the case in the gatekeeping function is the most important, but meaningful disclosures are important as well, and I think those disclosures need to be mandated and not discretionary. And take form that is readily comparable for students and easily understood. And again, I think with the important caveat that a disclosure doesn't solve the problem, but providing students with complete and meaningful information, is critical as well.

MS. MILLER: Thank you so much. And thank you to the negotiators, I really appreciate us sticking to the protocol and giving the Department what it needs. So, that's great. Amanda.

MS. AMANDA MARTINEZ: I also just wanted to give some information related to Barmak's and Johnson's kind of take on that. If the Education Department is trying to solve a problem of ensuring quality of education, I don't think that disclosures have been found to be or even just simply providing information. It depends on how you provide that information. And there's been research showing that a study found that the college scorecard information on colleges had really no significant impact specifically on black and Hispanic students' college choices. So, if we're going on that route and we're leaning and you know and we're caring about the students who are most disproportionately impacted and need the most help in navigating the higher education sector, information alone really is not the tool that we should be fighting for. The Education Department has other tools, specifically what we're talking about here today, so I'm hoping we can really lean on those because it's a proven mechanism that can help students go in other ways or, you know, ensure the education sectors are being pushed into are really ones that will thrive and be able to reach that outcome.

MS. MILLER: Thank you, Amanda. Emmanual and Marvin, I see your hands are up and I have you in the queue, but Anne put a question in the chat and I just want to give her that time.

DR. KRESS: Sure. Just really quickly, you know, I think going back to Barmak said, there were provisions in previous regulations that were really to protect against a lot of this, and I'm wondering if the Department has any data that's responsive to how effective they were. And then I just want to plus one what Amanda said. I do think there's a whole host of things we could do with these disclosures, which I think are incredibly important to students, but to really use or test them before we roll out frameworks and formats so that we're putting the information in the hands of those who need it most in ways that they can use it. And I do think that's something we still have a long way to go on.

MS. MILLER: Thank you, Anne. Emmanual.

MR. GUILLORY: I was just going to share that in looking at the 2010 and 2014 regulations when it comes to disclosure requirements, I do believe that disclosure requirements are important, but I also support what people are saying that should be the only metric, obviously. But I agree with Yael on what she was sharing that with disclosure requirements that can help inform a student and their family of the program they're about to enter into and whether or not it's something they actually want to do or not. So, I think that information sharing is important. And at the very least, I think it should include a list of occupations that the program prepares a student to enter. It should include on-time graduation rates, tuition and fees, books, supplies and room and board with a link to other cost information for the program. It should also include the placement rate for students completing the program and the median loan debt incurred by students completing the program, if we're going to stick with the median debt or whatever debt information that we agree to. So, at the very least, I think it should include that. Obviously, the 2014 rule added 16 pieces of disclosure information, and the list is rather long. So, I'm obviously not going to read through those, but I think at the very, very best base level, we have those five that I articulated.

MS. MILLER: Thank you, Emmanual. Marvin.

MR. SMITH: Yeah, I just wanted to plus one on what Anne and Carolyn are talking about in terms of disclosures. You know, right now, they're scattered all over school websites. They're hard to find. They're difficult to do comparisons. I'm not sure if we're serving students well with the system we have right now. I think that a centralized website similar to the college scorecard makes sense to me. Maybe it's not exactly what the college scorecard is presenting, but I really like the idea of centralizing and having a comparison site for students.

MS. MILLER: Thank you, Marvin. Brad.

MR. ADAMS: Yes, I believe we need to decide on the metrics first, then we can decide how to best disclose it to students. Students are overwhelmed with the amount of information to be provided to them. I just want to make sure we prioritize the disclosures to what's most important and what we deem most essential so we can get that information to students. And I believe there are so many disclosures right now, I'm not sure that they would know where to go find the information. So, I think college scorecard, I agree, probably makes the most sense to a college navigator, but you know, again, we need to prioritize the disclosures first.

MS. MILLER: Thank you. And just to let the Department know that there is a lot in the chat that could be useful, including some data requests for [audio] sessions. I just wanted to mention that. Jamie.

MS. STUDLEY: As a former FDA lawyer, I note that there is a precedent for regulations that specify type, size and location of disclosures and necessary information, as one of the team that built the college scorecard. I would mention that the biggest effect of disclosures, even though they appear to students and we're not sure how much they are used, the biggest effect is the incentive for institutions to either improve what they have to disclose or not need to make the disclosure by changing the circumstances. And third, because we could use a moment like this in the last few weeks, I was trying to think about better disclosure models, and I made up one that said if the disclosure was the chances that you would be able to repay this loan within X years is and the slide was from rock solid to snowball's chance in hell would we do better in getting the attention of students? I say that with humor, but I do think that when we think the disclosures are right, there is a place for them. How can we do it in ways that are more, are there ways to do it that might be more vivid and effective? I think the test for disclosures would be where the decision should be for students. It's a creditor's responsibility to judge quality. The state has specific things that it has to judge in a yes/no. Should this place be approved by the state, accredited by an accrediting agency, and that the Department of Education has to decide, can this institution participate in gainful is one of those cannot participate questions. But there's another set of questions that it is right to let people decide, just like we let them decide whether to take mortgages that do pose responsibilities and risks. And I think that's the dividing point for when a disclosure is appropriate and when it's up to accountability entities to make a question of go, no go, in or out, allowable or not.

MS. MILLER: Thank you, Jamie. Debbie.

MS. COCHRANE: I think given that we are talking about disclosures in the context of gainful employment rule, which is about career education programs, I think it's really important to also think about job placement rates in terms of the substance of any disclosures that do happen. I think those are arguably you know one of the most important figures that students would want to have as they're considering whether or where to enroll. The lack of consistency across existing placement rates is a huge, huge problem. And of course, some accrediting agencies require them, some don't. The ones that do require them have different definitions. But I'm going to put it into the chat also something that I think it would be great for this committee to look at again is a proposal that a working group of negotiators in 2013/14 put forth regarding coming up with a more standardized approach federally to job placement rates for the purposes of gainful employment disclosure. So, I think that might be worth just another look at again.

MS. MILLER: Thank you, Debbie. Amanda.

MS. AMANDA MARTINEZ: Sorry, I just have one more comment as I'm hearing these other comments related to disclosure and specifically when it comes to the GE rule. You know, we've done while this isn't like rigorous, I can't say that this is like a generalized statement. This didn't go through a randomized controlled trial. But however, I'm a part of an organization that is connected to affiliates. These are their own separate individual organizations, nonprofit or health community centers, for instance, or even schools themselves that are connected to the community. And so, when we conducted a study where we went to the community and talked to students and families, you know, we did come across and when we talked to the families about their, the question the central question was how did you decide to go to college? What was your financial journey and how did you decide which college go to? You know, we had a range of questions, and some students didn't realize that they did enter, students who realized after the fact that they were at a for-profit institution because they didn't realize that there were different types of institutions. Really, the story we heard for those who did enter these types of programs was they were motivated by one, the value of education. But and another was the promise of being able to rapidly go through the program because maybe they went through another program, they failed at it. Well didn't fail, but they have struggles to get through the program. You know, with this program, they were promised that they would get out quickly and they would be entering a job in less than a year or two. And that to them was this economic promise they were hoping on and being told about throughout their education system and really was something they were needing to then continuously survive in the reality that they were given. So, really they were motivated, motivated mostly by those promises. I am not sure we didn't hear stories, at least from the Latino perspective and this small sample of students that they were looking at all this information. They were so motivated by their promise of education, the promise that they would finally achieve some type of better job security for themselves and their family. So, I just want to kind of keep that in mind. You know, I can try to bring other stories to the forefront to help inform better decision-making on how to help students make these decisions at these really critical points of their of their journey and when they are learning about these programs.

MS. MILLER: Thank you, Amanda. Okay. I don't see any other hands. So, Greg, is it okay to move on?

MR. MARTIN: I think so. Let's move on to question nine the final, our final question, which is how should the Department ensure that institutions are not simply shutting down old programs and starting up new similar programs to avoid the consequences of the GE rule? For some context, for context, we did in the previous rule have some regulations surrounding the standing up of new programs that had to do with when the institution was informed of failing for one year, failing for a second year and finally, if they failed, how long it would be before they could stay at the program again. And all that was keyed on the first, I think the first four digits of the CIP code. So, with that context, then asking what we what we could, because there is always the possibility of institutions simply shutting down a program that they know to be a failing program in advance of any consequences which accrue to them and in standing up a program which might not be appreciably better. So, we throw it out there to the negotiators. What might we do to prevent that from happening?

MS. MILLER: Okay. Barmak.

MR. NASSIRIAN: So, this first of all, this is a very legitimate concern that that the Department is expressing here, but it's the price of our past sins kind of catching up with us. The Department approaches not only GE, but almost every other facet of participation in Title IV as essentially a freebie for institutions. So, to address the GE issue in particular, we allow institutions to offer risky programs. We give them multiple years to fail. And when they fail, the worst we do to them is to shake a stern finger in their face and tell them not to do it again. Because there are no actual consequences associated with offering failing or subpar programs, you really have created no incentive for institutions not to take the risk. The risk is entirely on students and on the taxpayers who have to pick up the pieces after the fact. So, you know that's just the way this Department has historically regulated the issues. I don't know what to do about that, but it brings me back to the broken record. If we were to impose some upfront metrics that that, you know, that legitimate institutions absolutely follow. Community colleges don't just wake up one day and decide to offer a GE program. They go through a laborious process internally and with employers and with the Labor Departments within their regions before a new program is introduced, there is integrity to the process of program introduction. Part of our problem is we rely on CIP codes. Well, you know, the uninitiated may ponder, well what's a new CIP code cost? Well, all it costs is three institutions offering the same number, and in a setting where you have multi-campus multi-institutional empires, creating three fake programs is just a matter of will. So, I would suggest again, first of all, there ought to be consequences associated with failing, consequences that go beyond simply not do it again. Don't do it again. But beyond that, some upfront metrics. Is the program properly accredited? Did you please show us the kind of market research and the kind of consultation with employers you did before you made up this field and decided to market the hell out of it? I don't get any extra time for English as a second language, Brady? No? Okay.

MS. MILLER: Sorry. Okay, Johnson.

MR. TYLER: English is my first language, and I'm not nearly as articulate as Barmak. I would just say, you know, I've struggled with this, I saw the other day that a Federal court ordered someone not to participate in the pharmaceutical industry ever again. Now, obviously, that's a judge. But I, you know, people like Yael and others have law enforcement expertise on this. But this is a problematic thing that it seems like it's a regulatory question, really. And there must be something within the statute that doesn't that allows you to protect students and not be defrauded again if something's coming on like just repackaging. I have seen this sort of practice in the world of debt relief scams, where the people just change their name and change their address and all this sort of stuff. And, you know, it seems like it's a very hard thing to control. So, I think you have to control the money. And I think you have authority to do that.

MS. MILLER: Thank you, Johnson. Okay, Yael.

MS. SHAVIT: Thanks. And, you know, this is a maybe not the most detailed proposal, but I think one thing that some regulations include and some federal regulations include as well are anti-evasion provisions, right? And I think that it could probably be fairly simple to include something like that in a reg, making clear that repackaging that is clearly for the purpose of evading the bad outcome of GE determinations is itself grounds for significant consequences with respect to Title IV. It is, if nothing else, tantamount to fraud and lying to the Department, which I think should itself imperil an institution's access to Title IV funds. So, I think there's probably a language that can be borrowed from other regs that that would satisfy this concern.

MS. MILLER: Thank you, Yael. Barmak.

MR. NASSIRIAN: Johnson's comment reminds me to strongly recommend to the Department

668.82, which is existing regulations that govern standards of conduct for institutions and for third party servicers. It's a little funky because parts of it apply to institutions and servicers. The really good parts seem to only apply to third party servicers, which I don't quite understand. I'd rather regulate the principle and assume the agent is regulated than just regulate the agent. But there's really some pretty good language there that ought to be incorporated, not in GE, frankly, but out of respect to Brad in standards of administrative capability so they apply to everybody.

