

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING PROGRAM INTEGRITY
AND INSTITUTIONAL QUALITY
SESSION 2, DAY 1, AFTERNOON
FEBRUARY 5, 2024

On the 5th day of February, 2024, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m.

P R O C E E D I N G S

MR. ROBERTS: Good afternoon, everyone. My name is Brady Roberts with the FMCS. I'll be facilitating this afternoon. Stop me if you've heard this one before, but we have a robust agenda to get to with the remainder of the afternoon. We will break promptly at 3:30 for 30 minutes of public comment. So, in the next 2.5 hours, we are really going to endeavor and push all of the committee to get through the remainder of the cash management section. So, forgive me in advance if I ask folks to post things in chat or not duplicate comments maybe previously articulated, because we do have a fair bit of the documents still to get through. So, with that, I'll turn it right back over to the Department. Greg, are we at Direct Payments? That's what I had written down.

MR. MARTIN: No, we are at the bottom of page three, and we're dealing with, (c) (2), one or more payment period- the using current-year funds to pay for prior year charges.

MR. ROBERTS: Gotcha. Okay.

MR. MARTIN: Bottom of page three of the current issue paper. That's where everybody ought to be. And I'll give our people a chance to pull that up on the screen. Vanessa is there. Excellent. Yeah. So, I'll start there then, Brady, if it's okay with you. So, this

was one we proposed before. We don't have anything new here except for, if you will turn it over to page four, you'll see that we have tuition and fees institutionally provided. We changed room and board again to food and housing, conforming change with FAFSA simplification. And that's the only thing we did here. We- I know that in the previous session, we- there was some discussion about what this dollar figure ought to be. You'll recall that the- going from \$200 to \$300 was a recognition of the inflation that's occurred since we put this reg on the books. Again, I'll just reiterate the Department's position that this is meant to be for minor, and I stress minor prior year charges that, in keeping with the ed-statement of ed purpose that it's statutory that the- that Title IV funds are to be used to pay for costs in the current year. And there really is no provision in statute for prior year charges. I- we do understand that, you know, prior year charges can often prevent the student from re-enrolling, and we want to facilitate the payment of those charges where they are minor. This is as far as the Department feels it can go. This figure, this \$300 figure is not an attempt to- a proposal to increase that amount as much as it's simply a recognition of the inflation that's occurred over time. So, I will open it for discussion, but hopefully we can be brief with this

and move on. Thank you. Brady?

MR. ROBERTS: Thank you. Any comments for the Department on section (c)(2)? Greg, I think you fished your wish, it was very brief. Do we want to take a quick temperature check on where we are? Not seeing any comments. It might be somewhat perfunctory, but I do want to give folks the opportunity if they have anything for the Department or the committee to consider.

MR. MARTIN: Yeah, a temperature check on that would be appropriate.

MR. ROBERTS: Great, great. Alright, folks, let me see your thumbs. Again, thumbs up. Love it, no changes. Middle thumb, not going to withhold consensus. Down, we have serious reservations, and we'll yield the floor to you for some additional commentary. I think I see everyone thumbs up. Correct me if I'm wrong. Great.

MS. JEFFRIES: I think you're right, Brady.

MR. ROBERTS: Cool. Thank you all. Moving right along, now I believe we are on 668.164(d) Direct Payments, right, Greg? Second time's the charm?

MR. MARTIN: Yes, we are here. That's where we are now. And just making- well, while Vanessa goes there or Joe, we are talking about direct payments

and a little bit of history here. Catching you up. One negotiator made recommend- made some recommendations about EFT, we're not accepting that regulation because it falls outside what we're considering today. Although we are not accepting recommendations- that recommendation, they called our attention to other options for distributing funds. And as you can see, we will look at this in a minute. We are removing the provision related to holding checks for 21 days and requiring that a check is mailed to a student or parent to ensure timely issuance to students. So, let's take a look at that one. And it's there on the screen for you on 668.164(d). You can see that under the definition of issuing a check, the- or rather, when the institution is considered to have issued a check, the institution issues a check on the date that it mails the check to the student or parent, period. We have eliminated the option of notifying the student or parent. The check is available for immediate pick-up at the specific- specified location. And that provision is current- is currently in the regs. Allows that the institution may hold the funds for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent

directly by other means, or return the funds to the program. Our reasoning for eliminating that provision is that- a couple of things. Number one, we feel it's antiquated. Secondly, it's been used by certain, should I say providers of services under tier one to [inaudible] to maybe encourage. Remember that students don't have to make a choice about how they're going to receive their credit balance payments. If you're in a tier one arrangement, generally students might have the option of taking the- what the provider is offering. Having that credit balance put on, for instance, a card. However, students don't have to do that. They always have the option of simply receiving their credit balance. Having it EFT'd to their account or having it mailed to them in the form of a check. There is no requirement that the student make it that- actively make a choice about that. Absent any student choice, the money is to be given to the student. What we have seen happening is where students have not made that determination and in the- with the provider not wanting to have to face a situation where they ever have to mail a check, what they'll do is use this 21-day rule and notify students that it's available for pickup. But instituting the 21 days and in doing so, sort of, I would say circumventing the requirement that, well, right now you do have the 21

days, but the basic requirement that credit balances be returned to a student or parent within 14 days. So, we believe that eliminating this closes that loophole and makes certain that students will get their credit balance checks. While we do understand that providers and maybe schools would prefer not to have to ever use a check to provide a credit balance to a student, that it's easier to do an EFT, it's easier if the student opts for whatever is being provided by the tier one provider, that the students have that option and the students are not required to make a decision. And absent such a decision, the credit balance must be sent to the student. So, there might not be a way to completely obviate the checks in every case. But we believe that the students getting their money in a timely manner is- takes precedence over that. So, I'll open the floor for discussion on that, elimination of that current provision.

MR. ROBERTS: Thank you, Greg. Any questions, comments from the Committee on the deletion in Direct Payments? Alrighty then. With that, I guess we'll take another temperature check, although it might be another brief one like last time. But happy to hear where the committee stands on this issue. So, barring any late hands, let's see folks' disposition- temperature check on 668.164(d), deletion in (2). I believe we are at minimum

all sideways on this, so no thumbs down. Thank you all. And again, feel free to stop me if I missed a thumb. Great. Alright, Greg, back to you and your team.

MR. MARTIN: Thank you, Brady. I want to thank everybody for that vote of confidence on that rule, that rule change. Let's now move on to a discussion of 668.164(e) tier one arrangements. A couple of notes here I want to make before we move on to this discussion about what we did here and what we have- what you have in front of you. The Department received a proposal from negotiators that placed limitations on fees and adopted some of the language directly. Others in modified form. The Department is still evaluating the language from a legal perspective and considering scenarios we'd like to cover. We are seeking feedback from the negotiators who submitted this proposal to see what is to be accomplished, as well as feedback on the proposal from other negotiators. Specifically, we- we'd like to understand all of the circumstances the negotiators hope to cover under the addition of language, stating that the financial institution does not discriminate between HEA- for HEA program funds in regard to tier one and tier two arrangements. So, you will see in this paper that we have adopted the language here, but we still have some concerns, not concerns, but some areas of where we're not

100% clear what was intended by those who offered this. Let's talk a little bit about this before we get into it. You're all aware that originally the Department hadn't proposed anything with respect to tier one, tier two, when we had our first session, there was nothing there. There were some concerns on the part of negotiators about addressing the issue of junk fees that are charged to students on students' accounts and what we might do to reign some of that in. We had said initially that we weren't opening up tier one, tier two generally. And that is the case. We're not doing a whole- a wholesale revision of tier one, tier two. However, we see what is here as an extension in some respects of the discussion we have about credit balances, which we'll be dealing with in a little bit, in which we did deal with and proposed in the first session. So, this really is a credit balance issue because these fees do have- do stem from the fact that students have credit balances which are being placed in these accounts. And we also see the- what was proposed here as basic protections to students against the charging of these junk fees. So, with that, I'm going to go into what we're- what we did here. You can see that 164 is up, and we'll look at what was right here on the screen, what was proposed to as addition as additionally in tier one and- so we have that the

institution of third party servicer or third party servicer associates- third party servicer's associated financial institution does not discriminate between Title IV HEA program funds and other funds when assessing any fees, charges, or other costs associated with the financial account. Then in (e), no fee is charged to the student for any attempted transaction or withdrawal where the institution, third-party or third-party servicer's associated financial institution rejects or denies such a transaction due to insufficient funds in the financial account. And finally, in (f), no sunset fee is charged to the student at any point in the life cycle of a financial account or access drive, including, for example, any fee automatically imposed when a student graduates, separates, or reaches a specified age. And then if we go down to below here in romanette (9)(c), we have, in addition, the Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of the students opening them if fees other than those prohibited in paragraphs (e)(2) romanette (5)(e)(f) are imposed under the T1 arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's model, Safe Student Account. So, I'll stop there under these tier one changes and we'll open the floor for discussion at this point.

MR. ROBERTS: Sorry I missed my unmute button. Any questions, comments from the Department, particularly the negotiators that did submit that proposed change? But obviously anyone is welcome.

MR. MARTIN: Before we do that, Brady, I just want to- I want to add one thing. We would specifically like those individuals who propose this to address the issue of (d), the institution, third party servicer or third-party services associated financial institution does not discriminate between Title IV HEA program funds and other funds. So specifically, what is meant by not discriminating, we'd like to have that addressed if they would be so kind.

MR. ROBERTS: Yeah. Barmak, was it you that said- I believe it was you that submitted this language.

MR. NASSIRIAN: I'm going to implicate my colleague Carolyn Fast, who joined me in submitting that proposal. And as Greg mentioned, the goal here is to stop the proliferation of junk fees that impose significant costs on Title IV recipients who do have overages in their accounts, where they have credit balances that they should be able to access without unreasonable fees. This issue of nondiscrimination is intended to protect Title IV recipients by requiring that

they not be treated any differently than people who deposit their own money or have access to their own accounts without Title IV. It's an added layer of protection to make sure there's no discriminatory treatment of students receiving aid. I don't know if that helps, but that was the purpose. I think it's fairly self-explanatory in terms of what we're attempting to do.

MR. ROBERTS: Denise, did you want to-

MS. MORELLI: The other question, Barmak, I think, and Carolyn I think we had was do you think that sunset fees is self-explanatory or- I mean, you do a little bit later or do you think for, you know, compliance purposes it needs to be further defined?

MR. NASSIRIAN: I mean, I- between the two of us, Carolyn is the attorney. But to me it's a fairly self-explanatory notion. It's when there is a credit balance, and the student simply decides to close the account or withdraw all of the available funds that the institution can- that the third-party entity may impose really burdensome and unnecessary fees on them just for the act of taking the money out.

MS. MORELLI: Okay, I just wanted to make sure that we weren't missing anything there. Thank you.

MR. ROBERTS: Thank you both. We'll go

to DC, and then Carolyn, we'll turn to you.

DR. PRINCE: Sure. Barmak, would you- is there another terminology? Because when I asked my colleagues in my sector, we- they don't use sunset fee and to explain it to them based on this was confusing. So, I wouldn't say it's an accepted higher education terminology and what that means, particularly in my space. And so, I would suggest or at least ask that we come up with either some synonyms or we have a definition page of or examples of what we mean by this and practicality, but it is not a generally accepted term to call it sunset. Because we don't necessarily know what that means. So, I just wanted to give that back.

MR. ROBERTS: Thank you. And then Carolyn.

MS. FAST: Thanks. Yeah. Just adding to what Barmak said in terms of just the point about provision (d) about discriminating between Title IV and non-Title IV. One way that discrimination could come into play that has occurred is that some financial institutions may charge fees based on keeping a minimum balance, but they might not count Title IV as qualifying for the minimum balance. So that just means that students who are getting Title IV only in those tier one accounts would be charged fees that other students wouldn't, and

that those fees would come directly out of Title IV money. And that is sort of the practical implication of that- the discrimination issue. And in terms of sunset fees, I don't think that we would have any objection to not using the term sunset fee and instead using sort of just the rest of the sentence where they said, for example, fees automatically imposed when a student graduates separates or reaches a certain- a specific- specified age. I mean, I don't think we're insistent on the use of the word sunset fee. And that's- the rest of it sort of sets out what is meant by that term. And that would be a fine way to handle that.

MR. ROBERTS: Thanks, Carolyn. Any other questions or comments from the Committee on the modifications to tier one arrangement? Yeah, Dom, go ahead.

MR. CHASE: Thank you. Just wanted to see clarity on the consideration of the EFT language and what sort of excluded that not being considered? Just for my understanding, please.

MR. MARTIN: Oh, yeah. Specifically, we, as you probably are aware and- let's see if I can- I can never find anything in regulations when I want to. But in 668 current, 668.161, we say EFT- in 668.161, it's not in front of you, so don't look for it. In 168.161

under scope and institutional responsibility of cash management, subpart K in (a)(1) romanette 4, I think I got that right, EFT, electronic funds transfer means transaction initiated electronically instructing the crediting or debiting of financial account or institutions depository account for purposes of transactions initiated by the Secretary. The firm EFT includes all transactions covered by 31CFR 208.2(f) for purposes of transactions initiated by or on behalf of institutions. The term EFT includes from among the transactions covered by 31CFR 208.2 only automated clearinghouse transactions. We're- we are not amenable to changing that rule to allow for peer-to-peer transactions. Our reasons for that are that- have to do with the inherent security of ACH transactions and the fact that we do not believe that peer to peer payment systems provide that level of security, and the Department is responsible for this funding. And it's also- schools also serve as a fiduciary in that regard. And that if there were ever to be any breaches or problems involving this, the same level of security where the funds are protected simply is not there. Although we are aware that peer to peer can be faster, we believe that the current EFT ACH transactions are fast enough to cover any situation. We do acknowledge that we allowed

peer to peer during the Covid flexibilities that we had. But those sunset, along with many other flexibilities we offered during that period of time. So that's our reasoning behind not wanting to move away from where we currently are.

MR. CHASE: Thank you.

MR. ROBERTS: And I do just want to note Jillian's comment in chat potentially satisfy- you know, resolving the confusion over sunset fees for swapping in the phrase closure fees.