MS. MILLER: I do not see any more hands. Greg, is it okay to close this one out and then maybe take a break?

MR. MARTIN: Yes, and I want to thank everybody for the excellent conversation on GE. I think it was the Department got a lot out of it and I really appreciate all the thought that you put into it. So yeah, I think it's we'll close this out and take a break.

MS. MILLER: Okay, I have 2:34 on my clock, so let's see back in 10 minutes. Thank you. Okay. Welcome back. I hope you had a very good break. Just wanted to note that Sam Veeder is back as the primary at the table, and we welcome her. Before we move on, I want to address public comment. We will have that at four o'clock. If everyone who has registered for public comments could log on early, maybe 10 to 15 minutes. And also, please make sure that you're naming convention matches the name that you registered with. Otherwise, we won't be able to let you into the session. With that said, Greg, are we ready to move to the next issue?

MR. MARTIN: As ready as we ever will be. Yes, let's get started with issue paper number four. And we're moving into financial responsibility. And people might find it rather daunting that this issue paper is considerably thicker than the other ones, but I would point out that, well, it is, and it is a little dense, but a lot of it is the rescinded 668.15. So, I just want to point that out before we before we get into that. So, basically the redlines are here. So, anything we rescind, we redline out and that whole section was removed. So, we'll discuss that. But, that is a substantial portion of the number of pages you have in front of you. So,we're going to start with financial responsibility, then a bit of an introduction first. Give you the statutory citation of 498C of the HEA. And we're looking at the regulatory sites, 34 CFR 668.15, 668.23. And then in subpart L, 668.174. So, we'll move into the summary of issues here. And as you're probably aware, we are required under the HEA to monitor institutions financial responsibility in an effort to protect taxpayers. Institutions that are not financially viable, and we point out here that the mechanisms for measuring financial responsibility, namely the composite score, do not always suffice to accept to assess the risk or of closure or liabilities that an institution may face. The Department proposes regulatory changes that will increase the ability to identify high-risk events and require financial protections as needed, and we seek to streamline the regulations by consolidating the financial responsibility requirements for change of ownership in Subpart L and revising the existing regulations at and reserving rather, not revising, reserving the existing regulations at 34 CFR 668.15. And as I pointed out earlier, the Department is not proposing to make any changes in the composite score calculation at this time. So, looking at some of our proposals, I already referenced 668.15, Factors of Financial Responsibility. We're going to remove and reserve the entirety of 668.15 and instead incorporate components of that section into the financial responsibility requirements under a new proposed 668.167 of subpart L of the regulations. This will streamline the regulations and ensure financial responsibility requirements are all located under Subpart L because that has been an area of confusion for a number of years, maintaining 668.15 while we had Subpart L, which is financial responsibility. Under 668.23, Compliance Audits and Audited Financial Statements, we are revising the date for submission in a timely manner, making it by the earlier of 30 days after the completion of the report, or six months after the end of the fiscal year. By requiring reports to be submitted when they were available, the Department will be able to evaluate results far sooner. So, we still have that that deadline being the absolute deadline being six months after the end of the fiscal year, which it currently is. But we would be stipulating that it's 30 days after completion of the report if it's before that time, so that if the report is completed, it doesn't sit for a number of months until being submitted. Moving on to Subpart L under 668.171(b), the General Standards of Financial Responsibility, we would be requiring institutions to demonstrate that they are able to meet their financial obligations by noting additional cases that constitute a failure to do so. These include failure to make debt payments for more than 90 days, failure to make payroll obligations, or borrowing from employee retirement plans without authorization. Looking at mandatory triggering events, the Department proposes to revise the set of conditions that automatically require posting of financial protection if the event occurs as prescribed in the regulations. The triggers are designed to measure external events or financial circumstances that may not appear in the institution's regular financial statements, or that may not yet be reflected in the composite score. And you can see here the triggers that we're referencing. The first one is revising triggering events for debts, liabilities and losses. And I'm not going to go read through all of that in the interest of time, but just saying that this includes clarifying the settlements, final judgments or administrative procedures will trigger financial protection requirements and we'll go into that in more detail when we look at the regs. The second one, there would be clarified language related to the withdrawal of owner's equity for proprietary institutions, ensuring that these withdrawals are captured, restoring and revising a financial protection trigger for cases where the institution is required to submit a teach out plan or agreement, moving a trigger related to major actions by a state authorizer from discretionary to mandatory. So, this would ensure the protection if an institution may be subject to a loss of Title IV eligibility and closure due to actions taken by a state. Next, we'll be refining the language for financial protection triggers affecting publicly traded institutions to better reflect early warning signs that will indicate problems with these institutions. We're moving triggers we've proposed rather to move triggers related to the loss of Title IV eligibility due to failure to meet 90/10, or two years of a failed cohort default rate that is not successfully completed. These would be moved from discretionary triggers to mandatory triggers. And finally, we're going to add a new or propose rather to add a new trigger assessing the impact when an institution makes a contribution to the school in the quarter before the end of the fiscal year and then makes a distribution in the first two quarters of the next fiscal year. So, this is with reference to attempts to manipulate financial responsibility scores through this practice. So, assessing the effects of these transactions will allow us to obtain financial protection where we see this as occurring. Next, we're looking at discretionary triggers under 668.171(d), and the Department proposes to revise the set of conditions that may, at the discretion of the Secretary, require posting of financial protection if the event occurs as prescribed in the regulations. These triggers are designed to measure the external events or financial circumstances that may not appear in the institution's regular financial statements, or they may not yet be reflected in the composite score. So again, these are discretionary triggers, and the first one here is to refine the language related to accreditor actions, clarifying that probation, show cause, or equivalent statuses may require financial protection. That is at the discretion of the Secretary; restoring a trigger that allows the Department to seek financial protection in the event that the institution sees significant fluctuations in Title IV volume. This would allow us to seek protection if we see large fluctuations across award years, fluctuations in volume of Title IV funds. Next is to allow the Secretary to obtain financial protection on the basis of interim financial data. Should be submitted to the Department to show significant concerns with cash flows, liquidity or withdrawal rates. Next one is to restore the prior trigger related to pending claims for Borrower Defense relief, when the Secretary has formed a group process to consider those claims. And we had two new triggers under discretionary triggers too, these are related to indications of possible future closure. And one is the discontinuation of a significant share of academic programs at the institution, which may be an indication that the institution is no longer able to provide education for which the students have enrolled. The second relates to closure of most of the institution's locations or closure of ground-based locations, while continuing to offer programs in an online format. Next, we'll take a look at changes related to when we would recalculate a composite score, making technical changes to adjust cross references to trigger events in C and D, and more accurately reflect triggering events that are revised throughout that section. Under 171(f), these are reporting requirements. We're making some technical changes to adjust reporting requirements to reflect changes to the mandatory and discretionary triggers. Under 171(h), these are audit opinions and disclosures. We're adjusting the language regarding an auditor's opinion of doubt about the institution's ability to continue operations, clarifying that we may independently assess whether the auditor's concerns have been addressed or whether the opinion of doubt reflects a lack of financial responsibility. Under 174, we're looking at past performance clarifying that the language related to auditor program review findings that lead to a liability of at least 5 percent of Title IV volume at the institution, so that the language will clearly suggest reports in question where those issued in the most two recent years were rather those issues in the most recent two most recent years, rather than reviews conducted in the two most recent years. Next, under 668.175, Alternate Standards and Requirements, we're making technical changes to adjust cross-references, clarify language related to financial surety. And under 176, Change of Ownership, this has to do with consolidation of financial responsibility requirements for institutions undergoing a change of ownership to clarify the regulations so that institutions are aware of the requirements that apply in the event of a change of ownership. This would include specifying requirements for a materially completed application, which will include two years of audited financial statements at the level of a change of in ownership or a letter of credit requirement. Proposed 668.176 also specifies conditions for financial responsibility, including not having operating losses, requires positive assets and requires a passing composite score and compliance with other requirements in Subpart L. And finally, the proposed language requires institutions to receive a temporary provisional Program Participation Agreement following a change of ownership. So, that's a that's an overview of what we plan to do here. And at this point, we can, we'll walk through the regs by paragraph and open the floor for comment, but first, so our first red line that we're looking at here is, rather relates to, 668.15. And you can see that that has been removed and reserved. All of that has been redlined. The current regulations at 668.15 are eliminated and instead incorporated into Subpart L. The inclusion of 668.15 is a relic of the L regulations, financial responsibility requirements or otherwise all included in subpart L under these proposed rules. So, the requirements related to financial responsibility for changes in ownership are in 176. So, we won't see those here, but we won't be looking at those in this part of the paper. Rather, we'll be looking at those toward the end of the paper. So just know that we've not taken away the requirements of financial responsibility, requirements for change of ownership. We've just eliminated 668.15 and moved them into Subpart L and we will look at those when we get to that particular section, so would ask you to turn past where you see 668.15 has been eliminated. As I said before, that does account for some number of pages.

MS. MILLER: Okay, we have quite a few hands up, but I just want to note that Kelli Perry is back at the table representing nonprofit institutions.

MR. MARTIN: Okay.

MS. MILLER: And Carolyn, your hand

was up unless you lowered it.

MS. FAST: Oh, I didn't mean to.

MS. MILLER: Okay. Okay. Well, why don't you go?

MS. FAST: Thank you. I appreciate it. I appreciate the Department for bringing up this really critical issue of financial oversight. And I just wanted to take a minute to kind of put it in context for why it is so important from the student protection viewpoint. There's been a real pattern in recent years of sudden closures of generally large for-profit chains. And when that happens, students' education is disrupted, and this is really an enormous issue. There are half a million students displaced by college closures in just a five-year period looked at in a Chronicle of Higher Education report. Over a thousand campuses closed, and every time that happens, students' education is disrupted and many are unable to complete their program in other programs and are left with debt and few job prospects after putting in a lot of time and effort. So, part of the reason for the financial oversight rules is to try to prevent these kinds of closures that happen without warning to students. And another really important part of it is to protect taxpayers. And that is because taxpayers end up paying millions of dollars in these types of closures because of the need to discharge loans for students who are unable to complete their program. And because these programs often have other liabilities which aren't, you know, which may not be able to be collected on. So that's, I just wanted to, I have other comments, too, but I just wanted to start off with why this is such a crucial thing for students and for taxpayer protections, and why strengthening these rules are so important. We think that the Department's proposals in general are a good step forward, but there needs to be more done and we're happy to be able to help with some suggestions as we go through. But I just wanted to start with that.

MS. MILLER: Thank you. Next is Kelli and then Barmak.

MS. PERRY: Thank you. I would echo Carolyn's comments, I think that this is very important for all involved being students, taxpayers and institutions alike. I just want to make some overarching points before we start on this section. And one thing that the point of this financial responsibility you know regulation has to do with the fact that you're looking for schools that are going to close. And in doing that, what are the right metrics to do that? The financial responsibility, the composite score, and now the additional triggers that have been added specifically, the composite score hasn't been looked at you know in great detail in 25 years or close to 25 years. And schools have changed in those twenty-five years. There was an effort to try to make some corrections to the composite score the last time, and I understand we're not addressing those this time, but we did take some great steps in clarifying things as it related to pension and endowments. But in doing so, we also added, the Department also added some metrics as it related to long-term debt and trying to stop schools from taking lines of credit in order to adjust their score. In doing that, though, it has put potential concern on scores for institutions as it relates to schools that might be trying to refinance their debt in this low interest rate environment and those decisions that schools are making to do that in order to refinance are things that ultimately would help their operations and potentially help students because it would free up additional monies. So, there is concern about long-term debt. I would ask that the Department reconsider looking at what the definition is as it relates to that. The other thing I'd like to point out too is that I think, before providing any penalties to schools and in this situation, I think there needs to be a more holistic look as far as it relates to providing draft scores like is done with federal default rate calculations. You know, for example, once those scores are calculated or recalculated by the Department, provide a draft of those scores to schools in order to validate. And if there's differences between what the Department thinks and what the school thinks, apply some type of appeals process where the institution could be looked at holistically, as opposed to just as it relates to whether or not the composite score was a passing score or a failing score. Thank you.