MS. KLEIN: Yeah, I don't know if that's even appropriate. I would just say my other comment is like, if you can tie it to CFPB defined something probably helps everybody understand what's meant by it.

MR. MARTIN: Thanks, Jillian. We'll look at the language. We have that and we'll look and see what we can do with that language. If anybody has any other comments they want to offer about that, please do. Thanks for all the consideration.

MR. ROBERTS: Anything else for consideration? Okay, notwithstanding the clarification on that, Greg, do you want to take a temperature check on the changes made to the tier one arrangement section?

MR. MARTIN: I would.

MR. ROBERTS: Alright. If folks are ready, feel free to indicate where you are on the changes to 668.164(e) with your thumbs. Again, I don't see any thumbs down. Please feel free to correct me if I missed anyone. It's later in the day, so people's fingers are kind of getting further and further down the screen, but I see a little bit of thumb. I think that indicates a thumbs up at least. Once you see the rest, it becomes a question. Alright, Greg, I'll turn it back over to your team for the next piece on tier two arrangement.

MR. MARTIN: Thanks, Brady. So, we're moving to a discussion of tier two arrangements, and that's coming up on the screen as we speak. This is starting at the top of page six for those of you following in the issue papers. And take a look at the language here. What we've done for tier two is in (c), the Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of students opening them if the fees imposed under the tier two arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's Model Safe Student Account. And ensure that the institution third party servicer or third-party servicers associated financial institution does not discriminate between Title IV HEA program funds and other funds when

assessing any fees, charges, or other costs associated with the financial account. And we'll open that up for discussion if anybody has anything to add about the- what's under tier two.

MR. ROBERTS: Thank you, Greg. Any comments on this section? So that's pages five and six, 668.164(f). Oh, I see you raising your physical hand, Erika. Go ahead.

MS. LINDEN: Sorry, had to unmute. Is there a reason that that (c) is different than the (c) on the previous section?

MR. MARTIN: Yeah, we had legal considerations as to how far we could go here. I'll turn it over to my colleague, Denise Morelli. Maybe she wants to make a couple of comments about that.

MS. MORELLI: I think there's a concern from the Department about the authority on outright prohibition of fees for a tier two arrangement, because there's no direct funds, Title IV funds being processed through the account.

MR. MARTIN: Thank you, Denise.

MR. ROBERTS: Thank you both. Anything else? Questions, concerns, considerations? Well, alright, Greg, anything else from the Department or are we okay to take a temperature check on this?

MR. MARTIN: Okay to take a temperature check.

MR. ROBERTS: Great. If you all wouldn't mind indicating where you were on these changes to tier two arrangement with your thumbs. Again, I don't see any thumbs down. Thank you all. I'll turn it over to Greg and his team for the next section, which I'm scrolling down, I think it's the edition in the Title IV HEA credit balances, right?

MR. MARTIN: That's correct, Brady. We're at 161.164(h)(1), Title IV credit balances. And we're not- we didn't make any changes here over what we had before. We discussed this language during the first session. And we discussed the Department's reasons for making this change to the definition of a credit balance. It essentially being a protection for students and insurance against their money- their money is being retained based on a technicality which existed in the current rules. So, we think this addresses that problem and provides an important protection for students. As I said, we already went over the reasons for it, but I'll open the floor again for any comments people may have before we take a temperature check.

MR. ROBERTS: Sure. Zack, we'll turn it over to you first.

MR. GOODWIN: You can make fun of me afterwards. Would it be- would the Department be open to using the term in combination with instead of and between Title IV funds and other types of funds?

MR. MARTIN: Okay, so if I'm following you, Zack, Title IV credit balance occurs when the amount of Title IV program funds, you would like to change and in combination with other Federal non-Title IV funds? Is there a specific reason why you don't like the current usage?

MR. GOODWIN: I guess I feel like someone could try to work around this. Ideally the Title IV funds and other funds coexist. And someone- I would say, I don't want to go too deeply into it if that's okay, because it was something that someone identified to me that they were aware of as a school practice and I certainly wouldn't call them out, of dispersing Title IV funds and not dispersing other funds, and saying that therefore this wouldn't have existed. It wouldn't be a credit balance.

MR. MARTIN: I- as far as changing the changing the language from and to in combination with, I mean, I don't- off the top of my head see a problem with that. I think we'd have to take that back and let our counsel and let some FSA people take a look at it. But I

don't- I mean, that- I mean, I would say Zack that the intent of our rule as proposed is exactly what you say, to avoid- to prohibit that. I don't- I'm not exactly certain what practice you're discussing there, but-

MR. GOODWIN: Sorry, I shouldn't have said practice. I mean, suggested practice, something that someone said to me.

MR. MARTIN: I mean, certainly, I would say the Department, we don't have any authority over how schools disperse other funds that aren't our funds. So, while I think it's- would be very unfortunate if schools are somehow not disbursing other funds in order not to make a credit balance occur, I would certainly say I call out that practice as definitely unacceptable, you know, and we would do whatever we could within the confines of our regulations to prohibit that. I think we're- I think what I'll say, Zack, is we're generally amenable to that change. We'll look at it. I just want to make- I just don't want to make a commitment on the part of the Department right now that we'll definitely do it, that's all. But I don't see a problem with it. I don't think my colleagues, Denise or Dave- but Denise has her hand up, so maybe she wants to make a point here.

MR. GOODWIN: Thank you, Greg. And

it's not- [inaudible] really strongly about. It- just like anything we can do [inaudible].

MS. MORELLI: I think that that captures what we're trying to do here. But just the attorney in me wants to make sure we think through all the implications of the language. And actually, it may be a more accurate- but we want to make sure we're thinking through everything.

MR. GOODWIN: Thank you.

MR. ROBERTS: And Zack, just to capture that, do you just want to briefly post that in chat just so the language that you're getting at is captured sort of in context to the discussion?

MR. GOODWIN: Will do. Thank you.

MR. ROBERTS: Thank you. Anything else on this section? No modifications from week one to consider, but we want to leave the floor open if folks want to talk more through it. Okay. Greg, do you want to take a- just another temperature check on this?

MR. MARTIN: I would.

MR. ROBERTS: Alright. I hope we're not tired of them yet, because we have plenty more coming. But if folks want to indicate where they are on this section, again with no new modifications, just to make sure we're tracking where the conversation is. I

cruelly made Zack type on his computer while also asking him to indicate where he was by a temperature- it's okay. But, yeah, I was going to say, okay, I got you. I don't see any thumbs down. So, thank you all for the conversation there. And thank you, Zack, for your suggestion. Alright, Greg, do you want to move on to late disbursements?

MR. MARTIN: Yes. Here again, we're not proposing anything different. This is pretty much what we had- exactly what we had last time. We explained the reasons for that. This- we are eliminating, in (4) romanette 2, where we currently have the rule, an institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completes the- successfully completed the period of enrollment for which he- for which the loan was intended. We see no reason to make a distinction between first and second disbursements. There really is nothing sacrosanct about a second or subsequent disbursement as opposed to a first disbursement. So, we propose to align the rules for each. We're not even 100% sure where that came from. The deep, dark days of the DSL program, I think a long time ago, there were some considerations, but we do not believe those exist today. We didn't have any pushback on that in

the first round. I don't have anything else to say about it. I will open it up for discussion, however, until we- prior to taking a temperature check.

MR. ROBERTS: Alright, thank you, Greg. Thank you, Vanessa. We can probably bring down the text. Any comments, questions, thoughts for the Department or the Committee? Seeing no hands. Again, before we move on, we do want to take a quick temperature check on this just to make sure we're tracking where the committee is on this issue paper. So, if folks wouldn't mind indicating where they are with a show of thumbs. DC, sorry- I appreciate you changing your background. Thank you. Alright. Thank you, all. I appreciate it. I didn't see any thumbs down there. Greg, I'll turn it back over to you.

MR. MARTIN: Okay. We can move on to- here we have, in 164(l) and (m), Returning Funds and Provision for books and supplies. And we note here again that we proposed to move this text from 164 over- (l) over to 167(a) and we'll see that subsequently, so that is eliminated. And then, here the provisions for books and supplies simply align with what we established earlier. An institution must provide a way for student who is eligible for Title IV funds to purchase- to obtain or purchase by the seventh day of the payment period the

books and supplies applicable to the payment period. If ten days prior to the beginning of the payment period, the institution could disburse the Title IV HEA program funds for which the student is eligible and presuming the funds were just- were disbursed, the student would have a credit balance. That's the current language. So, nothing new there. This section just simply takes out the parts of the regulation that were pertinent to the provisions for inclusion of books and supplies as tuition and fees, which we propose to remove. So that's what this section does. So, it does kind of work in conjunction with the other section, I should point that out. But that's all I have to say about this. I don't think- I'll certainly open the floor for comment, but I don't want to reopen the issue of books and supplies. Generally. I think we know where everybody stands on that, and we did take the consensus check on that. So, I'm not really speaking out of turn- out of bounds here. Not consensus check, temperature check we took on that before. So, if negotiators want to offer their check in sort of consideration of how they felt about books and supplies generally, I fully understand that. So, I mean, it's hard to look at this completely separately from the issue of books and supplies. But it does- this does conform with that. So, I just want to point that out as you think

about your- where you are with this. But I will open the floor if anybody has any comments before we move on.

MR. ROBERTS: Thank you, Greg. Any comments or questions for the Committee or the Department on the move here? It was a heavy lunch today. Yeah, Barmak, go ahead.

MR. NASSIRIAN: The only question I have is it may just be a drafting issue, but the amount at the very end of (1)(2), the amount as determined by the institution. Is that the amount the institution itself is selling the stuff for or is it MSRP? What is it?

MR. MARTIN: So, you're looking at where we have provisions for books and supplies. The amount the institution provides to students. The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph, or the amount needed by the student, as determined by- it's the amount determined- it's the amount needed to purchase the books and supplies as determined by the institution as to what that would be. So, it's the lesser of those two. Those two-

MR. NASSIRIAN: No, I know that. But I'm saying what is the amount- is the amount determined

by the institution, more specifically, the amount that the institution sells the stuff at the bookstore? Is it the retail price of this stuff? What is that amount? I mean, is the institution at liberty to just pick any number as long as it's lesser than?

MR. MARTIN: Yeah, I'm not sure we've ever looked at it in that level of granularity, Barmak, but obviously has to be a reasonable- obviously has to be a reasonable determination that the student can purchase- can obtain the books through that- through whatever that amount is. I mean, minimally, they're going to have to- you know, so it is still the- well, the lesser of the credit balance or the amount determined. So, it is- I see what you're saying there. Would it be possible for the school to make an absurd determination as to- or not a reasonable determination as to what amount is needed to purchase books and supplies. And that would be a compliance issue, I suppose, if it came up. I've never really, to be fair, to be honest with you, considered it, you know, to that- at that level. I would ask David or- David might have a comment about that. Turns out he does. So, I'll let Dave give his opinion on that.

MR. MUSSER: Yeah, it's a good question. I think in practice this nearly always, at least in all the instances that I've looked at as a

program reviewer and in questions, the institution tends to determine this, using the- using a specific amount that the student needs to buy the books, the price of the books. I've never seen another method used. That's not to say that it might not be. But generally, that's- the school has to- the school will default to the amount of the presumed credit balance generally. And in the rare case that they go lower than that to fulfill this requirement, they will point to the specific charges that the student has that's less than the credit balance. There's not- at least in my experience, I haven't seen any other method, but like I said, it's not that there couldn't be.

MR. ROBERTS: Thank you. If there's no more follow-up- no additional follow up on that- Jason, I think your hand is next.

MR. LORGAN: Thank you. So, I just wanted to ask a question if the regulation is still needed, because under (m), students currently have the option to opt out of the method the school provides. Thank you.

MR. MARTIN: So, you're saying- you're suggesting what is the- that this is not needed? You're suggesting, why is it still needed?

MR. LORGAN: Yeah.

MR. MARTIN: Well, the reason for this is- and I guess this is- and again, this is not new, but this is if- again, going back to the root here. Must provide a way for students who are eligible for Title IV HEA funds to obtain or purchase by the seventh day of a payment period. Books and supplies. If the following exists, so that- they could disperse Title IV program funds to student if the student was eligible and presuming the funds were dispersed, the student would have had a credit balance under this paragraph. So, it's a way of- I would- I think it is absolutely necessary because it obligates schools to- if there's a credit balance that's going to be- that's in play, they- because the thing here is here they could disperse the funds so they're able to disperse the funds for the student. And if the funds were dispersed, the student would have a credit balance. It's basically saying the school has to provide a way for the student to obtain those books and supplies quickly up front for, you know, not having to wait until perhaps the credit balance is actually dispersed. That's what the meaning of this is. So yeah, I think it sits outside of anything else we've done as a basic protection for students to get them their books and supplies earlier, get the means to them to purchase- you know, to secure those books and supplies.

MR. ROBERTS: Jillian.

MS. KLEIN: Yeah, I'm sorry, this is probably the dumbest question I've asked thus far, though probably will not be my dumbest one during these conversations. But it- is the idea that this then- if students choose to opt in under the conversation, we're not talking about that we already had, that they have fulfilled- the institutions- if an institution provides a student the option to opt in, have we met this requirement? And if the answer is- even if the student decides not to, and if the answer is yes, can we- I understand that you're proposing to cut three, but I feel like maybe you need to say something that if the institution provides the student the opportunity to opt in, that they have already met this requirement. I'm sorry if that's a dumb question.

MR. MARTIN: No not at all. I don't consider any questions to be dumb. I once had a colleague of mine who, on April Fool's Day, put a note on my desk that I should call Mr. Fox at the zoo about a financial aid question. And I did call the Philadelphia Zoo, and I went through the voicemail thing looking for- typing in F-o-x. F-o-x. No person by that- by that name exists here. Well, ten colleagues laughed their heads off at me, watching me do it. So, I'm never going to suggest that

anything anybody does is dumb, because I think that takes the game. But to answer your question, the- no, it sits out- you wouldn't- in doing that, and complying with that opt-in, you wouldn't meet this requirement. And what this has to do with is simply just because the student opts in, you're still- you still have to make available the means for the student to obtain those supplies, right? Those books and supplies. So, what this is, is that you're saying here if there's a credit balance, so we're not- you know, if there's going to be a credit balance- so, if there is going to be- the students going to have the funds necessary to pay for those books and supplies, that you make the- you make provision a way for a student. It says provide a way for the student who is eligible in order to receive those. And it says here, if ten days before the beginning of the payment period, because the- you're allowed to as an institution, you're permitted to remember dispersed funds up to ten days prior to the beginning of the payment period, right? That's the maximum timeframe that we have in cash management. And that would presumably get funds to the student as early as possible. Many schools don't choose to do that for many good reasons. It could be that you don't want to disperse funds until you absolutely know a student has begun attendance, right? So, you don't have

to return funds. There could be a number of reasons why you don't want to disperse ten days prior. The school does take on potential liability if you disperse ten days earlier and the student never shows up. So, some schools don't do that. But if ten days prior these situations existed, you could disperse, and there was- there were Title IV funds available or there will be you've got to make provision for the students to purchase. So, it goes beyond just saying, well, the students opting into getting the books and supplies from the school. That may be- that's all well and good, but you still have to make it possible for the student to do that, even if the credit balance hasn't been dispersed.

MS. KLEIN: But isn't that a way to do it? I guess I'm confused. I mean.

MR. MUSSER: Yes, I think I understand your question, Jillian. If a school offers a method of providing the books and supplies directly to the students from the school, that method has to meet these requirements. Because you have to ensure that method would ultimately get these things to the students in time for all the students for whom this- to whom this applies. If it didn't meet these requirements, so if you set up a method that didn't provide the materials to the students on the 20th day, then you couldn't- there would be no way

for you to meet this requirement for all the students that qualified. So, I think that answers at least the first part of your question. But I wanted to make sure I understood the second part of your question about the removal of three because I don't think I quite caught that.

MS. KLEIN: Yeah, I don't think it's this exact 3 language, but I think the old 3 language suggests the spirit of what I'm saying, which is I think that was an overt way to let institutions know exactly what you said, right? Which is if you have a process where a student can opt in to getting their books through the institution prior to the 10th day, or whatever specific timeline that then the institution has met this requirement even if the student doesn't choose to opt in or choose to opt out or whatever. So, I guess as an institution, given the inconsistencies and answers here, like I think it would be helpful to institutions if that's the case, to just be overt about that in the language.

MR. MARTIN: Well, 3 is the- remember, 3 is the old opt-out provision, so-

MS. KLEIN: Yeah, I'm saying not the exact 3, but the spirit of like if you do- if you- if the institution provides an opt-in option for students to get

their books that they have met this requirement.

[Inaudible]

MR. MARTIN: Well, it would have to- I would word it as if they provide the opt-in option, they would have to meet- it goes without saying they would have to meet this requirement. Otherwise, they couldn't do it. And you couldn't do like what Dave said, you couldn't say, okay, student opts in, right, is giving you the- giving you the authorization and has opted in to purchasing the books and supplies from the school. But you'll provide that to the student on day 15 or day 20, you couldn't do that. You'd have to still abide by this. If the student has that credit balance, you have to make those books available or make it- you know, you have to provide that to the student, right? Even if you hadn't actually disbursed yet. Does that make sense? It's- in doing the one, it's like- so all you're doing with the opt- with the opt-in, you're simply saying, okay, you're providing this class. I'll go back to my biology 101 again. You're providing this bundled homework book, papers, everything, and the student is opting in. Right? You're going to be able to- the student's purchasing it from you. You still have to make that available- all that available to the student within these timeframes. The student has a credit balance, right? There could have

been- that could have been disbursed up to ten days before, you have to go ahead and make the means available for the student to obtain those materials, which would be in the case of where the school provides it, simply providing them, giving the student access, right? So, let's just say on day one, you give the student access to all of that by giving them the electronic key, you would have met this requirement. I'm not- I'm not getting what you're- if you want- if I'm missing something-

MS. KLEIN: Well, I think the fact that I got- again, I'm sure I'm out of time. I think the fact that I got a different answer to what I thought was a dumb question from you and from Dave, at least-

MR. MARTIN: No, Dave- I think it's the same thing. What Dave is saying. If you're doing this, you're automatically needing it. If you're- if the student stopped again and you're providing the materials, yes, you've met this. Does that help?

MS. KLEIN: Sure.

MR. MARTIN: If you provide them- if you actually provide the materials and you- and the student's opted in and you provided the materials in this timeframe, you automatically meet this.

MS. KLEIN: Yes. But okay, so my question was not if an individual student opts in. My

question was if you have an institution, have a process where a student can choose to opt in, have we met this requirement for all students even if [30 seconds] even if- really? Even if none of them opt in, is what I'm saying. That was my question. And I was saying if the case is that you just have to have a process, but literally zero of your students, zero-

MR. MARTIN: I'll ask Dave to- if you had a situation where you could opt- students could opt in, but let's say none of them opt in. They all decide not to opt in, they want to buy- that means they want to buy their books and supplies through another means, you still have to make that- you still have to make it possible for-

MR. MUSSER: But you would- yeah, the answer is yes, I think, Jillian, because all this says currently is that you must provide a way. It doesn't say anything about whether someone actually uses that method. So, if you use the option available and it applies to the individuals that are described here, yes, you would meet this requirement.

MR. ROBERTS: Happy to let the conversation continue, but I do want to give other folks who have their hands raised if they want to-

MS. KLEIN: I scared everybody else

away. Everybody took their hand down, so, you're welcome.

MR. ROBERTS: I did notice that, yeah.

MR. GOODWIN: No, I just withdrew the question because it was answered.

MR. MARTIN: Okay. Gotcha. Thank you. And then there was one other one. Sorry, I didn't write down the name, but I did see one other hand. I don't know if it was intentional or not.

MR. LORGAN: I'm okay now, Brady, thank you.

MR. ROBERTS: Okay. Thank you, all. Any other questions about this section without- you know, given the guardrails of the- of what we want to do with this specific exchange? Alright. Anything else? Oh, yeah, Jo, go ahead.

MS. BLONDIN: Yes, before we do an up or down or whatever, can we restate exactly what- because I'm now a little confused. And so, I just want to make sure that we're as clear as possible on what we're raising our thumbs for. So could somebody- I mean, I can read it, I've read it and I've heard the conversation, but I just want to be really clear, if somebody can just articulate that for me. Thank you.

MR. MARTIN: Well, what we're doing here is- what's been proposed, as you can see here, you

can see the strikeout language. So, what we just discussed as far as the provision for the student to purchase books, and we went all over that in one and two. That's not new. Right? That's- that exists. That's extant. What we've done here is removed three, which was the opt-out policy- the opt-out rules because we no longer need- we would no longer need the opt-out rules, right? You don't need that.

MS. BLONDIN: In order to be consistent with the last-

MR. MARTIN: Yes, 3- removal of 3 and 4 is consistent with the books and supply chain, that's correct.

MS. BLONDIN: Okay.

MR. MARTIN: Sorry, Denise, did you have something?

MR. ROBERTS: Yeah, Denise, did you want to-

MS. MORELLI: No. I think we might not need to do a temperature check on this because it's tied to the one we already did. So, I- my suggestion is we don't need to do that unless there's-

MR. MARTIN: It is tied to the-

MS. MORELLI: Yeah, so we probably can skip the temperature check. And when we do it in the next

round, we'll make sure we tie the two of them together.

MR. MARTIN: They really are completely linked. So, it's just- it just enables the other. This just enables the- what we did. So, you're probably right, Denise. We probably don't have to take a temperature check for this.

MR. ROBERTS: I'm happy to skip it. I do just want to pose if there are any concerns or questions or additional considerations that you would have withheld, obviously, until you, you sort of were given an opportunity if you did have serious reservations about, again, where this section lies in the reg text, feel free to add those right now. Otherwise, Greg, if it's okay with you and your team, I'm happy to move to the next section.

MR. MARTIN: Okay, great.

MR. ROBERTS: Any- anything to add before we move to, I guess it would be student or parent authorizations?

MR. MARTIN: Correct.

DR. PRINCE: Yes. Is the question at hand that people might have changed their votes knowing what they know now compared to a previous vote, and want to make that adjustment? Is that question on the table?

MR. MARTIN: No. First of all, let's

make it clear again that we didn't vote- we're not voting consensus. This is simply just a temperature check to see where people are right now, right?

DR. PRINCE: Well, yeah.

MR. MARTIN: All Denise was- what Denise was saying was that what we're doing in (m) simply facilitates what we did back under (c) with respect to removing the current option of including books and supplies as part of tuition and fees. So, if given those rules as proposed, then you need to conform what is in (m) to that. So, for instance the opt-out is no longer necessary. The opt-out is made redundant, right, by that. So that is why that is removed. And three and four both are unnecessary given those changes. But what Denise was saying is that whether- you know, how you feel about what's in (m) is going to be entirely linked to what you- what your opinion was about the books and supplies changes that we already discussed and took a temperature check on, so that a temperature check here would be- would not be necessary. It wouldn't be changing anything. It's just sort of an extension of what we discussed previously. Hope that clarifies it.

DR. PRINCE: Yes. I think the issue that I have procedurally since we're on the topic was that wasn't discussed or stated earlier. And so, what

you're now doing is you're saying, oh, by the way, this goes with your earlier vote, but it wasn't clear what made the earlier vote, but this was also connected to it. And so, what it looks like is you tried to hide something additionally, even though there may not have been anything under the rug, you tried to hide something. Now saying, oh, we don't need to take a vote now, let's make an assumption that we thought we were going to after this discussion that it was tied to an earlier vote. Well, we didn't say that. And that wasn't part of the clarification when that was done. But then you open up a discussion, a conversation on this topic why- but you didn't connect to the earlier one. So, I think now people are- and I see some head nods saying, well, you should have said that before. And I think that's the procedural issue. So, moving forward, if we're going to vote for one thing and it's connected to subsequent sections, it'd be good to have that already stated out very early on before the vote, or not vote, I'm saying vote in the sense of temperature check, but it's all a vote in my mind. So, I use one word, that that's made clear when that is taking place.

MR. ROBERTS: I just- from a process perspective, I can just briefly weigh in, Greg. And that's a- it's a mea culpa from me. What I will say

though, and it's just to clarify what the purpose for all the temperature checks is. It's really just an opportunity to solicit as explicitly as we can as facilitators, any questions or comments or potential opposition that negotiators or the committee might have moved- looking forward into future weeks where we will actually be taking, you know, official consensus checks. So, you know, I can just speak from my team. It was never an attempt to obfuscate, you know, any part of this process. It was more- it was a change in the reg text, you know, meaning just like an ordering of where things were in this issue paper. But, per Denise's comment, you know, I also would agree that I felt the discussion had previously been covered, the sort of substantive questions and issues negotiators had with this. But your point is well taken, DC, and we'll endeavor to do that moving forward.

MR. MARTIN: Yeah, I want to assure everybody that there's certainly no intent on the part of the Department or FMCS to hide anything [inaudible] you know, certainly open to discussion of everything and to make clear that the only vote that will ever be taken here is the vote on the consensus. These are simply temperature checks.

MR. ROBERTS: We did struggle with the

nomenclature and what to call these kind of unofficial like where's everybody at right now? Again, they have no, you know, weight in the process. It's just a way to elicit more feedback.

MR. MARTIN: And it probably would have been a good idea if I had maybe tied the two of these together at the time I was- I mean, there's always this- there's always a desire to go through things as the paper is laid out, because that's the logical way to go through it. And then there are times when they're tied together. So, whether we should skip ahead and go back is always a difficult determination to make. And in this case, maybe I should have opted for the- for moving forward. So, I apologize if I didn't do that, but there was certainly no malicious intent.

MR. ROBERTS: Thank you, all. And again, any final comments or considerations for the committee on this section of the issue paper, the reg text? Seeing none. Greg, I will turn it over to you.

MR. MARTIN: Thanks, Brady. So, we're moving on to 668.165(b). We're now moving into 165, which in the regulations and subpart K is Authorizations and Notices. So, we're dealing specifically here with student or parent authorizations. And we have made a few changes here. If you look on page nine where we talk about- well,

I'll start here. Under- unless the Secretary provides funds to the institution under the reimbursement payment method or heightened cash management so as long as the institution is on advanced pay. The student- this is an authorization to hold on behalf of student or parent, any Title IV program funds that would otherwise be directly- paid directly to the student or parent as a credit balance. So that's a long existing provision. And then we have added they can also with this authorization retain unused cash value of meal plan funds. We already did discuss that. But this is the actual- actually where the authorization would be- where the rules are for how you obtain the authorization for that. So that's in (b). And you can also see under (c), apply the unused cash value meal plan funds for unpaid allowable charges on the students account. So, the provisions we previously discussed under- in 164, this is where the student would authorize the institution to be able to do that. And if we look in (2), the changes we've made there in obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, the institution must clearly describe what the authorization allows the institution to do and how it will be implemented. Must provide these authorizations conspicuously and separately from other documents a

student or parent is required to sign. So, this is just language that we put in as we were looking at all of this to strengthen the transparency of authorizations students are signing, one of the- two of the things here. Make them clear so the students know exactly what it is they're authorizing so that should- that cannot be hidden or obfuscated in any way. And to make sure those authorizations are conspicuously- are conspicuous and separate from other documents so that they're not- we have seen instances where in some institutions, obviously not the majority at all- the vast majority of institutions do this correctly and have the best interest of students in mind. But we have seen examples where authorizations are buried in other paperwork and students just routinely sign away these authorizations without really knowing what it is they're doing. And so, you know, in other words, like, you know, you can't make- you can't bury this authorization in an award letter. So, in accepting the award, the student is giving you the authorization. That would be an example of the type of circumvention that we would be trying to- we've never allowed that, quite frankly. We've always- we would have always made a compliance finding where that occurred [inaudible]. So, with that, I will open the floor for discussion.