MS. MILLER: Thank you, Kelli. Barmak, then Brad.

MR. NASSIRIAN: So, I too want to make some just overarching general comments here and then end with the question. The general comment I want to make is that in light of the more than 1,000 closures, precipitous closures that we just heard about and the fact that in the most egregious cases, the Department ends up basically holding the bag whatever the composite. And I appreciate the black box that you want to present us with when it comes to the composite score. But boy, if it were working, we wouldn't have case after case of the Department showing up just ahead of the undertaker to declare decisive action when the school is already completely broke and there is no money to be had. So, there's obviously something wrong. You know, it's easy to condemn Corinthian and ITT and call them crooks, and they ripped off people. But the Department has egg on its face. My God, how many more collapses can happen under your watchful eyes? I mean, there's something really missing here. And what is missing, to give you the analogy that means a lot to me, not perhaps as much to you, I feel like we're in a kind of a pre-Copernican model of the universe, and we're trying to sort of correct the observable by drawing more and more epicycles. So, the Department is now enumerating a whole bunch of triggers, most of which are set instead at the barn door like three counties over. But the enumeration of things that should trigger a review does not substitute for a dashboard that accurately and in real-time captures the financial circumstances of entities that are entrusted with monies that don't belong to them until they earn it. So, so that's, you know, that overarching problem is a real challenge here, it seems to me and it causes all kinds of problems for legitimate actors that are at no risk of closure. And it ironically allows the ones that are most at risk of closure to go scott free. It's really problematic from that point of view. So, I hope that the Department is open to some substantive coverage ratios, some reasonably intelligent ways of at least requiring limitations on the amount of federal dollars at risk, than just enumerating more and more triggers, most of which are completely meaningless. The question I want to ask is would any of these have stopped Corinthian from collapsing the way it did? And I really would be hard pressed to believe that they would, because most of, you know by the time the accrediting acts, by the time the state acts, by the time there is a judgment, by the time is bankruptcy, there's nothing left. So, I'm not sure what we're doing here. But this is not an effective, financially literate approach to what the commercial sector does very successfully all the time. We really do need some help, I think, from the Treasury Department and from folks who understand the capital markets as to when to extend credit and when to be alarmed at the circumstances of a participating institution.

MS. MILLER: Thank you. Brad, and then Jessica.

MR. ADAMS: Thank you. I would like to second Kelli's comment that it is disappointing that the Department has decided not to address the composite score as part of this rulemaking. We keep kicking that can down the road. One of the biggest accounting pronouncement changes in my lifetime has just been recently released and is effective as of 12/15/2021 from [inaudible] is going to bring all operating leases onto balance sheets effective in fiscal year 2022. What this does is it will bring assets and liabilities up. Equity will stay the same. There's no financial difference on day one without the operating lease day two with the operating lease on balance sheet other than equity as a percentage of assets when the equity ratio goes down. In addition, it's going to cause schools to enter into shorter term leases to keep that impact [inaudible], which will mean expenses will be higher because of the paying higher rates for these shorter term leases in order to hit a higher score on an equity ratio. Also, as Kelli mentioned, refinancing of debt is off the table because if debt is not used for capital assets on that date forward, it cannot be counted towards the primary reserve ratio. So again, schools are making bad financial decisions because of a composite score that's out of date, and I would encourage the Department as kind of Barmak alluded to that. Do we have any evidence that the schools that have gone out of business would have failed that composite score? Can the Department produce anything that says the schools that have failed had a failing composite score or did they have a passing composite score and the composite score just wasn't in a position to actually catch the failure? Thank you.

MS. MILLER: Thank you. Jessica.

MS. RANUCCI: I just wanted to echo what Carolyn said, but a little bit more from a perspective on the ground. I hope that most of you have not seen what the fallout from these precipitous closures looks like other than in the news, but it's really bad. And just to give you a sense, you know, a few years ago we just had a small single campus for-profit school that was operating in Manhattan. It was in precarious financial circumstances and had emailed the students a few times saying it might be acquired and then it wasn't acquired. It emailed the students in like August 21st, 23rd something and said, hey, fall semester is open, register right now, registrar's office is open. Obviously, the students came, paid money, including some out of pocket. On September 1st, it locked its doors and we, our office, was flooded with calls. The school just disappeared overnight, so students obviously had no options for the fall. It was already September. There was no way that they could continue their program right away. The school had not, my understanding from the accreditor, had not coordinated with the accreditors, such that there was an approved teach out. The records were a mess. We still have trouble getting transcripts. Theoretically, they're being held at another school. The actual physical inventory of the school, I think at one point, was just abandoned by the state. So, any records that are left, I believe, are just gone now because no one would pay to house them. We represented a group of students in Chapter 7 bankruptcy trying to get those out of pocket payments back. We weren't able to do so. In the meantime, there were a bunch of faculty there who hadn't gotten paid and whose health insurance had been retroactively canceled. So people, like many of you here who are on university health insurance, if you just have a routine surgery now, all of a sudden they had to pay out of pocket for that. And so, I just can't emphasize enough, you know, from the perspective of students and I think other people involved, just like how horribly damaging these were. Students spent years of their lives and these are almost all low income, almost all students of color. They were in programs like HVAC or automotive technology. They weren't going to be high earners anyway, and it was just extremely disruptive. Many of them never went back to school to their other programs, and you know, we helped as many as we could get a closed school discharge. But obviously that doesn't compensate them for the years of their lives. So, I just I just say that because hopefully you guys haven't seen that, and I just want to really say that I respect the Department's efforts to try and stop this problem because it's just it's really terrible and we don't want to see any more of these in our office. You know, we'd rather spend our time doing other things.

MS. MILLER: Thank you. Carolyn.

MS. FAST: Thanks so much to everyone and Jessica, especially for sharing that really important information. I just wanted to add to the conversation about the composite score, which I know that we're not discussing today, but that we would like to see the Department consider making changes to. I believe Brad asked whether there was data on whether the composite score was actually predictive of school closures that we've seen in the past, how that all works out, and I know that there is a GAO report that looked at the predictability of the composite score and found that it failed to predict precipitous school closures in around half the cases.

MS. MILLER: Thank you, Yael.

MS. SHAVIT: Thanks. I wanted to lend my voice in support of what the Department is endeavoring to do here. Regardless of any details that we talk about, we from the AG perspective view this issue as a consumer fraud issue. When people make the decision to go to a school, they do it with expectation and understanding that they'll be able to get a degree, and that's a representation that is made to them by the school. And when a school closes precipitously, you know, that means that the student was subject to a significant misrepresentation and one that may very well be the biggest financial decision or one of the biggest financial decisions that they're going to make in their life. So, you know, any efforts to strengthen the financial requirements here to create meaningful mandatory triggers, I think are important and we [inaudible].

MS. MILLER: Thank you. And I don't see any other hands. Greg, are we ready to take a temperature check?

MR. MARTIN: Well, before we do that, a couple of things I want to address, but just, you know, with respect to the composite score is I, you know, we understand that there is a considerable reservoir of thought out there that we need to revisit these and we're not, we're not disagreeing with that. What we're maintaining here is that we don't have the bandwidth to do it at this particular table. When we did it previously, as I think I pointed out earlier, we had arranged for a study to be done by a major accounting firm. It was quite extensive and it was also a very, very costly survey report that was prepared for us on which we based the composite scores we did at the time. We would want to do something similar going forward. So, I don't want to signal that the Department is not willing to do that or that we're not aware of the potential need for that, it's just it's rather that we don't believe it can be done right now at this time, but so I do want to point that out. As for the predictive, the predictability of school closures, I want to reiterate in the strongest terms that we are, we are always, you know, it's of paramount importance to us to try to determine as quickly as possible when a school closure threatens students. And you know we have a lot at stake with that. And so, you know, it's very important to us. We understand that in every case, composite scores haven't been necessarily predictive of those events. I don't know off the top of my head how predictive they were or in the case of some of the institutions that were mentioned, what their composite scores were. We can probably get that data. But I mean, one of the reasons for what we're proposing to do here is because we are cognizant of the fact that composite scores don't always serve as an indicator of when an institution is in trouble. So, we are trying to address some of that through the changes that we see here. As far as a temperature check, I mean, we could take a temperature check of the removal of what is the 668.15, but I don't know if that's effective to do before we've looked at what replaced it. So, I don't, you know, I don't know if I want people to. I mean, we could take a temperature check as far as is, does it make the regulations? I mean, I think it streamlines the regulations. It was a good decision to make things a lot clearer and place everything in Subpart L. Yeah, we can certainly take a temperature check on whether the negotiators believe that was the was a good decision or that's what we ought to do. So, to that extent, yes, we could take a temperature check.

MS. MILLER: Okay, so we're taking a temperature check on the removal of [inaudible]. Could you repeat it?

MR. MARTIN: Yes, the remove, the removing and reserving 668.15 moving the relevant parts of that into subpart L.

MR. FINLEY: Greg, if you don't mind, I would like to add a comment before you take the temperature check.

MR. MARTIN: Sure, Steve, go ahead.

MR. FINLEY: So just for background explanation for folks that have not been working on these regulations for, you know, two and a half decades or whatever, 668.15 was the old financial responsibility standards in the regulations before the Department put in place Part 171 for the composite ratio and the general financial responsibility standards that used the ratios for the annual determinations. 668.15 also dealt with changes of ownership and at the time we did the original composite score regulations. We didn't have a good standard to use with that kind of analysis for changes of ownership. And so it was left in place and it has confused a lot of people in the intervening years as to why there were all these detailed standards in 668.15, while at the same time we had a financial responsibility section in Subpart L. So, the goal here is to make some updates that actually address changes of ownership, put them into subpart L so it's a general part of the Financial Responsibility Regulations and eliminate 668.15 and reserve it for other uses, perhaps. But that's kind of what's underneath this restructuring that you're seeing here, and I just wanted to get that online, but I also want to take this opportunity to say a number of the changes that you see proposed here are designed to give the Department additional authority to make adjustments in a financial responsibility determination in between getting audited financial statements from the institution because frankly, that has been a problem. It's an annual submission. There's a composite score and a determination of financial responsibility made on it, and in years past when we've tried to monitor changes to the institution on an ongoing basis, we're still left with it having a passing score, even though we have identified some risky activity happening. So these changes are designed to get toward what other people are describing about having a more reactive ability at the Department to identify and respond to increased risks that we see. And I'll hold for now. Thanks.

MS. MILLER: Thank you, Steve. Kelli, your next, but I just wanted to acknowledge that David Socolow is back at the table for state agencies. Kelli.

MS. PERRY: Thank you. I just would like to follow up on Greg's comment as it relates to the composite score, and then I won't talk about it anymore, but in your acknowledgment of the fact that you know that it needs to be looked at, I guess, and the statement that it's costly, it was a costly endeavor for the Department, the way that it currently exists, it's very costly for institutions, it's very costly for students, it's very costly for all involved. So I, you know, I'm hopeful that with what you said that the Department is committing to looking at this in the near term because it is not a true reflection of campus closures.

MR. MARTIN: Yeah, in response to I, you know, we are looking at I don't have the authority to say I'm not going to do that here, absolutely commit the Department to looking at this at a specific time or on a specific table. But I do want to say that we, you know, we are aware of the of the interest in doing this and the need to look at this and we are doing that. So, I just wanted to offer some explanation for why we are taking the position that we're taking at this particular table and to make clear that it's not because the Department is steadfastly unwilling to look at the composite scores. I think anybody would acknowledge that certainly adding it to this table would be, I think, untenable given what we have to look at right now and the lack of preparatory work that exists to look at the composite scores that would have to be done at a future time.

MS. MILLER: Thank you. Brad.