MR. ROBERTS: Alright, thank you, Greg. Jillian, I see your hand, but I'll- I'm going to jump to Denise first. And, Vanessa, I think we can bring down the shared screen. Thank you. Denise, go ahead.

MS. MORELLI: I just wanted to tag on to what Greg had said that we've seen- I do a lot of compliance work, and we've seen a lot of issues with authorizations and students not understanding them, not seeing them, they're buried. And so, this was an attempt to try to tighten up our authorization provisions to assist the students in making informed decisions on this.

MR. ROBERTS: Thank you. Jillian, I see your hand up first. Go ahead.

MS. KLEIN: Yeah. Despite my- anyway, I'm back. Just to reiterate what I said this morning about the cadence of authorizations, this section also is not- like I read this section, I know it's silent to it, but I read this as, like annual or less often than annual. And so, I would just- I mean, be careful what you wish for, right? But like, I would just make sure the intention is that it's on a payment period basis or per term, or more often than once in the career of the student that that's clear, probably back what we were talking about this morning but certainly citing to this section does not make it any clearer in terms of the

cadence that you're expecting.

MR. MARTIN: Well, that's a good point, Jillian, that the problem here is that you say- the way it's set up, say something for instance in 164 that this requires a student authorization, but the rules turn into the actual authorization itself are then found in an entirely other section, which is 165, right? So the only one that and I'll ask Dave to comment here. The only one that we've got that we have that requires an authorization of payment period basis would be the one about books and supplies where I explained the reason for that. So, we- and that and that is in that section. But you know, you make a good point, and we'll go back- I think we need to go- we'll go back and reiterate and review rather, all the sections where there are, where it's possible to get a student authorization and how that, you know, how that works as far as how often you have to obtain it. Our general authorizations are general authorizations are obtained. The only requirement is that they be obtained up front. And they in general are good for the entirety of a student's matriculation unless a student retracts it, which they have the option of doing. The only one I can think of where we made a distinction with that was the one that had to be done every term. But we will go back and look at that.

MS. KLEIN: Yeah, [inaudible] this morning's thing. I mean, and I'm not a lawyer, and so I am out of my depth a bit here. But it literally says for each payment period the institution discloses, it doesn't say that the institution gets an authorization. So that's why I'm saying, like it just needs to be clear, because I think you can read either way. And so, it needs- I mean, if you want an institution to comply, then tell them what to do.

MR. MARTIN: No, I agree with you. I think that language can be cleaned up a little bit. I absolutely do. And we'll go back and take it- that is the intent, but we'll go back and take a look at that. So, it's a very good point.

MR. ROBERTS: Thank you. DC, go ahead.

DR. PRINCE: Thanks. So, the first question I have is around the usage of clearly described. What's clear to you isn't necessarily clear to me. And so, I realize that what you're doing is trying to address something based on a set of complaints that people have had and you've noticed as Denise has said, you know, around it being buried, what is the expectations of Department as it defines its authority to review, to say what is and isn't clearly described of this particular process?

MR. MARTIN: Well and like by clear we mean that the- that if you're obtaining a student's authorization to do something, that in that authorization, that written authorization has to describe exactly what- what's the student authorizing you to do. You know, you're basically- what's happening is your- the student's authorizing you to use their Title IV money to cover something other than tuition and fees and room and board, if it's provided by the institution. Those things you do not need a student authorization for. Everything else, you do. So, in providing these authorizations, what we're saying here is that you have to be- you have to disclose- you have to be in the authorization. What is it you're obtaining the authorization for? We're going to use your funds for the purchase of books and supplies. We're- you know, whatever it is that the student is authorizing you to do so, especially with respect to the authorization for- the opt-in authorization for books and supplies that are provided by the institution as part of the course. So, we want to make that very clear that that's what the student's authorizing the school to do in this case is to use their Title IV money for these books and supplies, as opposed to just a very generalized statement that doesn't really tell the student where the money is going.

DR. PRINCE: Does the Department- by agreeing does the Department take responsibility to then provide examples of what it means to be clear to a student, so that the level of ambiguity and the diversity of thought around this is minimal or minuscule, to the point where you understand what is clear. Because I think the issue we run into again is there's an expectation that something is written in a certain way, presented in a certain way, but then may not necessarily be in the way we use the terminology clear or coherent or, understandable, really, is what I think what we're trying to get to, in the language that we might find ourselves with, you know, varying opinion on what it means to be clear, or what it means to be understandable or coherent or, you know, that individual, whether they're first time in college or not or high income versus low [inaudible] whatever you're trying to do that they really understand what they're signing up to. So is that- is the Department willing to do that in order to get-

MR. MARTIN: Well, I don't- I mean, obviously we're not going to- I don't think if you're saying, will the Department agree to take- assume responsibility for where a school has failed to do this, no. As far as what we describe-

DR. PRINCE: That's not what I was

asking. Let me clarify-

MR. MARTIN: What we describe is clear, you know, I don't think there's been- I don't think we're going to be able to have a dictionary definition of clear. We have in the past done- you know, given examples of including but not limited to, things like that. It might be we can put some more language around this. I see David has his hand up, so maybe he has some ideas.

MR. MUSSER: Sure. Yeah, I- DC, I take your point, I think, if I'm understanding you correctly, that, you know, the word clear has a lot of different meanings to a lot of different people. And a lot of times when we have language like this, the Department is trying to get at a concept that really you can't nail down with exactitude. You can't actually say, this is clear in every case. And this is not clear in every case. What we often do though, is we provide examples of things that are- the Department does consider to be acceptable and examples of things that we would not consider to be acceptable. And we could do that both in the preamble to the final to the NPRM and the final rules. We certainly could- can and almost surely will do that in the FSA handbook, which is the guide that schools most frequently use when they look to us to give them guidance about

this. But from a compliance perspective, you know, most of the time when- if this were to come up in a compliance context, it's likely because, either there were student complaints that the information that they were given sort of obfuscated the way that the process actually played out or the Department, in a program review, sees that very little information was given, so much so that even the reviewer couldn't understand how the process was intended to play out. So, I do- but I definitely do hear you that it would be helpful for the Department to illustrate what we mean by clear in this context. And we can- I think we can certainly put some thought into that and try to get some explanations on that front.

DR. PRINCE: No, thanks, and I just want to clarify, I wasn't asking the Department to take responsibility for this, but to your point, to provide examples of what you mean by this. Because I was a bit taken back by Greg's comment. That's not what I was insinuating. The second question I have is around this separate from other documents. And again, what is the- what example are you saying that was- it was buried under something? Because I could see- does it have to be a- when you say separate document, is it a separate chapter within like the enrollment document that institutions provide, or is it at the time in which the activity needs

to become a priority for that individual? That has to be a separate form they can pull down from the website. I think when you- when this terminology of a separate document, it- again, I think there's a level of clarity, but [inaudible] isn't for at least saying where it should be located, what it should say, when it should take place. And it's just not clear from the discussions I've heard here, as well as what I'm reading on the document that is being requested of. It's just saying that it should be a separate document outside of what is required. Well, you know, again, that can- you give up too much authority by giving too many institutions different ways of doing this without narrowing down the level of expectation that's necessary.

MR. MARTIN: That's a very good point. I think you make a very good point, DC, about the- when you say separate, you know, but previously, you know, what- now when we've looked at this for authorizations, certainly what I can tell you- I can give you an example of something that would be absolutely prohibited, which would be, you know, some schools require institutions- require students to accept a- an award offer. And that's allowed. That's allowed. So, they will require a student to sign to accept an award offer so student can sign to do that. You cannot have it in such a way that by signing

to accept the offer of aid, you're also providing the authorization that would be explicitly prohibited. Now, to your point, which is a little more nuanced about, you know, student signs enrollment agreement, right? So generally, there's a signature block in an enrollment agreement. Likewise, we would not permit or find it permissible for a student to have to- when they sign the enrollment agreement to, in signing that enrollment agreement, also authorizing the school to do any of these things. Now, if you're getting down to the level of granularity, where would it be okay for in an agreement, the student- I mean, yeah, an agreement the student is going to sign that there's different signature blocks in that agreement and by signing here you're offering- you're allowing the authorizations and by down here you're offering something else? We have said in the past, as a matter of policy, that there has to be separate signatures for each thing, right? So, I don't think we've gone so far as- the question is, does it need to be separate physical documents? That's- we might be able to put some more clarifying language around that, I believe in the preamble, but I noticed Denise has some comments and so let me turn it over to her.

MS. MORELLI: Well, I mean, I understand what you're saying is it could be one thing

for one person, but I think we got to look at all of this as like a reasonableness standard. When we say separate, because what I've seen and I do a lot of work with the program review team, is it'll be buried in a tiny little spot in the enrollment agreement or with other, like, information, accepting a locker at the school or whatever. They- one of the reasons we're doing this is we deal with a lot of bad actors that try to get around the rules, right? So, we will see these buried and we go do program review and interview students and they're saying, I didn't know I told them they could keep that credit balance. I didn't understand what I was doing because it's buried with a bunch of other documents because we'll see documents 15 pages deep and the authorization is buried on one tiny little piece on the credit balances. So, what we want to do is make sure it's clear and in a separate document that's dealing with the credit balance authorization, so that students are not duped into signing something when they're just getting their, you know, equipment or getting their locker or getting some other kind of documentation. And I think as we apply all of our regulations, there is a reasonableness standard that the Department uses in determining whether or not it meets the standard. So, I think that's what we're dealing with here. If you have other language you would like to

see us look at, we'll be happy to do so. But I think we were looking at the- you know, clearly and was separate at being something that the student could look at and right away understand what they're getting into with signing away their credit balances or allowing the school to hold them.

DR. PRINCE: Yeah, I think the thing that I'm- if [inaudible] approach, this is not necessarily going after bad actors, but where is the shift, the culture shift in higher education to make sure that we are communicating effectively to students about these kinds of things? I think that's, for me, that's it. I don't- we don't have a lot of bad actors in our space, right? Everyone is doing what they're supposed to be doing. That's for other divisions to think about. But I think ultimately, if it's just a separate signature around that, that is not buried because then if you require a separate signature, not a signature for the page, a signature for that actual statement, I think that would be more acceptable here. Because again, I think what you're- what we're trying to- what we're trying to do, or at least from my perspective in the discussions we're having, is how do we think about the authorization of parents and students more broadly and our institutions about how we're processing and using, whether it's their

information, their finances, the money that they're accessing from the government, whatever the case may be. And so how do we do that with an appropriateness that shifts more about the culture, rather than trying to focus on bad actors, right, or the people who get in trouble. And so, I would just open- be open to- hope you're open to being more specific about what- not a separate document that is required, but maybe a specific signature or something that highlights the parents and students what they're signing, what that means. So, I think what you're going to get into is, well, it is a separate document. It's this chapter and something else. I think there are so many ways that I could think through how to make sure it's a separate document, still part of a general processes and I think that you're trying to get away from. So I think that's where we might want to have that particular discussion and change an arrangement.

MR. ROBERTS: Thank you all for that exchange. Anything new or additional to add for the committee's consideration on 668.165(b)? I'm not seeing any hands initially. Greg, just a suggestion, do you want to take a temperature check on this? Hear from any folks that might have anything to add and then take, like, a 20-minute break or so? I know we usually endeavor to do a break in the afternoon.

MR. MARTIN: Yeah. I think if- I think we can take our 15-minute break after we take a temperature check on this.

MR. ROBERTS: 15? Okay, sounds good. Well, so in that case, we'll take one final temperature check before the break on the entirety of the text that's in 668.165(b), Student or Parent Authorizations. If folks want to indicate where they are on the changes thus far in the reg text with their thumbs. I see three thumbs down, I believe. I see Jillian, Jason, and DC. Did I miss anyone?

MS. KLEIN: My thumb is sideways.

MR. ROBERTS: Oh, I apologize. Sorry, the angle was-

MS. KLEIN: I think Jo is down, though.

MR. ROBERTS: Oh, what was it, Jo? I apologize.

MS. BLONDIN: Jo Blondin was sideways.

MR. MARTIN: Gotcha.

MS. JEFFRIES: Yeah, and Dom was down.

MR. ROBERTS: Oh, and Dom. Sorry. I think that's where it was. Because [inaudible]-

MS. JEFFRIES: Let me just capture these.

MR. ROBERTS: Yeah.

MS. JEFFRIES: Who did you say, Brady?

MR. ROBERTS: I believe it was Jason,
Dom, and DC.

MS. JEFFRIES: Okay.

MR. ROBERTS: But again, if I missed
anyone, mischaracterized anyone, let me know. Dom, Jason,
or DC, anything you'd like to add to the conversation?
Anything that wasn't previously articulated for the
committee's consideration that would, at minimum, bring
you to a sideways thumb, you would withhold potential
future consensus when we took that vote? Yeah, Dom, go
ahead.

MR. CHASE: Yeah. Just briefly, I
think it's important to add context to the thumbs down. I
fully believe in transparency, but I believe this
language is inextricably connected to previous things
we've discussed. So, that's the reason for the down vote.

MR. ROBERTS: Thank you. And then
Jason.

MR. LORGAN: You know, I think I agree
with exactly what Dom just said.

MR. ROBERTS: Gotcha.

MR. LORGAN: I'll leave it at that.

MR. ROBERTS: Yeah, yeah. Understood.

Gotcha. And then DC, anything to add or your- gotcha. Yeah, we captured that in the previous discussion. Great. So, by my watch, I have 2:22. Do we want to endeavor to be back at around 2:40 to finish the discussion on cash management and then move into public comment?

MR. MARTIN: I think that sounds good.

MR. ROBERTS: Okay, we'll see everyone in about 17 minutes if that's okay. Welcome back, everyone. We are going to continue our discussion on issue paper related to cash management. Before we kick things off again, I do just want to let folks know who do have a scheduled slot for their public comment today to endeavor to log on 15 minutes before your scheduled time. Please try to log on with the name that you registered under, and you'll be in the waiting room, and then you'll be admitted promptly once you're speaking time comes up. So, if you can start logging on 15 minutes before your time, that really does help us ensure that we can get everyone who signed up, their three minutes to address the committee. So, with that, I'll turn it right back over to Greg and his team to tee us up for our next topic, which is 668.167, Returning Funds and Overpayments.