MR. ADAMS: Thank you, this will also be my last comment on the composite score. I second what

Kelli just said. Maybe it's the CPA in me. It just really bothers me that when schools make bad financial decisions because it gives them a better composite score, it's time to look at the composite score. And that's what's happening today with this [inaudible] standard change and when the impact on debt. So, I understand it's a monumental task to look at it. But if it's not helping prevent student, I mean from institutions, from going out of business, frankly, I do think it's time that we need to look at it in the very near future.

MR. MARTIN: Thank you, I mean, I'll definitely take that back. I think that it's been made very clear to us that, not that we weren't aware of it already, but certainly here that it's something we do need to take a look at, and I can commit to us taking that very seriously. So, thank you very much.

MS. MILLER: Thank you. Okay, so Greg, we could either take a temperature check or move on to the next section.

MR. MARTIN: You know, I'm not sure that a temperature check is really necessary for this until we look at the, you know, till we get into Subpart L and see what has replaced those, what was in 668.15.

MS. MILLER: Okay.

MR. MARTIN: So why don't we move on to looking at 668.23? So, 668.23 is Compliance Audits and Audited Financial Statements. Obviously, this is not Subpart L. This is, I think, Subpart B, standards for participation, I believe. So, this is dealing with audits, so in a different subsection. So, you can see here that the, as we discussed in the overview, the change to 668.23 is with the submission deadline, and you can see that much of it remains the same except as provided by the Single Audit Act, the United States Code [inaudible] the United States Code. An institution must submit annually to the Secretary its compliance audit and audited financial statement statements and what's been added here by the earlier of 30 days following the date of the auditor's report or six months after the last date of the institution's fiscal year. So, this is just again an acknowledgment that currently compliance audits and audited financial statements must be submitted within six months of the last day of the fiscal year, but that the acknowledgment here is that sometimes they're available sooner, and if they are available sooner, we would like to get those reports because it allows us to assess the institution, the institution's financial situation, far earlier than if the six months had elapsed. So that's what we're proposing here, to have it submitted by the earlier of the 30 days following the date of the auditor's report and keeping the six-month maximum timeframe. So, I'll open it up for any discussion or comments anyone might have on that proposed change.

MS. MILLER: Kelli, you're up first.

MS. PERRY: Thank you. Two comments/questions, I guess. So, my understanding is that the Department uses the easy audit submission to either recalculate or evaluate the composite score calculations, currently not the reporting to the clearinghouse as required by a single audit. And the current requirement for that is 90 days past [inaudible] fiscal year. So, is that something that will be changed as well? And then my second comment/question is that in your documentation on the front, when you describe this, you talked about the fact that the Department would be able to evaluate the results sooner and on a rolling basis. So currently, those composite scores come out on you know one list, one date. Can you explain what you're envisioning as it relates to evaluating results sooner and on a rolling basis?

MR. MARTIN: Well, I'll invite Steve to come in here. As far as what we proposed, here it is for FSA audits or financial aid audits. So, that's except as provided by the Single Audit Act, audits under that act, which we don't, the Department doesn't regulate. That does come under the under the Single Audit Act, and we don't have authority there. So, we do have authority for other audits to require that they be submitted after the within 30 days after the audit report. And I'm not sure I got the gist of the second part of your question, which was, if I'm not mistaken, why do we want to-

MS. PERRY: No, so my question is, so in the on the first page of the issue paper, you talk when you've documented this by adding the six months you talked about the fact that the Department will be able to evaluate the results sooner and on a rolling basis. So right now, the composite score results are coming out and one date, one list. And so, can you just kind of explain what the mechanism or how it would how that rolling basis of evaluation would be administered, I guess?

MR. MARTIN: I'm going to turn that one over to Steve because I'm not familiar with the actual process of audits as he is.

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

MR. FINLEY: Yeah, I thank you very much. I noticed that when my light wasn't coming on when

I was speaking. A couple of things here. Composite score list for all institutions may be made available all at once, but that represents the sum total of the annual reviews being done by the case teams. And those are done serially, right? No, it's impossible that every school could be evaluated on the same day and the list can be published the next day. So, when we talk about my understanding of what we're talking about on the ongoing evaluation are these provisions that talk about getting additional reports from schools, which was a practice already done by some case teams for schools that have been identified as potentially risky, and they do evaluate cash flow projections. They evaluate the estimates of the institution's ability to forecast its own operations over time as additional risk factors, and that's an ongoing evaluation, separate and apart from evaluation of the annual audited financial statements. And just to clarify here, the Department regulations have always said the audit submissions are due no later than six months. But what we have seen is we often get audits coming in at the six-month point where the completion date on them was substantially earlier. And we're just going to clarify saying if the audits are done and they are complete, signed off on, they should go ahead and be submitted to the Department at that point, right? Six months was always an outside time limit. It never prevented an institution from submitting them earlier and if they're complete, we want them submitted earlier. That will also enhance our ability to look at these to do these evaluations sooner.

MS. PERRY: And I clearly understand that, and the 30 days is something that's already added for the submission to the clearinghouse as it relates to the completion of those audits. I think my question is that the Department is using the easy audit submission to evaluate the financial responsibility calculation. So, is that timeframe going to change to mirror this requirement? Because right now it's nine months from the date of your fiscal year end.

MR. FINLEY: Yeah. The way they audit, the way the regulations are written, audits submitted on audits prepared and submitted under the Single Audit Act are accepted as meeting the institution's annual audit submission requirements. So if they change, if they adjust the deadlines, those get adjusted automatically since the Department accepts what is done under those. I would say the difference is if the audits are complete, we'll have to resolve whether that means they should be submitted to the Department sooner if they're already completed. We'll have to get back to you on that.

MS. MILLER: So, I see a Dave McClintock's hand up and he is an advisor, so I call on you to give light to this.

MR. MCCLINTOCK: Yeah, thank you. I obviously didn't draft the issue paper, but I think what is happening here, the single audit guide, it requires submission already within 30 days after the issuance of the report. However, the same requirement is not part of the proprietary audit guide. And so, this was written to cause those to align with one another, I think it's as except as provided. So Kelli, the nine-month requirement seems to still be in place for the single audit with or issued within 30 days, 30 days of the report being issued the way that it always has been. It's for other schools, the 30-day within issuance requirement is being added. Is that right, Greg?

MS. MILLER: [Inaudible] Okay, Brad has had his stand up patiently, so, Brad.

MR. ADAMS: Thank you. I'm generally okay and supportive of the language being proposed here, I just want to call out, and I'm not sure if the language change is needed or warranted, but the compliance audit, opinion date and the audited financial statement opinion date can fall on different days. So, I just want to make sure it's clear that that's the case and that there would be 30 days from the actual opinion date of each separate audit.

MR. MARTIN: I'm going to take that one back for clarification by our staff and as soon as I get that, I will let you know, thank you.

MS. MILLER: Barmak.

MR. NASSIRIAN: Just a quick question. You're not making any changes to subsection three, but do you, does the Department consider OPMs third party services?

MR. MARTIN: We don't automatically consider an OPM to be a third-party servicer or if what an OPM provides, services it provides to the school, meets our current regulatory definition and what we've said in subregulatory guidance then then it could. It could be a third-party servicer. I don't think I could say that every in every case they are. Currently, if all an OPM did was offer, for instance, educational material, it wouldn't be considered a third party servicer, but OPMs offer all types of services to institutions, and if it falls under our definition, then it would be it would be a considered a third-party servicer. But I can ask Steve to confirm that or add to it.

MR. FINLEY: Barmak, I guess at this

point, I would just say they're not categorically excluded as third-party servicers, how's that?

MR. NASSIRIAN: I mean, it's the language that defining them says include performing any function required by any statutory provision or applicable to Title IV of HEA. I'm assuming teaching students is a required function occasionally under the Title IV so and increasingly OPMs are not restricting their activities to administrative stuff. They're increasingly partnering with institutions to do the actual delivery of instruction. So, I would certainly hope that they are clearly included and subject to the audit requirements.

MS. MILLER: Thank you, Barmak, and I want to acknowledge that Carney King is has joined us back at the table representing students and student loan borrowers. I don't think I said that. Okay. Other comments? I don't see any. Greg, are we okay to move on?

MR. MARTIN: Sure. We could take a temperature check of the, of this, then we can move on.

MS. MILLER: So, could you frame the temperature check?

MR. MARTIN: Yeah, just so that the temperature would be on our revision here requiring the audit. A requiring that this compliance, audit and financial statements by the earlier of 30 days following the day of the auditors report or six months after the after the last day of the institution's fiscal year. So basically, the temperature check would be on our addition of the language by the earlier of 30 days following the date of the auditor's report.

MS. MILLER: Thank you. Oh, Steve, did you want to go before-

MR. FINLEY: We just need to get back with clarification on the question of whether that's the later of the audit report or the financial statement report, or whether it's two independent dates. But we've noted the question.

MS. MILLER: Thank you. Okay. Temperature checks, thumbs really high on adding this language. I don't see any thumbs down. This passed. [phonetic] Okay, are we ready, Greg, to move on?

MR. MARTIN: I think so. Thank you very much and thank you everybody for that discussion. So, we're ready to move on to looking at Subpart L, Financial Responsibility, and we'll begin in 668.171. [Inaudible] on the screen. Okay, so looking at B, General Standards of Financial Responsibility and except as provided in paragraph H of this section the Secretary considers an institution to be financially responsible if the Secretary determines that the institution's equity primary reserve and the income ratios yield a composite score of at least 1.5 under 668.172 and references the appropriate appendices there. The institution has sufficient cash reserves to make the required returns on earned Title IV HEA program funds under 668.173. And now we're looking at some changes in three. The institution is able to meet all of its financial obligations and provide administrative resources necessary to comply with the Title IV HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if it fails to make refunds under its refund policy or return of Title IV HEA program funds for which it is responsible under 668.22. And here we have added or pay Title IV credit balances as required under 668.164(h) romanette 2. Or it fails to make repayments to the Secretary for any debt or liability arising from the institution's participation in the Title IV HEA programs, and we've added it fails to make a payment in accordance with existing undisputed financial obligations for more than 90 days. It fails to make payroll obligations per its published payroll schedule. It borrows funds from retirement plans or restricted funds without authorization. Or subject to an action or event described in paragraph C of this section, those are mandatory triggering events, or an action the Secretary determines likely to have a material effect on the financial obligations or financial conditions of the institution rather under Paragraph D, which is the discretionary trigger events. So, I'll open the door for discussion on that.

MS. MILLER: Barmak.

MR. NASSIRIAN: So again, focusing on the timing of and efficacy of these new additions, romanette three strikes me as the only one that might serve as an early warning system candidly by the time an institution’s failing to meet payroll or has to borrow from retirement funds again, the Department is too late. I mean, those are good triggers to our articulate [phonetic]. There's lots of others too, right? Fail to pay the payroll taxes that it has collected. That's another marker of somebody in deep trouble. So, 90 days delinquency does strike me as a meaningful early warning system, which should be preserved, but I also worry about ways in which institutions may game this. So, what happens if they take on, I don't know whether the Department has debt covenants restricting the ability to borrow, but what happens if an institution manages to basically in a Ponzi scheme, just borrow short-term in order to make payments on existing debts? That's only my understanding is that only gets captured at the next audit, right? Not in real time. Am I correct? And isn't that in some ways the way to loot the corporation and to evade, leaving anything for the Department to pick up after the fact?

MR. MARTIN: I mean, I'll take that one back, Barmak. I'd like to talk to our financial analyst about that one, unless Steve has a comment on it. I think, yes, there is the possibility institutions could borrow to make to do these things. I would, you know, in some cases where schools are beginning to not be able to make these obligations, I would imagine that they might have difficulty borrowing at that point. But I will take that back and get a get a better answer for you regarding that. As concerns of the other elements here, I, having done compliance myself and been involved with the issue of Title IV credit balances, I feel that that the failure to make Title IV credit balances is a fairly good indicator of schools that are in trouble, when schools begin to experience financial difficulties. One of the first things they start to do that they do is to find ways not to not to make those credit balances payments to students either, not at all or in other cases, simply delay them. So, I find that to be a very important indicator as well.