MR. MARTIN: Thank you. Brady. Welcome back, everybody. As Brady said, we will be looking at

668.167. And while Vanessa is pulling that up for us, a couple of remarks I want to make about this section. So, here, we didn't propose any substantive changes here. However, we did receive a number of data requests, which we're working to provide responses to. We also wanted to talk through a number of questions on the Department's process and overpayments, and we will be doing that momentarily, as related to the specific process the Department has for collecting these debts. Before we do that, let's just go back to what we originally had proposed under overpayments. We moved everything that had to do with- and I'll go back to the discussion of this briefly just to reiterate what we did. And there is a note to the committee at the bottom of page nine that again reviews everything that we propose with this section. And by and large, we propose to rename 167, which was severability. We have a new 168 for that and changing this to return- returning funds and overpayments and moving all of the regulatory requirements that were spread throughout the regulations into this section. We did talk about that at the last- during our last meeting, specifically what changes we made. I want to just- and we did talk about this already. But I want to reference that again. We- with respect to overpayments for grant overpayments, we changed I think for TEACH grant the

amount of the overpayment from a student is not liable for from \$25- less than \$25 to less than \$50. And that conforms with statutory rules about what students are required to repay under R2T4 for grant overpayments. The same for FSEOG from \$25 to \$50. And we also for Direct Loan overpayments, under (g), we changed the student is not, or rather, we rather put there- added that a student is not liable for. And the institution is not required to attempt recovery of a Direct Loan overpayment if the amount is less than \$100 and is not a remaining balance. Federal Student Loan servicers and lenders must write off totals for borrowers, principals, and interest of \$100 or less after 30 days. That simply conforms to the statutory requirements related to the Direct Loan program and servicing of that program. So having thought about that, what I'd like to do- those are the only changes. Those were the same as the changes that we presented to you before. What I'd like to discuss now in 167(b) is overpayment timelines. And the timeframes within which all of this is collected. And you will note there that we have the overpayment timelines we've put in here for overpayments for which the student is responsible and that are not tied to nonattendance to return Title IV funds. Institutions must promptly send a written notice to the student requesting repayment of the overpayment

amount. Institutions have 30 calendar days from the date the notice was sent to recover the overpayment in full or enter into a repayment arrangement with the student that is satisfactory to the institution. And then two, we say if the initial 30 days has elapsed, have elapsed rather, and the institution has not received the full overpayment or made satisfactory repayment arrangements, the institution has 15 calendar days to report the overpayment to NSLDS and refer the overpayment to the Department. For FSA grant overpayments for which the institution is responsible, institutions have 45 days, 45 calendar days from the date of discovery, to restore the fund. So, what I've given you there is a little bit of background and context about the requirements for collection of overpayments that are due from students and timeliness associated with that. And last time we were together, there was considerable interest in looking at the Department's current process for how that is accomplished, where students owe overpayments. And it would be the situation where the school would not be entering into a repayment arrangement with the student, and the school would have reported the overpayment to NSLDS and referred that overpayment to the Department for collection and what happens at the point where the Department takes over that responsibility. So, we have

some material for you today and are lucky to have David Musser with us. David works in FSA, and they are the responsible entity for this. So, what we're going to do now is just turn it over to David Musser, and he will walk through that process with you. David, if you wouldn't mind.

MR. MUSSER: Thanks, Greg. Yeah, we did some research with our colleagues in FSA who specifically work on this process. And so, I want to go through each of the questions that we received on this topic to give you guys a better sense of how the process plays out in practice. So, the first question I think that's probably easiest to address is who is the Department's contractor for collection on Pell Grant overpayments and it's maximum- Maximus Federal Services, the same contractor that we use for debt collections. And there's- there was a question about what kinds of instructions or guidelines has the Department provided for the negotiation of payment plans? So, when a school refers a- an overpayment to the Department, they're also required to report the student to NSLDS. When they do that, the student loses Title IV eligibility during that period. Once the overpayment reaches the Department's contractor for collection on these overpayments, the contractor will reach out to the student to provide the

student with information about how they can enter into a repayment plan and regain their Title IV eligibility. If the student does enter into that payment plan, they immediately regain Title IV eligibility and will retain it, unless they fail to make a payment, at which point they will be asked to repay the full amount and they will no longer be Title IV eligible until that full amount is repaid. So that's sort of the general process. Now, we were also asked, and it's a good question, how does the Department determine what the payment plan will be? So essentially, the Department relies on the same regulations that apply to Direct Loan rehabilitations. And the first thing the Department does is offer a payment equal to 15% of the amount by which the borrower's income exceeds 150% of the poverty line. And then if the debtor cannot make that payment, they are permitted to submit the rehabilitation income and expenses form, which you can find on Studentaid.gov, and provide special circumstances and give an indication of what they can afford. The Department can then reduce that- the payment for the individual, not down to \$0, but there is no technical minimum, aside from zero. So, it could be as low and has been in some cases, as low as \$5 or \$10 per month. The student is informed of the repayment plan options in the welcome letter that they've

received from the Department, and that they have the option of contacting us to establish a reasonable and affordable repayment option. That letter is sent immediately after the debt is accepted by the Department. And it gives the individual 65 days to avoid treasury offset. And if they don't respond during that period, we do refer that debt for treasury offset. So, I'm going to pause there and ask if there are any questions or any other- anything else that I can clarify about the process that's currently used for overpayments before we go on. Sophie Laing. Go ahead.

MS. LAING: Thanks so much. That's a really helpful background. I was just wondering if it's possible to get any data on how many students are actually entering into these payment plans. I think that I've never come across them. I think the same was true for Robyn and other legal aid folks that we talked to that we've never seen these sorts of payment plans. So, it would be really helpful to get a sense of if it's a lot of students accessing these plans and accessing low dollar amounts, or if students still- if the process still isn't really clear for students. And then the other question I had was if the Department is willing to consider kind of updating those guidelines to match the SAVE Plan more than the IBR plan since the SAVE Plan is

now in place and is a lot more generous for low-income students. And these students in particular could benefit from even lower dollar amounts to pay back these overpayments because they are Pell Grant overpayments, and they receive them because they are low income. And so, I think we'd asked if the Department would consider changing those guidelines for the payment arrangements.

MR. MUSSER: So, Greg, let me first answer the question about the data, and then I'll turn it over to Greg for the second part of your question, Sophie. We are still working on your- on data requests that you've submitted. That should provide at least the majority of those items. I'm not sure if we have the- enough of a breakdown for what you requested, but, once we have the data and it's fully validated, we will send it around, and you can make an additional request. And I believe we could track that down for you before the third session. And then I'll hand it off to Greg to respond to your second point.

MS. LAING: Thanks.

MR. MARTIN: Thanks, Dave. Yes, so as far as like aligning the options for repayment with SAVE, we've not considered that. I want to say that we have- we are willing to consider any suggestions- proposals you have. There are some limitations. We have, for instance-

so, we don't- you know, as far as income goes for students, we would not be able to rely on the IRS for that for this purpose. We'd have to, I guess, have students provide their own documentation of their income. We haven't given that particular process a great deal of consideration yet, but I think if you- what I would say is to anybody on the committee, all of you, if you have specific proposals for how such a process might work, please feel free to provide us with those. I'm not- we're not taking anything off the table. I can't make any guarantees as to what we can do when we've looked at it from a legal standpoint and one of resources as well. But we're certainly- and I and I do take your point that yes, these are Pell Grant overpayments or FSEOG overpayments. One, to- one is to people with need and then FSEOGs, individuals who are already Pell Grant recipients, generally speaking, have very low [inaudible], if not zero. And so therefore have exceptional needs. So, we're talking about people who are fairly stressed financially. So, I think that there is a willingness and an interest in- on the part of the Department to look at what- doing whatever we can do to facilitate the- you know, getting the money back, of course. It is owed but making it as least- less onerous for students if we can do that. I also want to point out that with this- with the

collection options that you asked for the data that Dave discussed, there's also, you know, some schools, I want to point this out, some schools don't- if there's an overpayment, whether it's- obviously if it's the school's fault, the school has to make good on that, right? We know that. But if it's an overpayment that's the student's- liability to the student, some schools will simply pay that or simply they'll simply restore the fund and then either write it off as a student or the school. So just whatever data you receive, you know, that would be the ones that we have, which might not be indicative of every instance where an overpayment was owed. I just want to point that out. So again, we're willing to take any suggestions, hearing discussion about it. And so, I'll leave it at that and then turn it back over to Dave if he has something else he wants to say or entertain other comments.

MR. ROBERTS: Doesn't look like it.
But, Sophie, did you- oh, sorry, go ahead, Dave.

MR. MUSSER: I was going to say, I want Sophie to go first if she has something and then I can talk.

MS. LAING: Thanks. I guess just two things to clarify. One is that it seems like there's already a process of getting students' financial

information if they are entering into payment arrangements. And I was just suggesting that instead of the kind of IBR formula, we allow them to access the more generous SAVE formula, but it doesn't seem like that would actually require more or different information than putting them in the IBR formula. It would just be applying a different formula. And then, although, correct me if I'm wrong, and then the other question, I think just on the data point, is if it would be possible to see those exact instructions that- or like manual that FSA provides to Maximus on the collection of these debts.

MR. MUSSER: I don't know if we can submit just the manual, although I think it would be helpful for folks to see the letter that we send to students, and I believe that should be possible. So, I'll see if I can track that down. Yeah, maybe to help characterize the proposal a little bit better, I want to just sort of express how I viewed the proposal that we received on this topic. As you heard from my description, the current process treats an overpayment a little bit like a loan, a defaulted loan, and gives the students very similar options, which I believe are quite flexible because those situations call for flexibility. You don't know what the individual circumstances are. You need to give them some leeway in terms of how much they can

repay. On the other hand, I can understand the desire to give a little bit more flexibility to the student and have terms that are somewhat less onerous, as Greg described. If I understood the proposal correctly, it would transition from an approach that sort of looks at an overpayment as a defaulted loan and one that looks like a loan that is just going into repayment, like any other loan. And I believe that there are some limitations in terms of how the Department handles overpayments that may prevent us from treating it in exactly the same way. But I think we are open to, potentially making changes to the process that make it more- at least more similar to the way that loans are treated when an individual goes into repayment. One thing that we do, I think, with- in internal discussions do feel strongly about is that the initial entity that should be provided with the opportunity to obtain the amount of the overpayment is still the school, both for the reason that Greg just mentioned as that many schools take it upon themselves to fulfill that obligation simply by repaying the amount the student owes on their own, but also because in many instances, you know, we- if it's a small overpayment amount especially, the student often finds that working with the school is simpler than having to go through the Department and going through what I would, I imagine,

would be a rather scary process of working with the government for this amount that they seemed to have overpaid. But that aside, I think we are open to other changes that have been proposed. So, if you- if you guys want to have further discussion on this, I think this is a good time for it.

MR. ROBERTS: Okay. Barmak.

MR. NASSIRIAN: I don't have any specific proposal, and I understand where the Department's coming from. But by virtue of the process you just described, obviously this is not, in most instances, the case of an individual who's able to but is unwilling to repay. It's typically by the time the stuff comes your way, this is an individual who's obviously unable, who's navigated a fairly scary process already and has landed in your lap. I would strongly support treating them as leniently as possible because it's kind of self-defeating if you offer them a repayment scheme that is still not workable for them, you're checkmating them for, you know, potentially permanently, from pursuing education by rendering them ineligible and getting them a way out of the situation they're in. So, to whatever extent the Department can be more lenient and follow something that is more proximate to the SAVE approach, I think that would be appropriate. Thank you.

MR. ROBERTS: Thank you. Sophie, go ahead.

MS. LAING: Thanks. One, I just had a question about the- when schools, I guess kind of cover this debt if they're- if that means that they truly cover it or if they cover it, but then turn it into an institutional debt that the student still has to pay back otherwise, or if they're truly just kind of waiving or covering the cost? I guess that's one question I had. And then I think the other one is just kind of a clarifying question of whether or not, we can kind of re-up or resubmit our proposal to treat this more like regular loan debt and get people access to grace period and the SAVE Plan. I think our major concern here is that students are dropping out due to really- or withdrawing or whatever due to really, really difficult circumstances and we don't think that they should be subject to, you know, more onerous requirements than necessary to access more aid or just to be able to repay this debt.

MR. MARTIN: With respect to the first question, I think that it- I don't think there's a standard practice. I don't have any- we wouldn't have any statistics on the extent to which schools automatically restore the funds.

MR. MUSSER: Well, I actually want to

butt in on this one, Greg. I apologize.

MR. MARTIN: No, go ahead.

MR. MUSSER: In cases where it's a student overpayment and the school covers it, the- there is no institutional debt because the amounts that the student got generally is- generally remains on the account. They don't have to take- the school doesn't have to send anything back. So, they're not creating a new institutional debt. I'm trying to think of any circumstance where that might not be the case. But the only time that the school sends money back that creates an institutional debt typically is when the school made an error, and the school is responsible for it. So, yeah, let me- give me a minute and try to think through the circumstances where the school might end up causing the student to owe a balance to them in these cases. But I don't think that would happen in very many instances.

MR. MARTIN: Yes, that's what I was saying, we don't have a lot- we don't have anything established in regulations as to how this actually works. I think we have to- give us a little bit to think about exactly how that would play out in this circumstance. I do think law schools do- I think law schools routinely, as Dave said, just make good on it. And that's it. There's nothing- but I'm thinking, Dave, if they have to-

if the amount of power the student receives is reduced, well, we'll have to take that- let's take that back and think on that, and we'll try to get you a better answer tomorrow.

MR. ROBERTS: Okay. Thank you all.

Zack, go ahead.

MR. GOODWIN: Thank you, Brady. Maybe this is what was being thought of- I've seen a couple of things at different institutions, but if a student's account balance is brought to zero and then it's learned after the fact that the student has an overpayment that they're responsible for and the school repays it on their behalf, if, say that was \$500, they will repay the Department \$500 or reduce the Pell Grant by \$500, and that becomes a debt that the student then owes to the school instead of the Department.