MS. MILLER: Steve, do you want to weigh in? I'm sorry.

MR. MARTIN: Go ahead, Steve, I'm sorry.

MR. FINLEY: Any suggestions for additional triggers that folks would like to submit in writing, we would be happy to see and talk about. Barmak, I do appreciate what you're suggesting that some of these are much better early indicators than others, but lists like this are kind of like disclaimers that you have to sign when you're making a purchase or something. Anything that's listed in there is something that happened somewhere, and I'm sure that these come from a lot of experience over time at the Department of things that happened at schools that were strapped for cash at the time. Some are better than others at being early indicators, certainly.

MS. MILLER: Thank you, Steve. Brad.

MR. ADAMS: Yes. To add to Barmak's comment, romanette three through five, I just want to say there's a concept in accounting called materiality, and we'll never capture every single component of what may mean materially financially to a school. We're trying. We're adding these three things here, but there could be many others. I think we'd be much better off with the materiality definition instead of trying to guess or assume all the different things that could end up being a material financial impact to a school. Again, these three things when they occur may or may not be material to that school, and accounting does a very good job explaining this definition. So, I'm not sure why we're trying to come up with language for every single instance of what we think could be material to a school's financial position. And we'd be much better off defining materiality and what that means than trying to come up with 30 different romanettes.

MS. MILLER: Thank you, Brad. David.

MR. SOCOLOW: Yeah, picking up on something Barmak said about romanette three and 90-day financial obligations for payroll taxes collected from their employees, state payroll taxes are due every 90 days in almost every state for unemployment insurance, among other things. And you know, I don't know if the Department considers that to be included, but I would just say for the perspective of getting an early warning from a cooperative state agency that might have noticed an entity was delinquent on its obligations to the state government. That might be a source of referrals of some early warning notices, and I don't know if it would be possible to. Well, first of all, do you believe that counts as a financial obligation and should we be making it explicit in this romanette? Thank you.

MS. MILLER: Thank you. Well, I don't see any other hands on this Greg. Would, where would you like to go next?

MR. MARTIN: We could take a temperature check on that because we're moving on to a new subparagraph so we could do a quick temperature check on this one.

MS. MILLER: Okay, so, we're taking a temperature check, thumbs high for 668.171.

MR. MARTIN: B.

MS. MILLER: B, I'm sorry. Thumbs high. I don't see everyone's thumbs. Okay. No thumbs down on that one.

MR. MARTIN: Okay, we'll move on to a discussion of-

MR. FINLEY: Greg, we did-

MS. MILLER: Oh, okay.

MR. ADAMS: Again, back to my materiality comment. These may not be material to the individual institution [inaudible] warranted. I think a better comment would be you need to look at a materiality definition, maybe Dave could even help present one to the Department.

MR. MARTIN: Okay. So, we're going to move on to 171(c), this is the mandatory triggering event and an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) romanette five of this section, if one or more of the following occurs. So, the first one we deal with here is debts, liabilities and losses at the end of the fiscal year, for which the Secretary has most recently calculated an institution's composite score. The institution is required to pay any debt or incurs any liability from a settlement, final judgment in a judicial proceeding or determination arising from an administrative proceeding and as a result of the debts, liabilities or losses that have stemmed from those actions or events, the institution’s recalculated composite score is less than one as determined by the Secretary at the end of this section. And pointing out here that we have made a number of revisions to the mandatory triggering events and these are events that occur if they occur, will necessarily require the institution to post financial protection, such as a letter of credit. And we've adjusted this trigger to relate to a requirement to pay any debt or incur any liability from a settlement, financial judgment or administrative determination. This will only require financial protection if the losses from that judgment or determination would cause the institution's composite score to fall. So, while the trigger previous referred only to post appeal determinations, we are concerned that such a significant event would be too late. The institution may already be in severe financial distress by the time the appeals are exhausted. Thus, we're proposing here to eliminate that language regarding the post hearing determination, so points out the difference between the existing language and what we are proposing here. Moving on to some other indicators, the institution is being sued for financial relief in an action brought on or after July 1, 2023 by a federal or state authority or through a qui tam lawsuit in which the federal government has intervened and the suit has been pending for 120 days or the Secretary has adjudicated claims in favor of borrowers under the loan discharge provisions in 34 CFR Part 685 and the total amount of loans discharged since July 1, 2023 is equal to or greater than five percent of the total Title IV HEA program funds received by the institution during the most recently completed fiscal year. And I will yeah, then we'll go on to, so the next one is this was debts, liabilities and losses. Next one relates to, and this is still under under paragraph C. Looking at romanette two, withdraw of owner's equity for proprietary institutions whose composite score is less than 1.5. There is a withdrawal of owner's equity from the institution by any means unless the withdrawal is a transfer to an entity included in the Affiliated Entity Group on whose behalf the institution's composite score was calculated or the equivalent of wages in a sole proprietor, proprietorship or partnership or required dividend or return of capital. So, I think I'll stop there, because that's a lot and I know that we haven't covered a full paragraph, but I don't want to get too far ahead of myself because what we're covering here is fairly dense, so I'll stop there and open the floor for comments.

MS. MILLER: Okay, Carolyn.

MS. FAST: Thank you. Just in general, I'm supportive of the idea of creating these triggers, and I think this is overall a good idea. A couple of comments about how to strengthen them or make them look a little bit better, potentially. Looking at the trigger that would result in recalculation of a composite score based on the amount from a settlement, that raised some questions for me because of the concerns about the composite score itself being flawed, that perhaps just recalculating the composite score is not necessarily the best approach there, perhaps and sort of like independent expert analysis would be useful to sort of review whether or not that is something that would create a financial significant financial issue. And other concern that I had with that provision was that it would only result in a consequence if the composite score was under one, which seems to be weaker than it could be because ordinarily, if a composite score was under 1.5, there would be, if I understand correctly, a consequence of financial protection. So, I was wondering why the protection would be lesser here than if I'm understanding correctly that it would be otherwise. So those are two quick points about that.

MR. MARTIN: So, you're suggesting that it'd be not one, it'd be at one point, you said at 1.5?

MS. FAST: Right. And also asking whether there's a reason why it wouldn't be because it seems to me that if it's under 1.5, ordinarily that would be enough to trigger some action or consequences or however you want to look at it in terms of protecting funds.

MR. MARTIN: I think currently it's keyed to outright failure, but we'll take that back. I'll discuss it with our group and I [interposing] if anybody else has comments on that particular aspect, you're welcome, I would welcome those as well.

MR. FINLEY: Let me just answer the question that she's asking, which is generally 1.5 is a passing score. But institutions that score between 1.1 and 1.4 have up to three years to be in the zone, where they're not necessarily required to provide a letter of credit. They're under some heightened reporting, but they're not providing financial protection and anything a score of below 1.0 is always a failing score that requires financial protection. So, I know, the suggestion can be made that the trigger should be higher, but I'm just trying to explain why it's where it is in the proposal.

MS. FAST: If I may, I'd like to suggest that it be a 1.5 trigger rather than a 1.

MS. MILLER: Thank you. So, we have Brad, Yael, Kelli and Barmak, and we do want to cap it there because we want to move to a public comment. So, Brad.

MR. ADAMS: Yes, this comment relates to Section B. I'll withhold the owner's equity comment for tomorrow. The trigger, so this is about being sued by a state or federal agency. The triggering event should be things that have actually happened and had an actual financial impact that can be measured. For example, I agree that if the school is paid out of material settlement, it makes sense to determine whether that settlement is material to the school's bottom line. The mere fact that the institution is being sued by an agency, well it should not. There is no way to know whether that suit will result in a liability or that it would be material to the school's finances. It's important to note here that the judicial branch, not the executive branch, hears cases and controversies in this country. Here, the Department is proposing essentially to penalize institutions if they are sued, notwithstanding the merits of the case brought by the government. Implicit in the Department's argument here is that whenever a government entity brings the complaint in court, it should be an indication that the government may succeed on its merits. But to the contrary, the government frequently loses in court. I think we should all be skeptical of the idea that institutions should be punished by the Department of education before they've had their day in court. Adding this mandatory trigger will create significant problems for institutions and will undoubtedly be over-inclusive as it as it will punish institutions that will ultimately have their name cleared in court.

MS. MILLER: Thank you, Brad. So, we only have two minutes left before public comment, so if we can make it brief. Yael. Okay, Kelli.

MS. SHAVIT: Do you mind if I respond to that? I think I might have been next and my response is directly pertinent.

MS. MILLER: Okay.

MS. SHAVIT: I just want to ground this discussion in reality. This is not about punishing institutions, it's about what is an indicator of a likely precipitous closure that is going to be incredibly harmful to borrowers. And I would now like to reiterate what I said before, that access to Title IV funds is not an entitlement, but a privilege. It's our experience time and time again that by the time an institution is sued by a state agency or by a federal agency, it might already be too late. And it's a pretty good indicator of precipitous closure, and we've seen that in many examples in the actions that we've brought [phonetic]. I'd like to also note that by the time that we bring a lawsuit as agencies, we've had access to a lot of information. We have subpoena power, we have investigatory power. We don't bring lawsuits on hunches or assumptions. We bring them based on hard data. And that hard data is regularly related to the financial health of the institution. I commend the Department for reincluding this mandatory trigger that was already part of previous regulations. I think it's critical for protecting borrowers.

MS. MILLER: Okay, thank you. We are at time because we have to get to public comments, I'm sorry, Kelli and Barmak, but you can always put it in the chat. Steve.

MS. JEFFRIES: I will say this, Kelli and Barmak, we can keep note that you in that order and pick up with you first thing in the morning when we open this topic, if that's okay with you. Alright, so we'll go first with Kelli and then with Barmak and any subsequent comments.

MS. MILLER: Thank you for that. Okay, now it's time for public comment.

MR. ROBERTS: Roz, I'm admitting Kyle Southern, who's here on behalf of the Institute for College Access and Success.

MS. MILLER: Thank you. Hello, Kyle. How are you?

MR. SOUTHERN: Hi, good afternoon.

MS. MILLER: You have three minutes to comment, starting whenever you speak.

MR. SOUTHERN: Thank you. Good

afternoon. I'm Dr. Kyle Southern, Director of Accountability at the Institute for College Access and Success, a nonprofit, nonpartisan organization dedicated to advancing affordability, accountability and equity in higher education. At TICAS, we're encouraged by the Department's intention to reinstate the gainful employment rule because, in short, when it was in place, the GE rule worked. According to one analysis, 500 of the 767 programs identified as failing in 2017 had closed by 2018, including nearly two-thirds of for-profit programs that failed to meet the rules' baseline standards. The performance of many for-profit career education programs demonstrates the need for the GE rule. Community colleges and other public institutions offered 61 percent of the programs covered by the 2014 rule. Not-for-profit institutions offered only one-third of covered programs. Yet for-profit colleges offered 98 percent of the programs that failed. Moreover, black and Latino students enrolled in a for-profit two-year program pay more than twice the cost that would pay to attend a program at a public college, and they leave with $10,000 more debt on average. Students at two and four-year for-profit colleges combined earn [phonetic] on average 83 percent more than their peers at public and nonprofit private institutions. A GE rule that builds from the 2014 rule will serve as a needed backstop to prevent high cost, low-quality programs from perpetuating cycles of exploitation too often seen in this sector. Separately, this committee must resist calls to create carve-outs that would weaken what Congress intended when a bipartisan majority agreed to close the 90/10 loophole. G.I. Bill benefits are a debt we collectively owe to our neighbors who serve, not a boon to corporate bottom lines. And federal dollars are federal dollars, no matter the Department or program from which they come. Members of this committee should also all insist in the strongest possible rules to ensure the financial strength of colleges that they have the administrative capability to serve students effectively, and that profit centers for unscrupulous actors cannot masquerade as nonprofit institutions of higher education. Together with the ability to benefit and Title IV certification regulations, each of these issues represents an error on the Department of Education's [inaudible] to protect taxpayers investments in our nation students and protect students from educational harm. Thank you for your consideration of these comments and thank you all for your service.