MR. MARTIN: Yeah, I think that- I think you're right that that could happen if the school- I mean, and obviously the school would probably- making it- you'd have to make an adjustment to [inaudible] to reduce the amount and either send it back through G5 or netted out against another draw. But the money goes- the moneys off the student account- would- could create a balance on the account. But as I said, we'll definitely- good point, we'll definitely take that all back and give

it some consideration.

MR. GOODWIN: Thank you.

MR. ROBERTS: Any other questions, items for consideration, proposed changes on this section of the reg text? Oh, Jamie, go ahead. You're muted right now by the way.

MS. STUDLEY: When you say section are we- are you just in a- what unit of measure are we on?

MR. ROBERTS: That's a very good question. I was going to turn to Greg to bail me out of that one.

MR. MARTIN: I'm willing to entertain anything on one 167 in general.

MR. ROBERTS: I was going to say we were talking about overpayment, but anything in general, I think probably is where we would move now.

MS. STUDLEY: Okay. Two thoughts, just as somebody who once had the financial aid office report to me at a small school with a small number of students. Two things. One, I think the discussion that we've just been having about the most favorable approach for students makes sense. It also might have the effect of fewer different formulae and scheme- schemas for student calculation out in- just out in play for people to keep track of the fewer different boxes and programs. That

takes me to a very specific just observation I leave to the Department to do this. I know that there are lots of different timeframes floating around, but when I read (b) and see 30 days for this, then 15, then 45, I picture my beloved Zena Schaffer, the financial aid director, like what, what was the- I just wonder whether the 15 really needs to be 15 for an important interest of the Department's, or whether there are fewer different ways to do these things that do not deserve, you know, that don't deprive students of anything, don't burden the Department, but just try and keep the, you know, the overheating of the brain and the reprogramming of the computer system. There are just enough of these to keep track of. It's a small point, but it actually makes it- can make a difference in the daily operations that people have to keep track of, and the risk of innocent error.

MR. MARTIN: Yeah, I take your point there. I think with the number of days we have- but I- to explain it, a couple of things. So, the first thing is, the institution being aware of the overpayment, right, that it exists. So that's the first one, that they're- it's not tied to the return Title IV funds. The institution must promptly send notice to the student. So, we're talking about if the institution has to send a notice to the student that this exists, what's a

reasonable amount of time to offer the institution to do that? So, we do have to have- we do feel the need to have a specific- to have something to say, you have to do this in a reasonable amount of time. What is reasonable? 30 days is a timeframe that we frequently use. It's not sacrosanct, but as I always point out, any number is to a certain extent- I'm not going to use the A word again, but it is- yeah, but it comes from somewhere, right? I mean, I always point out why is the age of majority 18 and not 17, and for 55 days, you know, we- these are agreed upon things that have happened. So here we're giving the school 30 days. And then they have then- they have 30 days to send the notice to the student. And they- then they have 30 days when the notice is sent. But for overpayments, which [inaudible] responsible, it must promptly notify the student. We don't give the days there. I'm sorry. We don't give the number of days there. But generally, we've said it has to be promptly. They have 30 days from the date the notice is sent to recover the overpayment or enter the- enter into an arrangement. So they send the notice to the student. We have to give a reasonable amount of time for the student to act, you know, so that we've determined 30 days is a reasonable amount of time for the student to act by either paying it back to the school or for the school to enter into an

over- into a repayment arrangement with the student. So now we have- the initial 30 days has elapsed and nothing's come back from the student. There're no satisfactory arrangements. What's the school have to do at that point? So, what we're saying here is that we wouldn't want the student to report the student immediately because, as David pointed out, the instant the institution goes on to NSLDS and indicates the overpayment, that student is no longer eligible. So, you have to give the student time to react to this. So that's why, you know, from that 30 days is elapsed- then you have the 15 calendar days. That keys to the Department's requirements for reporting generally for like when COD reporting has to take place. So, these are all conventions that key to- the 15 days is more a reporting thing, right? The 30 days-

MS. STUDLEY: So, they're drawn from other- okay, that makes sense. [Inaudible] mean drawn from different processes.

MR. MARTIN: Yeah, I'm not sure that there's anything sacred about these number of days, but they seem reasonable to keep the- I mean, what's reasonable to allow students- schools time to do what they have to do, students time to react, and then finally the school time to actually do what they have to do,

which is- the reporting in NSLDS is easy enough. That's an electronic process. The referral is still partially paper. I think the school goes in NSLDS and indicates it's turned it over to the Department. But then there is a paper referral process, after which time the Department will get the referral from the school. And then the Department goes on to NSLDS and makes an indication that the overpayment is transferred to the Department. At least that's the way it used to work. I think that's-

MS. STUDLEY: If I take your point, Greg, that the numbers come from some other benchmark. Yeah, they generally do where 15 is standard for that. And there just happened to line up here in a way that looks confusing. I defer to the Department.

MR. MARTIN: Generally, we have to- I mean whenever we use days, it's sort of incumbent upon us and our legal people at the Department want- don't like to see just days pulled up from nowhere, that there should be some, you know, there should be some- you should key to something. You know, there should be some basis for why we use this number of days. Congress can do whatever it wants for days and weeks and months. But we can't. So, we have to find something. And so, we usually go back to [inaudible]. That's why- I don't know, Dave, do you have anything you want to add to that discussion?

MR. ROBERTS: Doesn't look like it. Any other questions, elements for the committee to consider? And this is looking at the whole of that larger section. Any other questions from the Department? Greg, did you want to walk through anything else or-?

MR. MARTIN: No, that's pretty much it with respect to 167. You know, as we're thinking about whether, you know, where- as you're thinking about where you stand on this with respect to a temperature check, I would just- a couple of things. Number one, most of what we did here was moving disassociated pieces in the regulations that had to do with overpayments into one area, which I think was a great idea of why we did it. So that's one thing. We made a few tweaks for those number of days. And, with this- the overpayment timelines. So [inaudible] that. I think one thing we don't have here yet is, you know, in talking about the Department's procedures for collecting overpayments, David went through the process that we have now, which is procedural and not enshrined in regulation. Where we go from here, I think we don't 100% know. We have to go back and consider that. So, I just ask the committee to keep that in mind that we are not closing the door on that and saying no, this is what we've- this is what we do, this is what we're going to continue to do. We will be amenable to any

suggestions that are made. But right now, I can't really go any further than that, you know, to say that. We'll need time to digest that and see what it's- what might be possible for us to do and what might not be. And I don't know, David, you want to add- do you have anything to say about the process before we move on?

MR. MUSSER: No, I don't think so. I think you covered it, Greg. We- I think partly, you know, some of the considerations are practical. Some of the considerations are policy oriented. But we will start, I think, from the recommendation that you guys previously provided when we think through this.

MR. MARTIN: Thanks, Dave.

MR. ROBERTS: Alright. So, with that, if we're okay to take a temperature check on the entirety of 167. Again, with what Greg and Dave had- keep that in mind, obviously. Just again, a more informal read of where the committee is right now, based on the discussion we've had thus far and what you've seen in terms of the reg text. If folks want to indicate where they are with a show of their thumbs. I believe I see one thumb down and that would be Sophie. Did I miss anyone? I think I got everyone. Thank you, thank you. I believe it was just the constituency representing legal aid. Sophie, did you want to add anything? I know there was some back and forth,

but did you want to make sure there is anything additional you wanted the committee to consider in moving forward on this section?

MS. LAING: No, I think we covered it in the discussion.

MR. ROBERTS: Alright. Much appreciated. Greg, did you want to walk through that last section on severability? I know it was just a move, but we can close that out.

MR. MARTIN: Yeah. We're not proposing anything here, I don't believe. Well, we are to the extent that we're moving it. So, unless someone has an objection to the fact that it's now in 168 as opposed to somewhere else. So, you can see here that this was 167, but we took 167 to move all the overpayment requirements into, so severability becomes 168. And we just say if any provision of this subpart or its application to any person [inaudible] invalid the remainder of the section or application of any person active practice should not be affected [inaudible] protects us in the case of lawsuits or something along those lines. So, I don't think we need to take a vote on that. But- not a vote, rather a temperature check. So, I think we're good there. That should be pretty straightforward. And, yeah, that's great. So, I appreciate all that.

MR. ROBERTS: Okay. So, I'm looking at the time right now it's, it's, 3:16. So we'll begin public comment in about 14 minutes. Greg or anyone else in the Department, any concluding remarks on this issue paper just to close out day one of week two?

MR. MARTIN: Well, I guess I would just want to thank everybody for the- what I thought was a very, very good discussion today about everything here. And I thank everybody for where we could come to an agreement that we're moving in the right direction. I know that we have some disparity of opinion on a couple of sections, but I want to say that I think everybody expressed their views very succinctly and made it very clear why they stand where they stand. And we certainly respect where everybody's coming from with that. I thought the discussion was really good. I look forward to picking up tomorrow with state authorization. So that's about all I have to say. I don't know, David, Denise, anything else you want to add? Okay. At this point, I think it's a little- given we only have like ten minutes, I don't really want to take up state authorization with ten minutes. So, I don't know what- we're in a bit of an awkward situation.

MR. ROBERTS: No, no, no, I was going to say, any final remarks, anyone on the committee? I

know we've had a lot of robust dialog today, so if anyone has any additional thoughts or questions or comments or things for the committee to consider, feel free to do so now. Otherwise, what I would suggest is we could just take maybe like a quick, five- or so-minute break and then actually begin public comment a little bit early. So, in that case, we do always have a waiting list of people that ask to speak but didn't get an assigned slot. So, we can allow those folks to get an opportunity to address the committee. Does that sound okay to everyone?

MR. MARTIN: That sounds great if there's no other comments.

MR. ROBERTS: Any concluding remarks, Cindy, anything from the FMCS team? No? Okay. So, in that case, if folks do want to take a quick five-minute break just to get up and stretch their legs, we'll come back, right at maybe 3:25. And then we'll roll right into public comment with some time built in for some folks on the waiting list as well. Welcome back, everyone. I hope you enjoyed that very brief break. As we do in all negotiated rulemakings, we're going to reserve the last portions today for our public comment period. Members of the public are given three minutes to address the committee. We give them a quick heads up, and we endeavor to include as many folks as possible. We always keep a

waiting list in case there's a no-show. And we have a little extra time today. So, if you did receive an email that you have a public speaking slot or even that you're on the waitlist, feel free to start logging in so we can ensure that we have time to hear from you. But with that, I think, John, we can admit our first public speaker of the day.

MR. WEATHERS: Thank you, Brady. Our first speaker today is Cheri Kittrell, professor from State College of Florida.

MR. ROBERTS: Good afternoon, Professor Kittrell. Can you hear me? Looks like she's connecting to audio. Hi, Cheri. Can you hear me?

DR. KITTRELL: Yes, I can.

MR. ROBERTS: Excellent. We can hear you and we can see you. Welcome to public comment. You'll be given three minutes to address the committee with a 30-second heads up when your time is about to expire, and your time will begin whenever you're ready.

DR. KITTRELL: Thank you. Good afternoon. My name is Dr. Cheri Kittrell, and I'm a professor of psychology and department psychology coordinator at State College of Florida. Thank you for giving me the opportunity to speak today. I wanted to share the experience that I've had with my students as it

concerns inclusive access, which is known as easy access on our campus. My general psychology students were some of the very first students on our campus to pilot easy access. The success that we saw across early engagement in class, retention in our courses, and student and faculty satisfaction with the program led to a more widespread availability of easy access as an option for our faculty. One of the most important choices for faculty when selecting a textbook is about cost to the student. Inclusive access certainly has the benefit of being the lowest price that students have ever paid for my textbook, \$20 lower, in fact. Additionally, students don't have to wait for financial aid to pay for their books or to try and figure out trial versions of the course materials, which still often expired before many students straightened out problems with multiple funding sources. Prior to easy access, students who did have financial aid were limited to buying their books at the bookstore and were subject to whatever markup the bookstore had, as well as a dizzying array of versions that students never understood. They were confused by used versions that seemed cheaper but didn't have a required course code, and they often missed out on deals that they would have gotten if they'd bought a packaged version. Additionally, the bookstore would only order a

small percentage of books because they assume students would buy from other outlets or may not buy a book at all. So, students were fighting over the last few remaining book packages, and then coming back to class to say that it will be two weeks before the bookstore could get any more in stock. Students who weren't lucky enough to have financial aid would turn to other sources; online resellers, rental companies, fliers in the hallway from other students who had previously taken a class to resell their books. These other sources created a similar conundrum. Is it the right edition of the text for my current class? How similar is the fourth edition to the fifth edition? And while it was inconvenient for some students to have to wait for corrected supplies to be sent, for some students, that wasn't even possible based on the outlet where they chose to buy. Sometimes students were stuck with the wrong book because they couldn't afford to purchase another. And this issue is made far worse now by the fact that students are not all local to our institutions anymore. It can be difficult and costly to get books shipped to, say, American military deployed abroad in a timely manner. I know my time is short here today, and I'm grateful for the opportunity to speak. If you could take one thing away from what I've had to say here today, it's that the advent of inclusive access has

been such a boon to my courses, and I cannot imagine going back to any other method. With inclusive access, every student is prepared on the first day. They always have the correct materials, a working course code, and are ready to begin work immediately. They feel prepared from day one.

MR. WAGNER: You have 30 seconds remaining.

DR. KITTRELL: This is a system that is working for my students, and I would hate to lose it. Thank you for your time.

MR. ROBERTS: Thank you Dr. Kittrell, for your comment. We appreciate it.

DR. KITTRELL: Absolutely.

MR. ROBERTS: Alright, John, I think we can admit our next speaker.

MR. WEATHERS: Brady, our next speaker is Emily Rounds. She's speaking for Third Way.

MR. ROBERTS: Hi, Emily. Can you hear us?

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

MR. ROBERTS: Yep. We can hear you and we can see you. Welcome to public comment. You'll have three minutes to address the committee, and you'll be

given a 30-second heads up. And your time begins whenever you're ready.