MS. MILLER: Thank you, Kyle.

MR. ROBERTS: Okay, Roz, I am now

admitting Bob Shireman, who's here representing the Century Foundation.

MS. MILLER: Hi, Bob.

MR. ROBERTS: He's all connected with sound if you want to-

MS. MILLER: Hi, Bob, welcome,

MR. SHIREMAN: Thank you so much. Really appreciate it.

MS. MILLER: I'm sorry. You have three minutes for comment, starting when you speak.

MR. SHIREMAN: Thank you to the Department staff and to the negotiators for all of your thoughtful proposals and discussions. I would like to address the mantra that we have started to hear from the for-profit college industry with regard to this neg reg. The slogan that they have adopted is all students, all institutions, all sectors. The slogan is clearly intended to create the impression that the for-profit institutions are somehow being unfairly targeted with regulations. That is a deception. Tomorrow as part of the discussion of the change of ownership regulations, you'll be discussing the definition of a nonprofit institution of higher education institution that had generally not exhibited predatory behavior because of the restrictions on their finances and their control.

The original Higher Education Act excluded for-profit institutions because of the scandals that had occurred with the GI Bill in the 1940s and 50s. When for-profit institutions were added, the protection they inserted in lieu of the nonprofit requirements was the requirement that programs provide for gainful employment in a recognized occupation. Later, after the scandals of the 1980s, again largely for-profits, the 85/15 requirement later changed to 90/10 was added. GE and 90/10 requirements are part of a deal that an institution signs up for when it decides it wants federal entitlement funds. You can forgo the nonprofit prohibition on owners or anyone extracting profit from the institution, which changes the incentives behind every management decision that an institution makes. You can ignore the requirement that all of the revenue must return to the institution and to its educational mission. You can place control of the institution in the hands of people who personally profit, even though even though it is more effective to rely on trustees who have no such financial conflict of interest, you can refuse to comply with those regulations, but instead you must comply with the other rules that attempt to take their place. Helping to assure that students and taxpayers get value given the incentive at a for-profit institution to spend less on education and incentive that nonprofit institutions do not have because of the regulations that apply to them. These substitute regulations, I must emphasize [audio] often as effective at preventing consumer abuses, has half the public and nonprofit requirements. If those rules that apply to all institutions, we would have avoided most of the fraud and abuse scandals of the past. I urge the for-profit industry to abandon its deceptive all fall all slogan. It is disingenuous. It is a misrepresentation. It is misleading in the same way that predatory colleges try to trick students into enrolling in programs that are not really right for them. Thank you so much.

MS. JEFFRIES: Thank you, Bob.

MR. ROBERTS: Alright, Roz, I just admitted Mr. Dan Mahoney, who is representing himself.

MS. MILLER: Hi, Dan.

MR. MAHONEY: Hello.

MS. MILLER: You have three minutes to comment, starting when you speak.

MR. MAHONEY: Great. Thank you. Thanks, everybody. I want to speak in defense of protecting borrowers from institutions. In 2003, it was both the best year of my life and the worst. The best year of my life because my wife gave birth to our first child, the worst because my wife and I consolidated our student loans into FFEL spousal consolidation loans. Maybe the worst mistake of our lives. Spousal consolidation because both of us had graduate degrees in the arts. We decided that having one payment would be probably a good idea for a while until we earned more money to be able to pay larger sums on our loans. It had been, the consolidation program had been in existence since 1993. In 2006, the Department of Education decided to do away with the program. They had 13 years of numbers of data and decided that these were these loans were bad bets. They were going into default. There was divorce happening. They were unable to collect what they needed to collect. So, the Department of Education stopped the program. But for those of us who were already in the program and had these loans, we were just left swinging in the wind. So, the institution I need protection from, it seems, is the Department of Education. This is an untenable position to admit that something didn't work, but then leave the people who are already in this, in these loans, in them. It was always too risky. It was always a bad bet. And my guess is that there's the information to prove that if you just look. In 2011, both my wife and I started working for a nonprofit institution here in Maine. We found out about

Public Service Loan Forgiveness. We contacted our student loan servicer, Navient. They said we qualified. Every year, I called back. Every year, I got, well, three years in a row. I got, yes, you qualified, everything is great. You're in Income Based Repayment. It's all working out. On the fourth year, someone said, no, you have the wrong type of loan; spousal consolidations do not count. They suggested I call Studentaid.gov. [Audio] So we went to studentaid.gov who said, yeah, all you have to do is contact Navient and they can switch the loans to direct loans. Navient then said, no, we can't do that. You got to talk to studentaid.gov, they can help you. Then studentaid.gov referred us back to Navient. It's this endless cycle that we can't get out of. We've even had a lawyer suggest we get a divorce, and maybe that could help.

MS. JEFFRIES: I'm sorry, Daniel, your time is up.

MR. MAHONEY: Okay, thank you so much.

MR. MAHONEY: Thank you.

MR. ROBERTS: Roz, I'm admitting Jonelle Daughtry, who's a veteran representing themselves. It looks like they might be stuck joining, so I'm going to admit the next speaker and then I'll message a message them, so I'm now admitting Joe Louis

Martinez, who is representing himself.

MS. MILLER: Hi, Joe, welcome. [Inaudible] connect to the audio there.

MR. ROBERTS: Why don't I admit the next speaker and I'll also, wait, he should be able to hear us now.

MS. MILLER: Okay, welcome Joe. You have three minutes, beginning when you speak.

MR. ROBERTS: Now, I think he's still, I'll message him. I think he's having some audio issues, but I will now admit Mr. Joe Gent, who is the director of Alternative Distance Adult and pre-K education for the Nye County School District.

MS. MILLER: Okay, welcome Joe Gent. You have three minutes to comment, starting when you speak. Are we on mute?

MR. GENT: Better.

MS. MILLER: Yes.

MR. GENT: Okay. I apologize for that. Thank you for your public service. My name is Joe Gent. I'm a Marine Corps officer, combat veteran of the global war on terrorism. I'm also a three-time graduate of all nine universities and a practicing educator. I currently serve as the director of Alternative Distance Adult and pre-K education in Nye County School District in Nevada.

I have experienced distance learning from both a personal and professional perspective. So, after I left to the Marine Corps, I decided to go back to school to advance my career, but I had to work full-time to support my family. So, a brick and mortar university was not an option for me. After completing three degrees online in a virtual environment, I can say with confidence that my fellow classmates chose this platform because they were in a similar position as I was. They simply couldn't manage a career while attending a traditional brick and mortar university. That model is frankly not suited for everyone, especially veterans who entered their education as working adults after years of serving in the military and transitioning to civilian life. In my opinion, veterans already have enough barriers to education, and the 90/10 rule is one of them. While I was at the University of Phoenix, I personally was honored to receive a full ride scholarship to complete my doctorate. But I know that's not the case for all veterans. Some have to use their Montgomery GI Bill to afford their education. That's why I think it's crucial you consider the true impact the 90/10 rule would have on veteran students. The Marines and sailors who served in a combat zone with me risking their life and limb numerous times, these same service members who we entrust to care for the lives of each other and maintain millions of dollars worth of equipment, we, my fellow veterans and I should be allowed, we should be entrusted to use our hard earned and well-deserved education benefits where we choose. I ask you to create regulations fairly for all students, especially for my fellow brother and sister veterans transitioning to civilian life and consider the impact the 90/10 rule will have on them. Thank you again for the opportunity to address you today.

MS. MILLER: Thank you, Joe. Okay.

MR. ROBERTS: I think Jonelle is on and should be able to come off of mute and address the committee.

MS. JEFFRIES: Okay, thank you.

MS. DAUGHTRY: I can hear you. Good afternoon. I'm good. Good afternoon, my name is Jonelle Daughtry [phonetic] and I'm a veteran. I started pursuing a Ph.D. in Sports and Performance Psychology in 2014 at University of the Rockies. In 2018, University of the Rockies became part of Ashford University, which recently became University of Arizona Global Campus. I told the recruiter that I already used most of my GI bill for my bachelor's and master's degree. With that knowledge, the school promised me that they would provide yellow ribbon and other funding to make up for any shortfall after my GI Bill was used. This promise plays a significant role in my decision to go to University of the Rockies because I was concerned about financing my Ph.D. As it turned out, my GI Bill only covered two classes. Contrary to their initial promise, the school has refused to provide the additional funding and I had to take out student loans to continue my education. Although the school told me they would provide all necessary resources for my dissertation, they have fallen short in every possible way. My school has not provided feedback on my writing and instead told me to hire a professional editor to review my work. Besides having access to the school library, I am practically left on my own to work on my dissertation. My program requires me to fly to Colorado for in-residence programs every year. I have attended the program three times so far, and each trip costs a thousand dollars, which I paid out of pocket. Since the Colorado program is necessary for my degree, I had naturally believed it would be covered by whatever funding the school initially promised me. My ability to make progress towards my degree is also thwarted by a constant change of dissertation advisors. Each time my advisor has changed, I was instructed to start my dissertation completely from scratch. I have been in the Ph.D. Program for almost eight years with no progress to show for it. Nevertheless, the school has always pushed me to keep up with the program, despite providing me none of the resources I need. I was also promised a military discount, which I never saw. The school kept adding charges to my account, and no one would give me an explanation because there is a constant turnover in staff at the school. I currently have about $200,000 in PLUS and graduate PLUS loans because of Ashford and University AGC. I feel like the school is keeping me in the program just to continue changing charging [audio] even though my school. I have one more sentence sorry.

MS. JEFFRIES: Okay, that's okay, go ahead.

MS. DAUGHTRY: So sorry. Even though my school has changed names and corporate ownership twice since I started, the quality of instruction and disregard of student interest has never improved. I hope the Education Department will develop new rules to ensure that only schools with high quality instructional practices are entitled to receive federal student aid funding. Thank you very much for hearing my comments and my situation.

MS. MILLER: Thank you, Jonelle.

Brady, who's up next?

MR. ROBERTS: I am re-admitting Mr. Joe Martinez, who was having some audio issues when he first joined and should be and should be okay to speak once he's on now. Looks like he's on. His video might still be having some issues, but audio might improve.

MS. MILLER: Joe, welcome. You have-.

MR. ROBERTS: He's still connecting. He's still connecting to the audio. I'm going to message him again and see if I can work it out, but in the meantime, I'm going to admit Liz King, who's the senior director at the Leadership Conference on Civil and Human Rights.

MS. MILLER: Sorry about that. You have three minutes to comment, starting when you speak.

MR. ROBERTS: Oh, Ms. King, I think that you're muted right now.

MS. KING: Oh, sorry, is it my turn?

MR. ROBERTS: Yes.

MS. KING: Oh, sorry, my name is Liz King and I'm the senior director of the Education Equity Program at the Leadership Conference on Civil and Human Rights in Washington, DC. We are a coalition charged by our diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States. I wanted to first thank the committee for accepting the nomination of Amanda Martinez, UnidosUS to serve as a negotiator on behalf of the civil rights community and to acknowledge Jaylon and Herbin and the Center for Responsible Lending for their long-standing commitment to racial justice, equal opportunity and consumer protection. I must also share profound disappointment that the Department did not include a dedicated civil rights community negotiator when the committee was originally created. The primary measure of the success of this committee, and if any regulation or policy to implement and enforce the Higher Education Act is whether the actions advance equity and higher education and protect students from discrimination. At its core, the purpose of the HEA is to expand access and opportunity in higher education. This law was created in the height of the civil rights movement and at the demands of those communities, black, Latino, Native American, Asian American and LGBTQ people, women, religious minorities and people with disabilities who were shut out of higher education and the pathway it created to full participation in the social, political and economic life of the country. The very issues before this committee, whether students will be protected from high cost, low quality institutions, whether institutions will have to prove their value before participating in federal aid programs and whether the federal government will meaningfully exercise its oversight responsibilities, are fundamentally urgent questions of racial and gender justice. Black and Latino students are overrepresented in for-profit colleges where all students are much less likely to graduate and far more likely to default on their student loans than students at public and private nonprofit schools. Black and Latino for profit students leave with $10,000 more debt on average than their peers attending a public two-year program. The civil rights community has repeatedly raised the alarm about the need for aggressive regulation in this area. I am happy to share with this committee our policy brief, gainful employment, a civil rights perspective, as well as our civil rights principles. [Audio] As this committee continues its important work, I urge you in the strongest of terms to see the stakes of these decisions for what they are. We have an obligation to ensure that the determination to pursue an education at any cost does not, in fact, cost them everything. Thank you.