MS. ROUNDS: Great. Thank you so much. Thank you for the opportunity to offer comments to the Negotiated Rulemaking Committee. As said before, my name is Emily Rounds, and I'm an education policy adviser at Third Way, a national public policy think tank in Washington, D.C. Third way strongly supports the Department's efforts to strengthen the accreditation procedures related to student achievement. Accreditation is meant to provide a level of quality assurance for higher education, signaling that an institution provides a valuable education to students, and that schools can be trusted to use taxpayer dollars responsibly. But there are too many examples of institutions that continue to receive Title IV funding despite dismal student outcomes. In last month's session, a negotiator proposed graduation rates as an example of a student achievement metric. According to the most updated accreditor data, for the 2021 to 22 year, 37% of accredited schools graduated less than half of their students. The same year, those institutions received more than \$20 billion in Title IV funding. Accreditation is not delivering on its goal of quality assurance, largely because student achievement standards are not effectively implemented in

accreditation. We urge the Department to advance the last session's conversations into regulations that require accreditors to hold institutions accountable for student outcomes. We ask the Department to establish common definitions for student success metrics, because accreditors can and do define student achievement differently for the institutions that they accredit. Common definitions would be a step toward greater accountability by promoting consistent student outcomes, reporting across accreditors, clarifying what is considered a successful outcome, and reducing the risk of accreditors approving underperforming institutions. We also urge the Department to require accreditors to set performance goals for the institutions that they accredit. To remain in good standing, institutions would have to meet baseline benchmarks for achievement. The Department must also require that accreditors and institutions use and report reliable data from student achievement metrics from federal public sources, like the College Scorecard or IPEDS. When it comes to protecting students and ensuring responsible use of taxpayer dollars, self-reported metrics are not sufficient. Accreditors should also be required to disaggregate these data wherever possible. Last month's negotiations initiated important discussions around student

achievement and accreditation. As you pick up the conversation this session, we urge you to lean into the Department's authority to require accreditors to establish clear benchmarks for evaluating achievement and to strengthen these provisions in the final regulations. Thank you for your time and consideration of these comments.

MR. ROBERTS: Thank you very much, Emily, for your comment. We appreciate it. Okay. John, who do we have next?

MR. WEATHERS: Brady, next we have Cheri Carter representing herself.

MR. ROBERTS: Good afternoon, Cheri. Can you hear us? Oh, I can see- I think you're muted right now.

MS. CARTER: There we go. Good afternoon.

MR. ROBERTS: Good afternoon. Welcome to public comment. You'll have three minutes to address the committee, and you'll be given a 30-second heads up, and your time begins whenever you're ready.

MS. CARTER: Alright, great. Thank you. Good afternoon. My name is Cheri Carter. In 2007, I decided to use my GI Bill to pursue a career in medical billing and coding because I had worked in the medical

field as a corpsman while I was in the Navy. I enrolled in an accelerated online associate degree program for medical billing and coding at Colorado Technical University. I wanted the convenience of an online school because I was a single mother of a child with special needs. After enrolling, I remember thinking that something seemed off about the school. The teachers never gave us any exams or tests, not even one quiz. Instead, we just had to post two written assignments each week and comment on other student's online posts. Almost all of us got As. When we had to do group work, some students never showed up and they still received an A. There was very little covered in the eight weeks of class. If a textbook had 20 chapters, we only read about three of them. It was near the end of my time at Colorado Tech that I realized we had been given what I call the dollar store version of a medical billing and coding program. It did not have the accreditation that would make us eligible for the jobs that we thought we could get. As part of our classes, we had learned about different medical and billing and coding certifications. Two weeks before we were set to graduate, one of my classmates sent a message to the group chat saying that our degree would only lead to a lower certification and would not open many job opportunities. The next day, our teacher confirmed that

our classmate was correct. We would not be able to get the certifications that doctors and hospitals require for billing and coding. I couldn't believe it. I had spent 14 months in an expensive program, and it turned out to be total junk. I am unable to get my GI benefits restored, and I will never get back the time I spent. Because the school was approved, I thought it was legitimate. I think if a school offers a program that was supposed to lead to a career, the school's accreditor should make sure the program has what is needed to prepare you for that career. Otherwise, Veterans will waste their precious time and hard-earned GI benefits just like I did. I thank you for your time.

MR. ROBERTS: Thank you, Cheri, for your comment. We appreciate it. Alright, John, who do we have next?

MR. WEATHERS: Brady, next we have Kolin Wilkins representing themselves.

MR. ROBERTS: Good afternoon, Kolin, can you hear me?

MR. WILKINS: Yes, sir, I can.

MR. ROBERTS: We can hear you. If you want and you're comfortable, you can feel free to turn on your video, but we can definitely hear you. And that's- it's great if you just want to stick with that. Okay, I

see you turning on your video.

MR. WILKINS: It should be turning on.

MR. ROBERTS: It's a black screen
right now.

MR. WILKINS: That's strange. I put
the video on. I'm not sure why it's not-

MR. ROBERTS: That's alright. We can
hear you and that's the important thing. But welcome to
public comment. You'll have three minutes to address the
committee, and you'll be given a 30-second heads up and
your time will begin whenever you're ready.

MR. WILKINS: Alrighty. So good
afternoon and thank you for the opportunity to speak
today. My name is Kolin Wilkins, and in February 2020, I
enrolled at Vista College to pursue an associate degree
in medical insurance coding and billing. One of the
reasons I enrolled was that they advertised their ability
to get students interesting externships and prestigious
jobs. I fully bought into the school's self-promotion and
helped to use my degree to get a job at the Department of
Veterans Affairs to help other veterans like myself. The
school closed in October of 2021 when I was just five
weeks away from graduating. If I had known the school was
having so many problems, I would have never gone in the
first place. I did not get any value from my GI Bill

benefits I earned from my time in the Army. When I first enrolled, I could tell that the school was not as cracked up as it should be. And still, there was a lot of other veterans there. And I would like- you know, I did good with my teachers, so I decided to see it through. Then, five weeks before I was set to graduate, the school abruptly closed. We had no warning up until the last moment. We were being encouraged to sign up for new classes. It seems like only people at the very top of school knew the school was going to close. I had been at the school for close to two years and was so close to finishing my degree, but all that time was just thrown in the trash. I was and am so frustrated because of the school closure. I was unable to participate in the externship program even though I was so close to finishing my degree. I have not been able to get a job in billing and coding. After the school's closure, I heard a news story that the owner of Vista College is now involved with another school, which just seems unfair. I think more should be done to protect students and veterans from schools that are on the brink of closing. Thank you for your time.

MR. ROBERTS: Thank you for your comment as well, Kolin. We appreciate it. Alright, John, who do we have next?

MR. WEATHERS: Next, Brady, we have Michael Caraway, representing themselves.

MR. ROBERTS: Excellent. Good afternoon. Michael, can you hear me? Oh, I think you're muted right now. But we can hear you or we can see you, and I'm pretty sure we'll be able to hear you very shortly.

MR. CARAWAY: Okay.

MR. ROBERTS: Perfect. Welcome to public comment. You'll have three minutes to address the committee. You'll be given a 30-second heads up, and your time begins whenever you're ready.

MR. CARAWAY: Awesome, I am ready. I start now?

MR. ROBERTS: Oh, yeah. Go ahead.

MR. CARAWAY: Okay. Good afternoon and thank you for the opportunity to share a bit about the challenges I faced since my time as a student at Brown Mackie College. My name is Michael Caraway, and I have served in the United States Air Force for 17 years as both an active-duty airman and a reservist. In 2010, I started to look at my options for going to college, and I ended up choosing Brown Mackie because it was close to home and they promoted themselves as being military friendly. They seemed like a great fit for me. After a

year of school, I was deployed overseas. When I returned, the information technology program I was enrolled in was no longer offered. Not exactly what I was expecting. I didn't let this deter me, and I looked at transferring to a community college to keep my education on track. But none of my credits from Brown Mackie were recognized for transfer. I must admit, I have my doubts about the education of Brown Mackie. It seemed to be too easy to enroll. The classes were disorganized. We never had any book work to do after class. The teachers didn't seem to have any plan for the classes. It was just disorganized all the way around, so I wasn't surprised to find that my credits were of no value. I ended up going to- going a different direction with my education, but I feel the sting of that year at Brown Mackie with the student loans I'm still trying to pay off and having nothing to show for it. I hope my story helps this committee think through solutions as you hear from me and other veterans who rely on Federal agencies to make sure schools are offering solid programs to a real education. Thank you again for your time and consideration.

MR. ROBERTS: Thank you very much for your comment, Michael. We appreciate it.

MR. CARAWAY: Thank you.

MR. ROBERTS: Whenever you're ready,

John, I think we're able to admit our next speaker.

MR. WEATHERS: Yes, Brady. Next, we have Shameka Galloway, representing themselves.

MR. ROBERTS: Good afternoon, Shameka, can you hear me?

MS. GALLOWAY: Yes, I can hear you. Can you hear me and see me?

MR. ROBERTS: We can hear you and see you. Welcome to public comment. You'll be given three minutes to address the committee with a 30-second heads up, and your time will begin whenever you're ready.

MS. GALLOWAY: Okay. Well, good afternoon, Committee. Oh, can you hear me?

MR. ROBERTS: You're good to go.

MS. GALLOWAY: Yes. Hello, my name is Shameka Galloway. Good afternoon, everyone, and thank you for your public service. I want to thank you for making higher education work better for students, especially students such as myself. I finished my degree from the University of Phoenix in 2021. You won't be too surprised to hear what my life was like as a single mom raising three children, working four jobs. Early on I had a plan for completing my pre-med degree. But again, juggling school, schools wouldn't allow you to have the flexibility like the University of Phoenix, you had to be

in class. Therefore, I had to take care of my responsibilities, make sure that I was providing for my family, you know, the stability that they needed, a home, making sure that the utilities were taken care of. While taking care of those things, I had to put my education on the back burner, so I switched to a different program. I went to the Bachelor of Science in Nursing program and still had the same challenges, of course, because you needed to be physically on campus and of course having to work, I could not go to a class physically and unable to make those courses, of course, unfortunately, the story, my story, is not uncommon for several adults in the work field or in the workplace right now. Many other single parents, such as myself, we've shared information and they've talked to me about their struggles. I've mentored some of those parents that have children, have to work, and it was difficult to do both. So having the opportunity of such schools like the University of Phoenix again, schools like this make it possible for us to continue our education and to better ourselves while trying to provide for our children. And again, after I obtained my licensed practical nursing licensure, I knew I wanted to continue to go back to school. I struggled trying to do that while making money. I would take courses off and on, but I couldn't commit. Again, having

the University of Phoenix, having that online and that flexibility format was perfect for me to finish my degree. And not only that, in 2021, I finished my bachelor's in health management at the university, and I also went back and decided to stay in the school and earn my master's degree in health administration. I am proud to say that I graduated on time. I graduated summa cum laude with my bachelor's degree. I graduated with honors with my master's degree even. And again, three children working four full time jobs, trying to keep everything going. I wouldn't be here today [30 seconds] Okay. I wouldn't be here today if it wasn't for the University of Phoenix. And I urge you to consider adult students like myself considering higher education rules and the regulations. I appreciate you all so much for your time. Thank you again.

MR. ROBERTS: Thank you, Shameka, for your public comment. We appreciate it. Alright, John.

MR. WEATHERS: Brady, next we have William Glover, representing themselves.

MR. ROBERTS: Excellent. Good afternoon, William, can you hear me?

MR. GLOVER: I can.

MR. ROBERTS: Excellent. We can hear you and we can see you. Welcome to public comment. You'll

be given three minutes to address the committee with a 30-second heads up, and your time will begin whenever you're ready.

MR. GLOVER: Okay. That's fantastic. I'll go ahead. And I've already written out a testimony. So, here we go. Good afternoon. My name is William Glover, and I'm studying nursing at Broward College in Fort Lauderdale, Florida. I want to thank you for the opportunity to speak with you today. At Broward College is a program in place, which is called First Day for many classes, which makes it so students have access to the required course materials on the first day of class. I support First Day, primarily because it has not only proven to save me time, but also money. I've been a professional firefighter and first responder for the last 20 years. Currently, I'm working full time while going to nursing school. I also served in the Coast Guard prior to attending college. Early in my career, I paid for my EMT and firefighter training using the GI Bill. If I had access to a program like First Day when I was using the GI Bill to pay for college, it would have been so much easier. Having the ability to use the GI Bill to get my education was wonderful. However, it required me to spend hours doing paperwork, days waiting for the college to complete their part, and weeks to finally receive my

reimbursement. In order to make sure I had course materials in time for class, I had to purchase all of them out of pocket. Luckily, I was working and had the money to do so. I know many students do not. With a program like First Day, I would have been given access to my course materials up front, and they could have easily used my GI Bill to pay for the course materials along with my tuition fees once my reimbursement came in. I consider myself a lifelong learner. I have completed programs such as an EMT, police officer, firefighter, and soon to be nurse. I have also taught classes and know what it's like to both be a student and an instructor. In addition to students' time, another point to consider is how first aid helps make sure all students have the exact same materials to study from. Some of my classes require us to work in groups, and it's so much more effective as a student or as an instructor if everyone is using the same version of the course materials that they can access right within the learning management system. As you consider this issue, I hope that you will think about students like me who have used financial aid or the GI Bill to pay for college, and how much easier having the option to purchase your course materials through programs like first aid can make the start of each term. I want to thank you all, each and every one of you for your time

and for allowing me to speak. Thank you.

MR. ROBERTS: Thank you, William, for your comment. We appreciate it.

MR. GLOVER: Thank you.

MR. WEATHERS: Brady, next we have Chyna Rose, speaking for themselves.

MR. ROBERTS: Excellent. Chyna, can you hear me?

MR. WEATHERS: Trying to join.

MR. ROBERTS: Are you able to hear me? It looks like she might be connecting to audio. Great. Good afternoon, Chyna, can you hear me?

MS. ROSE: Yes. Can you hear me?