MS. MILLER: Thank you, Liz. Joe, are you with us?

MR. MARTINEZ: Yes. Can you hear me?

MS. MILLER: Yes. You have three minutes to comment, starting when you speak.

MR. MARTINEZ: Okay, thank you. I'm sorry for the technical difficulties, but so, first off, my name is Joe Louis Martinez, and I thank you guys for the opportunity to share my story and point of view of higher education today, more specifically on the 90/10 rule. I'm a veteran, and I served in the military for 11 years. Eventually, I earned my GI Bill and decided to use these benefits to go back to school. At that time, my daughter had just moved in with me in the night when she was in the ninth grade. I'm not knowing anything about this, so I wanted to set a good example for her, not only her, but for my family. So, in doing so, the typical university was not an option for me. I was working full-time at the Veterans Hospital here in Albuquerque, New Mexico. On top of that, I was taking care of my mother full-time and then my daughter moved in so that that really puts a lot of pressure on a young man when going through that. Therefore, the University of Phoenix was the best fix for my situation, it allowed me, gave me the best option. The university created a flexibility and an inclusive environment for me and other students from all types of lifestyles. And it was especially supportive of a veteran student. There needs to be more policies that support universities like the Phoenix that create accessibility environments for veteran students like myself. Eventually, I graduated in 2015 and got my MBA. It was, this wouldn't have been possible at a typical brick and mortar university that only offers in-person classes or classes during the day. I deserve the opportunity to set myself and my family up for success. And with the master's degree under my belt and having it entirely paid off and advanced my career in IT. And I worked in the industry for many years now. Please consider my story as a veteran who benefited from the GI Bill and consider the 90/10 rule and how it will impact veterans like myself. I know that I'm not the only one. And again, I want to thank you for your time. That's all I got.

MS. MILLER: Thank you, Joe. Brady, do we have any more?

MR. ROBERTS: We do, I'm now admitting Joseph Sharpe, who's here speaking on behalf of the American Legion. He should be able to hear you. He has his video turned off, but.

MR. SHARPE: Hello.

MS. MILLER: Welcome, Joseph. You have three minutes, starting when you speak.

MR. SHARPE: Okay, thank you. On

behalf of the national commander Paul Diller and the nearly two million members of the American Legion. We thank the Department of Education for inviting us to speak on 90/10 and gainful employment at this public hearing today, ensuring that service members obtain quality education during and after their time in uniform. It's a top priority for the American Legion. Every veteran deserves the right to an education that provides them with the skills and experience needed to find gainful employment in the 21st century labor market. Many veterans have successfully utilize the GI Bill benefits to seek gainful employment in their desired industries. However, others have unfortunately fallen victim to unscrupulous actors who have taken advantage of the old 90/10 interpretation of the U.S. education law, whereby GI Bill education benefits counted as private dollars outside of Title IV Federal Student Aid programs. Given that taxpayers spent more than 150 billion on federal financial aid and 11 billion on GI Bill benefits annually, the American Legion is concerned with safeguarding federal taxpayer stewardship and ensuring public funds are supporting reputable institutions of higher learning. Numerous laws passed in recent years, including the Harry W. Colmery Act of 2017 and the Isakson Roe Act of 2020, seek to combat the ability of these malicious institutions to swindle the nation's veterans into overpriced and underperforming programs that fail to provide the necessary training and skills needed to succeed in today's job market. The American Legion stresses the need for risk-based systems to ensure students do not graduate from institutions of higher learning facing diminished or negative job market returns. While serving on the Advisory Council for the Risk Based Survey RBS model, The American Legion pushed for its development, advocating tirelessly to ensure that it becomes the standard practice when evaluating higher education institutions that use the GI Bill. The American Legion's commitment to supporting the model is codified in our Resolution Number 11 GI Bill risk-based survey whereby the American Legion requests the federal government promptly adopt [Audio] the RBS program to protect our veterans, servicemembers, and the GI Bill. And finally, the American Legion looks forward to the implementation upscaling of the RBS model later this year and request that the U.S. Department of Education upholds its current interpretation of 9/10 and enforce accordingly. We thank the U.S. Department of Education for their diligence in this matter and for their efforts to provide quality [Audio] opportunities for our service members and veterans. Thank you.

MS. JEFFRIES: Your three minutes are up. Thank you.

MR. ROBERTS: I'm admitting Matthew Feehan, who is representing himself.

MS. MILLER: Hi Matthew.

MR. FEEHAN: Hi there, can you hear me alright?

MS. MILLER: Yes, you have three minutes starting when you speak.

MR. FEEHAN: Beautiful, thank you for your time. Good afternoon, honorable members of this committee, it is my distinct pleasure to offer feedback towards these proposed rules that in all likelihood will affect student veterans and student service members. My name is Matthew Feehan. I'm a disabled U.S. military veteran, a graduate of Western New England School of Law, a graduate student at the University of Texas Rio Grande Valley, go Vaqueros. A former honors law clerk for the U.S. Department of Justice and committee member of the Academic Research and Education Technology Committee at UTRGV. And finally principal at Feehan and Associates. First, I'd like to start off by acknowledging the ongoing outstanding work of our primary representative Iraq and Veterans of America and of our secondary representative Veterans Education

Success, both organizations have done an outstanding job for student veterans and student service members. Next on some of the regulatory issues raised thus far and will likely come up this week, IAVA and VES in this particular area do not speak for me and my interest. This agreement is all but natural. However, I'm concerned that my fellow brothers and sisters in uniform may not be best represented here today, and I encourage this committee to increase its student veteran representation, particularly because the GI Bill is a benefit garnered by all sectors of the postsecondary education system that includes for-profit, nonprofit and public institutions. My general feedback pertains to the 90/10 rule, Ability to Benefit certificate, certification procedures, change of ownership and change control, financial responsibility, gainful employment and standards of administrative capability. Contrary to Partisan lobbyists and think tanks misrepresentations, many of the aforementioned regulations do not solely address for-profits. In fact, financial responsibility cited by statute Section 498 of the HEA and 34 CFR 668 addresses both for-profits, non-profits and public educational institutions, and ironically, they're delineated by subpart. If the Massachusetts Attorney General's Office is office's argument is correct, that filing a lawsuit essentially means that won the lawsuit, and that's an indicator for a triggering event, then following that same logic, I would offer to this committee that we should add GI Bill school feedback tool complaint to triggering events. The triggering events I would suggest would be five or more student veteran complaints raised at the tool should be a triggering event. In addition, a teach out plan is not a plan. It is far from stable, as many lobbyists think tanks argue. For educational institutions near to implementation of a teach out plan, we should change the word from submit to publish. Currently, the language says to submit the teach out plan-

MS. JEFFRIES: Matthew, your time is up.

MR. FEEHAN: Thank you, ma'am. Thank you for your time.

MR. ROBERTS: Alright, Roz, our final speaker for the day is Ashlynne Hancock or Haycock, excuse me, who was the deputy director for policy and legislation at the Tragedy Assistance Program for Survivors.

MS. MILLER: Hi Ashlynne.

MR. HAYCOCK: Thank you.

MS. MILLER: You have three minutes

starting when you speak.

MR. HAYCOCK: Thank you. Good afternoon. My name is Ashlynne Haycock and I serve as the deputy director of policy at the Tragedy Assistance Program for Survivors. I come to you today to stand up for the over 100,000 families of fallen heroes that TAPS represents, many of whom have or will use education benefits from the Department of Veterans Affairs. We stand here today to call on the Department of Education to ensure strong implementation of the new law to close the 90/10 loophole. As you know, the 90/10 loophole resulted in targeting of our community by aggressive and deceptive marketing. Countless veterans, families, caregivers and survivors are seen as nothing more than dollars signs in uniform and have had their lives financially ruined because of this loophole. We thank bipartisan members of Congress for listening to us and finally closing the 90/10 loophole. At TAPS, we are especially concerned with the discussion that funds paid directly to the students will not be included in the final calculation. While most people generally just think of the [inaudible] portion of the post-9/11 GI Bill, when discussing it, they forget that Chapter 35 benefits are paid the same way. This proposal will take the target off of the backs of veterans and place it on a much more vulnerable population than of caregivers and survivors. Between a significantly lower payment rate of Chapter 35 benefits and the responsibilities of a veteran caregiver have, they generally have significantly less options for institutions of higher learning than this as most choose an online program with flexibility around the needs of their families. The same goes for surviving spouses, who tend to also choose online programs with flexibility, as many of them are single parents and online programs tend to fit better with limited childcare needs. This makes them prime targets for predatory for-profit programs that market on flexibility. Closing the loophole was supposed to help protect them. Not including funds paid directly to students will instead put an even larger target on their backs. We strongly encourage the Department of Education to include both Chapter 35 and Montgomery GI Bill benefits in the final calculation for 90/10. At TAPS, we have not come to these positions lightly, and we stand unwavering in our commitment as it has a significant impact on those we serve. Thank you for the time to present our views and please reach out to us if you have any clarifying questions. Thank you.

MS. MILLER: Thank you, Ashley. Brady, does that conclude our public commenters for the day?

MR. ROBERTS: That does. Thank you, everyone.

MS. MILLER: Okay. Greg, do you have any final comments?

MR. MARTIN: No, no other than just to thank everybody for what I felt was a very productive day and say how much we appreciate all the, everything we've heard and I look forward to seeing everybody tomorrow. Thank you very much.

MS. MILLER: Alright. Thank you, everyone. We'll pick up where we left off tomorrow.

MS. JEFFRIES: See you in the morning, everyone.

Appendix

Department of Education, Office of Postsecondary Education
Zoom Chat Transcript
Institutional and Programmatic Eligibility Committee
Session 1, Day 2, Afternoon, January 19, 2021

From Ashley Schofield (A) - MSIs to Everyone:

I am at the table for Beverly.

From Sam (P) Fin Aid Admin to Everyone:

David Peterson is in for Sam Veeder for Financial Aid Professionals

From Jamie Studley (P) Accrediting Agencies to Everyone:

The question Brad proposed be subject to a temp check not only has no text or reference to authority, and also has not been directly discussed by negotiators.

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

Thank you Iwill submit the question to Cindy via email. My request is simply asking whether we should or could use a different statutory authority in Direct Loan agreement quality assurance authority in Sec. 453 of the HEA, and apply that 2014 GE debt to earnings metrics in the prior rule to all institutions

From Yael Shavit to Everyone:

+1 to Barmak

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

+1 Barmak, especially on preventing victimization.

From Anne Kress (P) Comm Colleges to Everyone:

+1 to Jamie’s point about positions where higher ed has no impact over wages and employment requirements—so our only strategy is to keep costs low

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

I support measures on addressing programs with low-income outcomes

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

+1 with Jamie on the need to look at the data for the various options are we discussing and be mindful of impacts.

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

+1 to Jamie re: low-income occupations that serve critical public needs. This has a disproportionate impact on community colleges.

From Jamie Studley (P) Accrediting Agencies to Everyone:

Other negotiators have captured my question: what might be the effect if the rules were to have consequences for low-income when the debt-to-income ratio is not problematic? Can we address the risks for programs in low-income fields by the allowable level we set (maybe comparisons to peers in the field--consequences for the lowest outliers in that field?).