MR. ROBERTS: We can. We can see you as well. Welcome to public comment. You'll be given three minutes to address the committee with a 30-second heads up, and your time will begin whenever you're ready.

MS. ROSE: Okay. I'll begin right now. Good afternoon. My name is Chyna Rose, and I'm a student at Bright Point Community College in Richmond, Virginia. I have personally experienced the frustration of taking classes and not having the option of inclusive access, and how that had a negative impact on my ability to succeed in the course. Before I started my studies at Bright Point, I went to a different school, and they did

not offer the inclusive access program. I was using financial aid to help pay for my tuition and course materials, and I had to wait to receive my refund check before I could afford to purchase any of my books and supplies. For me, this was very frustrating because my instructors didn't think about the fact that some students would not be able to have their course materials right away, and just went ahead and set up assignments that were due the first couple of weeks of class. For those students who had received the refund, that was, of course, great, but for those who hadn't, you were just kind of out of luck. So, it really wasn't- it was really easy to fall behind and lose momentum in the course. When I transferred to Bright Point, I realized how the inclusive access program there worked, and it was such a relief because it made the process of getting started on the course so much quicker and easier. I feel like it's so much more streamlined at Bright Point because they give me all of my course materials before my classes start, build my account, and then my financial aid is applied without me having to wait for a check. This program makes my life a lot easier, and it's a lot more convenient and less stressful for me to just know I will have the materials I need to be successful in the class right away, and most importantly, it allows me to stay on

track with my assignments so I won't fall behind. I hope you will consider keeping these programs in place so students like me on financial aid can keep getting their course materials right away. Thank you.

MR. ROBERTS: Thank you, Chyna, for your comment. We appreciate it.

MS. ROSE: Absolutely. Have a great day.

MR. ROBERTS: You too. Okay, John who is our next speaker.

MR. WEATHERS: Brady, yeah, next you have Kristen Folsom, speaking for themselves.

MR. ROBERTS: Hello, Kristen, can you hear me? I can see you. You just got to enable audio it looks like. While she works on that, John, would you like to admit our next speaker and then maybe message her to help work on that?

MR. WEATHERS: Yes, Brady. Next, we have Derek James, speaking for himself.

MR. ROBERTS: Excellent. Good afternoon, Derek, can you hear me?

MR. JAMES: Yeah, can you hear me?

MR. ROBERTS: We can. We can see you as well. Welcome to public comment. You have three minutes to address the committee, and you'll be given a

30-second heads up, and your time will begin whenever you're ready.

MR. JAMES: Okay, great. Good afternoon. My name is Derek James, and I'm a student at Wilbur Wright Community College in Chicago, Illinois. My comment is in support of the Department's proposed change to eliminate automatic textbook billing for books and supplies without student authorization. I also support the requirement that institutions disclose the price of these course materials to students before asking for their authorization. I concur with the Department's goals of transparency and student choice. I decided to go back to college after having been out of higher education for more than a decade. I initially attended Full Sail University right out of high school, where I had a very bad experience. I dropped out after a semester when I decided that particular school was not a good investment for me. Acquiring textbooks and trying to understand what to get or don't get, with an access code has been one of the most frustrating things about returning to college. Every semester, I've had to buy an access code to get the required course materials because they're bundled with the online platform, where I also submit my homework assignments. This semester has required access codes from Cengage and Pearson. My professor actually told me to not

get the Pearson book through the campus bookstore, because it was considerably more expensive than getting it from the publisher. When I looked into this, the marked-up price from the bookstore was \$100 versus \$80 on the Pearson website. So, after discovering this was the case for Pearson, I looked into the bookstore price for the Cengage materials and compared them to the publisher website. The Cengage website provided me with two access code options. One was to pay \$114 to rent the digital book for four months, compared to \$148 through the bookstore, or two, pay \$130 to purchase Cengage Unlimited, a subscription to the publisher's repository of books, which was \$163 through the bookstore. My professor did not have a clear answer on which Cengage product I should purchase. I ultimately rented the digital book because it was cheaper. Frustrated with the bookstore- frustrated that the bookstore would mark up the price of these materials, and I'm forced to buy an access code to submit my homework, it leaves students with little choice. My experience with the bookstore and the publishers gives me little confidence that they are looking out for my best interest. This is why I'm concerned about publisher sales models that automatically bill these materials to the student's tuition bill. A student should have to authorize an institution to charge

them. Done?

MR. ROBERTS: No, sorry, go ahead.

That's our next speaker. Please continue.

MR. JAMES: Got it, okay, sorry. A student should have to authorize an institution to charge them for books and supplies. It's our money, and we should get to choose how we spend it. I shouldn't be forced to buy textbooks [30 seconds] Okay. I shouldn't be forced to buy a textbook at a price my institution is determined is affordable to me, especially when some institutions seek to maximize revenue for themselves in these arrangements. What is affordable to me is not the same as what's affordable to another student. The only way to make this fair is to let us students decide for ourselves and make textbook companies compete for our business.

MR. ROBERTS: Thank you very much, Derek. We appreciate your comment.

MR. JAMES: Thank you.

MR. WEATHERS: Brady, we have Kristen already ready to go; Kristen Folsom speaking for herself.

MR. ROBERTS: Great. Good afternoon, Kristen, can you hear us?

MS. FOLSOM: Yes, I can hear you this time. Thanks.

MR. ROBERTS: Excellent. Excellent. Welcome. Glad we figured that out. You'll have three minutes to address the committee with a 30-second heads up, and your time will begin whenever you're ready.

MS. FOLSOM: Okay, now?

MR. ROBERTS: Go ahead.

MS. FOLSOM: Okay. Alright. Good afternoon. My name is Kristen Folsom, and I'm speaking on behalf of people like myself who have a student loan for themselves as well as a Parent PLUS Loan. And I understand that this is a segment of the population that's tentatively being considered for hardship relief. And I would like to say really quickly, I don't understand this dissecting of what hardship is for people. I think it's a hardship for all of us. And we're, for most of us, we're having a hard time. We're really in a precarious predicament. As for myself, I got an email from MOHELA over the weekend, and they reminded me that my payment is due. It was due in January, and I do plan to pay the payment. I know I owe it, but I just don't have the money. My payment is \$1,373. This is on an Income Driven Repayment Plan. This is for my student loan as well as the Parent PLUS Loan. And like I say, I do plan to pay it. I work a full-time job and I just cannot pay it at this time. And I'm currently looking for a

part-time job or a second job just so I can pay this payment. And, during the payment pause that we had, what I did with the extra money that I had was help my daughter, who had graduated from college and went to work for AmeriCorps, and I helped her to stand on her feet and to become self-sufficient. And then after that last year, I had a son who graduated from high school. Unfortunately, I won't be able to send him to college. And I have another son who is suffering from some disabilities. So really, at this point, I'm taking care of three adults, and trying to help them sustain themselves. During the payment pause, the money that I saved that I was able to help my daughter with became now \$1,300, is about the same that I pay in inflated cost for everything, for housing, for food, for groceries or gas and everything. So, it's really no extra money that we have after this forbearance. I'd like to say that I am trying at this point, I do want to make the payment. I know I owe the loan, but I want to be education Secretary to consider seriously, in helping people like myself who have a payment- who have payments for their own loans and also a Parent PLUS payment, and in fact, who are all already involved- enrolled in Income Driven Repayment Plans. And that's me. Several other options that I've considered, I've considered, selling my property. I've

considered selling my car. I've considered taking the whole family off of medical insurance. And I've also actually considered trying to find a sugar daddy just to pay the student loan. So, I'm asking the Secretary and the Education Department to please consider us seriously. Thank you.

MR. ROBERTS: Thank you, Kristen, for your comment. We appreciate it. I believe we have time for one final speaker. We'll go a minute or two over, but I think that's okay. Who are we hearing from next?

MR. WEATHERS: Brady, our final speaker will be Dr. Elizabeth Spica.

MR. ROBERTS: I'm not sure. You might have admitted two folks, in which case we'll hear from both. Dr. Spica, we'll hear from you first. Welcome. You'll have three minutes for public comment with a 30-second heads up, and we will begin your time whenever you're ready.

DR. SPICA: Alright. Thank you for hanging on to listen to me after time. My name is Elizabeth Spica, and I hold a PhD in higher education administration from the University of Tennessee. I'm speaking today in support of the proposed changes that would effectively eliminate the practice of automatic billing for books and supplies. Like the committee, I'm

invested in rules that support students, and the research I've done suggests that participation in an inclusive access program provides no significant improvements for students in terms of academic outcomes. I'm here today to make you aware of my study and also walk you through the results. The study was published in October 2021 in the peer-reviewed Community College Journal of Research and Practice. For this study, I partnered with the Tennessee Board of Regents to examine the impacts of inclusive access for Tennessee Community College students. The study compared DFW rates, which is basically a count of students that either earned a D, F, incomplete, or withdrew from the course altogether, versus those students who passed with an A through C grade, which presumably means they succeeded. We took DFW rates for a fall inclusive access pilot semester, which was 141 courses across all of Tennessee's 13 community colleges, and then compared them to two previous fall semesters in which those same courses were taught. The results showed no significant improvements or declines between the inclusive access pilot semester and those two previous fall semesters. Because the idea of inclusive access is intended to level the playing field, so to speak, I also broke down these results to look at race and ethnicity, namely white versus nonwhite, Pell versus non-Pell

recipients, and age, learners over 25 and under 25. And there were also no significant improvements or declines for any of those populations which are of specific concern, not only for Tennessee, but I think for all of us across the nation. So, with regard to academic outcomes, the study produced no evidence to support inclusive access participation over previous methods. And to be clear, I am not against inclusive access per se, but an absence of these measurable significant improvements, I believe the program should be at best an opt-in model and but one of the many course material purchase options available for students. I also think that the Department's concerns about a lack of disclosure and transparency are quite founded. The rules, as they stand, in my opinion, have enabled agreements that look suspiciously like exclusive dealing arrangements. And when I think about it from the perspective of market competition, I'm concerned that automatic billing will soon function no differently than any of the streaming services that we have at home. We're all paying more now than ever before for those, but it didn't start that way when we first made the switch from cable to streaming. Except the cost here, and the consequences are much more extreme because these costs are going to contribute to our now almost \$2 trillion of student loan debt. And as

Adam Smith famously wrote, to widen the market and to narrow the competition is always the interest of the dealers. It is not in the interest of the students. Thank you for your time.

MR. ROBERTS: Thank you, Dr. Spica, for your comment. Unfortunately, we are overtime, so that will be our last speaker for today. Thank you for all the conversation and the dialog today on cash management. We will pick things up tomorrow at 10 a.m. eastern, and until then, enjoy the rest of your afternoon and evening. Thank you, all.

Zoom Chat Transcript

Program Integrity and Institutional Quality- Session 2, Day 1, Afternoon, February 5, 2024

***Chat was copied as presented, as a result minor typos or grammatical errors may be present.**

From P, Jillian Klein, Proprietary Instit to Everyone:

Quick Google search suggested "closure fee" might be more commonly accepted nomenclature. I'm outside of my wheelhouse here but would just suggest to whatever extent possible should peg to something already defined by the CFPB - that should help providers be clear on compliance expectations.

From A, Sophie Laing, Legal Aid to Everyone:

Supportive of the Department's changes here- students may be banking for the first time in college, and shouldn't be hit with extra junk fees and costs, especially when banking somewhere because of the advice/representations made by their institution

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "Supportive of the De..." with 👍

From P, John Ware - State Regulator to Everyone:

Some banks also call them "account inactivity fees".

From A, Magin Sanchez, Civil Rights/Consumer to Everyone:

Reacted to "Supportive of the De..." with 👍

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Proposed minor text change: A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds [in combination with] any other Federal or non-Federal funds, including but not limited to scholarships, grants, or private loans....

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Many institutions will use the allowance for books, supplies and equipment from the cost of attendance.

From P Jamie Studley, Institutional Accreditors to Everyone:

could the language be reposted?

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:

Reacted to "could the language b..." with 👍

From (A) - Dom Chase - Business Officers to Everyone:

I believe this too is connected to a previous temperature check.

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:

Reacted to "I believe this too i..." with 👍

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

I think we spoke earlier about what needed to be authorized, not so much the actual methods of acquiring authorization.

From P, Jillian Klein, Proprietary Instit to Everyone:

I agree with Barmak and Sophie that the approach should mirror the most favorable approach available to students at the time ED is working with them.


From A, Magin Sanchez, Civil Rights/Consumer to Everyone:

+1 to Sophie, Barmak, and Jillian's point regarding using SAVE/the most favorable approach rather than standard IDR or another strict approaches. No student actively desires to be in this horrible position, and strictness only worsens an already horrible situation for all involved.

From A, Magin Sanchez, Civil Rights/Consumer to Everyone:

Reacted to "I agree with Barmak ..." with 

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "+1 to Sophie, Barmak..." with 

From A, Emmett Blaney, Students/Borrowers to Everyone:

Reacted to "+1 to Sophie, Barmak..." with 


From A-Alyssa Dobson, 4Yr. Public to Everyone:

Reacted to "+1 to Sophie, Barmak..." with 

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "+1 to Sophie, Barm..." with 


From Carolyn Fast to Everyone:

Reacted to "+1 to Sophie, Barmak..." with 


From P., Diana Hooley, State Attorneys General to Everyone:

I agree that students should be offered the most favorable approach to repayment to better ensure students aren't further burdened or later prevented from accessing higher education due to ineligibility.

From P Erika Linden, Private Nonprofit to Everyone:

Reacted to "I agree that student..." with 


From Carolyn Fast to Everyone:

Reacted to "I agree that student..." with 


From A, Emmett Blaney, Students/Borrowers to Everyone:

+1 to considering the most affordable option possible for repayment.

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "I agree that student..." with 

From A, Magin Sanchez, Civil Rights/Consumer to Everyone:

Reacted to "I agree that student..." with 

From (P) Barmak Nassirian, Veterans & Mil. Students to Everyone:

My colleague, Ashlynn, will sit in for us during the public comment period

From P Jamie Studley, Institutional Accreditors to Everyone:

Need to step off. I believe the alternate will join for conclusion.