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

Did my voice sound muffled to anyone else? I am not sure what changed on my end.

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

Brad, I could hear you fine

From Jamie Studley (P) Accrediting Agencies to Everyone:

Brad, you did seem a little muffled to me, perhaps you were sitting back away from your mic.

From Johnson Tyler, Brooklyn Legal Services to Everyone:

+1 on Barmak and Ernest on a short corrective period for schools who fail GE.

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

+1 to Ernest's comment that it is important to think about how delays in consequences for failures harms students

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

Thank you all for your feedback

From Jamie Studley (P) Accrediting Agencies to Everyone:

Using more than one year is often reasonable, but these time horizons may be longer than needed. + 1 to Debbie's suggestion about looking at the patterns in setting that timing.

From Adam Looney (Advisor) to Everyone:

Earnings (and student loan repayment rates) three years after leaving school have been shown to be broadly representative of such outcomes over the longer run. (I could provide some citations to that effect.) Obviously, earnings continue to rise over time, but after three years you have a good sense of the relative performance of students from different programs and earnings that are stable thereafter.

From Johnson (P) Legal Aid to Everyone:

I think there was an appeal process on GE findings in early regs that addressed due process concerns on metrics accuracy

From Emmanual Guillory (A)-PNPs to Everyone:

The 2014 rule will prohibit Title IV eligibility for programs if they failed the debt-to-earnings metrics for 2 out of 3 consecutive years and cannot reapply for reinstatement for three calendar years.

From Jamie Studley (P) Accrediting Agencies to Everyone:

Greg, could you briefly explain "that figure" in (a) -- how detailed was the reporting, debt per student using that definition or something more?

From Emmanual Guillory (A)-PNPs to Everyone:

There was also an ability to appeal draft debt-to-earnings rates

From Emmanual Guillory (A)-PNPs to Everyone:

And there was an ability to appeal the completers list

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

+1 on Brad's point about automating the process as much as possible

From Emmanual Guillory (A)-PNPs to Everyone:

Adam, can you share data comparing 5 years of earnings to 3 years of earnings? It seems as though 5 years would be a better representation, but I do understand wanting to administer the debt-to-earnings ratio as soon as possible.

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

On (a), I believe reporting of those figures (to use the cap) was voluntary. Does the Department have information on (1) how many institutions/programs made use of the cap and (2) whether use of the cap impacted outcomes under the established metrics?

From Anne Kress (P) Comm Colleges to Everyone:

+1 to Brad’s call for automation. I’d add that These accountability issues are really an argument for the College Transparency Act or a unit record data system—a long term solution. But one unrelated to our current negotiations.

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

+1 to Emmanual's salary request difference of 5 vs 3 years. I would also like to add if using an average annual salary over multiple years would be better than 1 year.

From Adam Looney (Advisor) to Everyone:

Regarding concerns about "low-earning" professions, I can help find some data to that effect, but I think as it regards earnings itself, those concerns are likely misplaced. Based on the data used to inform the original 2014 rulemaking, the programs whose students earned less than a high school graduate are overwhelmingly undergraduate certificate programs and AA programs in fields like cosmetology, massage therapy, or office assistant programs. Moreover, in the vast majority of these fields there are alternative programs that would pass the rule and thus be available to students. For debt-to-earnings, I would have to pull more data.

From Jamie Studley (P) Accrediting Agencies to Everyone:

Adam: that would be helpful, and it would be reassuring if what you speculate is the case.

From Jamie Studley (P) Accrediting Agencies to Everyone:

+ 1 Yael about including instit and private debt

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

+1 w/Yael the inclusion of institutional and private loan debt

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

Adding this late, but also giving a +1 to Yael re: including institutional and private loan debt.

From Adam Looney (Advisor) to Everyone:

On the 3 versus 5 year, some data points. One observation is that with a 5-year delay, the timeline between enrolling a student, having them complete the program, having the student spend 5 years in the labor market, observing their earnings administratively (which occurs with a lag), and then potentially sanctioning the program, it would take close to a decade between when a student enrolled and when the Department could determine their program had failed them.

From Jamie Studley (P) Accrediting Agencies to Everyone:

+1 to David's broad point about trying to use the same metrics when possible, to allow for data quality (easier to get the definition and data right if there are fewer different ones), and also comparability as well as burden issues

From Adam Looney (Advisor) to Everyone:

Regarding the stability of metrics between 3 and 5 years after enrollment, this paper (https://www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf) summarizes the evidence as follows:

From Adam Looney (Advisor) to Everyone:

"Both of the metrics we propose involve outcomes measured three years after students have left a program, a point in time when earnings and loan repayment outcomes have been shown to be broadly representative of such outcomes over the longer run (Chetty et al. 2017; Chou, Looney, and Watson 2017)."

From Adam Looney (Advisor) to Everyone:

"Among a cohort of students enrolled in two-year colleges and “non-elite” four-year colleges, Chetty et al. (2017) find that students’ rank in the earnings distribution stays is relatively constant between the ages of 25 and 36. Students at more elite colleges experience steep increases in earnings ranks between 25 and 30, and then stabilize. The data are not perfectly comparable to those that would be used in the proposed accountability metrics but provide some evidence that for non-elite institutions measuring earnings 3 years after program exit, when most students will be near or over the age of 25, will provide an accurate ranking of students’ labor market outcomes across programs over the longer-run. The Chetty et al. (2017) data are based on older cohorts of students enrolled between 1999 and 2000 while near the age of 20. By construction this omits older, independent students, who comprise a larger share of “non-elite” colleges."

From Adam Looney (Advisor) to Everyone:

"It is not clear whether these patterns are representative of all students at such institutions. With respect to loan repayment, institutional 3-year loan repayment rates are highly correlated with long-run repayment outcomes (Chou, Looney, and Watson 2017). Using supplemental data from the 2009 and 2010 repayment cohorts (provided by the Senate HELP Committee to the authors, upon request), we estimate that over 95 percent of institutions would have the same repayment rate status (e.g., pass or fail) at 5 years after repayment entry as they would at 3 years and, when weighted by cohort balances at repayment entry, more than 99 percent of institutions would have the same status at 3 and at 5 years post-repayment entry."

From Adam Looney (Advisor) to Everyone:

Sorry for the long cut and paste; I could circulate as a document.

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

Re. private loan figures cited: The College Board's Trends in Student Aid is the best source I am aware of on total (federal and nonfederal debt). Their full data set can be downloaded here: https://research.collegeboard.org/trends/student-aid. I used Table 2, rows 18 (total federal loans) and row 29 (nonfederal loans), for the relevant years.

From David Socolow (A) State Agencies to Everyone:

+1 to Johnson's point. For many private student loans, schools must "certify" Total Cost of Attendance minus the amount of student aid for which the student is eligible prior to the origination of the loan, (so that the lender can verify that the loan amount doesn't exceed TCOA minus available student aid). So, schools should have data on every private student loan they have certified.

From Adam Looney (Advisor) to Everyone:

Cellini and Blanchard have a recent paper that specifically addresses the question of how much underreported income there is in programs that might be subject to GE rules. https://drive.google.com/file/d/1dAhIMzeVF7pYSJSU2ovwhFapJbeBOy_d/view Their conclusion is that in cosmetology programs specifically "underreporting of tipped income is likely to constitute just 8% of earnings."

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

Sent this request to Cindy:

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

I would like to ask the Department if it can provide program-level enrollment data at the four and six-digit CIP levels for all gainful employment programs so we can see how many institutions and programs would be captured and fall through based on the n-sizes we discuss. Many community colleges were able to avoid the 2014 debt-to-earnings metric because of small program sizes.

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

+1 to Barmak on how to make decisions re program size

From Johnson (P) Legal Aid to Everyone:

1+ to Jamie on combining N numbers in different small programs per institution when N is too small

From Anne Kress (P) Comm Colleges to Everyone:

+1 to Jamie’s point is seeking to get the signal out of the noise so that we are focusing our efforts on protecting at-risk students.

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

+1 on Jamie's comments

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

I will put a 2018 Treasury report into the chat that may help to generate some discussion and ideas.

https://www.treasury.gov/tigta/auditreports/2018reports/201830081fr.pdf

In this report, the IRS states that “From the estimated individual income tax underreporting Tax Gap estimate of $235 billion for Tax Year (TY) 2006, the IRS estimates there were unreported tips by employees of $23 billion (10 percent). The $23 billion in unreported tips accounts for 52 percent of the estimated individual tip income in TY 2006 of $44 billion.”

From Amanda Martinez to Everyone:

+1 Barmak

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Barmak — Provisions in the earlier regulations were designed to guard against this; to what extent were they successful?

From Anne Kress (P) Comm Colleges to Everyone:

Does the Dept have any responsive data on this question?

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

+1 on Emmanual's view

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

How has the Department historically landed on what disclosures it ends up using? To what extent, like Anne mentioned, are the options tested against student/family opinions on what disclosures would be most useful to them?

From Ashley Schofield (A) - MSIs to Everyone:

+1 @ Emmanual

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

Great points by Jamie

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Jaime!

From Emmanual Guillory (A)-PNPs to Everyone:

+1 Jamie

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

+1 Jamie

From Adam Looney (Advisor) to Everyone:

Here is a paper examining college-related disclosures and how to improve their efficacy: https://www.brookings.edu/research/information-disclosure-and-college-choice/

From Ashley Schofield (A) - MSIs to Everyone:

+1 @Jamie

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

Related to job placement rate proposals from a working group on the topic in 2013-14, there are two memos. One is on the use of job placement rates as a disclosure and reporting requirement: https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/21jobplacement-rate-as-disclosure93013.pdf. The second relates to consideration of a job placement rate as a metric in a GE rule: https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/21jobplacement-rate-as-metric93013.pdf

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Barmak — accurate description of CC program pathway; documenting the prep work and planning should be part of the process

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

I am supportive of the Department’s efforts to remove 668.15 and to consolidate the financial responsibility regulations all into Subpart L. I agree that the current structure can create confusion.

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

+1 to Kelli's comment

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

Would the department be open to David doing an analysis of the leasing standard change to composite scores? Again this is an accounting change that has no financial bearing on the schools' financial strength.

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

+1 to Carolyn's comment

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

David Socolow is coming to the table for state agencies for a bit.

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

Carney King is replacing me at the table for students/student loan borrowers.

From Kelli Perry (P) - Private, Nonprofit Institutions of Higher Ed to Everyone:

I said 90 days and I meant 9 months relating to e-z audit.

From Yael Shavit (A) -- State AGs to Everyone:

+1 to Barmak

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

My yes vote on this matter is tied to confirmation that the 30 day question I posed

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

+! on Brad's comment on materiality: "Suffers any material adverse events" at the end of the list as a catchall

From Dave McClintock (Advisor) Auditor to Everyone:

Happy to assist

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

+1 on Carolyn's point

From Yael Shavit (A) -- State AGs to Everyone:

+1 on Carolyn

From Anne Kress (P) Comm Colleges to Everyone:

+1 on Carolyn

From Jamie Studley (P) Accrediting Agencies to Everyone:

The provision doesn't say sued - it says judgment has been rendered after day in court.

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

+1 on Yael's point

From Anne Kress (P) Comm Colleges to Everyone:

+1 @Yael, these are indicators that lead to action to protect students; we need to center that

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

+1 to Yael

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

+1 to Yael

From Ashley Schofield (A) - MSIs to Everyone:

+ 1 to Yael

From Jamie Studley (P) Accrediting Agencies to Everyone:

Ah sorry -- if you mean (B) it is a very high bar for a significant financial risk, + 1 to Yael

From Sam (P) Fin Aid Admin to Everyone:

+1 to Yae

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

+1 Yael's point.

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

Where will we pick up tomorrow? Will we stay on B? The institution is being sued for financial relief in an action brought on or after July 1, 2023, by a Federal or State authority, or through a qui tam lawsuit in which the

Federal government has intervened and the suit has been pending for 120 days;?

From Sam (P) Fin Aid Admin to Everyone:

*Yael