

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
NEGOTIATED RULEMAKING PROGRAM INTEGRITY  
AND INSTITUTIONAL QUALITY  
SESSION 2, DAY 4, MORNING  
FEBRUARY 8, 2024

On the 8th day of February 2024, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MR. ROBERTS: Good morning and welcome back to day four of session two for this negotiated rulemaking. My name is Brady Roberts with FMCS. I'll be facilitating this morning. I want to kick us off with just a few brief items of housekeeping and then we'll jump right back into the reg text on accreditation. Just a reminder to the committee that everyone will have three minutes for their comment to offer new information for the negotiating community. And we ask that negotiators endeavor to utilize the chat feature to indicate support for previous positions or other negotiators' stances or to share any additional information. We ask that folks keep comments courteous, professional, and focused to the topics that we're currently covering within the reg text. So I know this document is something like 66 pages. But if folks can endeavor to keep comments to the germane section, it will help just, a, keep us on track and b, I think, help tailor some of the feedback that we're asking you to provide in a really easy-to-digest format. And then we will kick things off with a quick roll call, and then I'll turn it right over to the Department. So without further ado, representing business officers from institutions of higher education, we are joined by Joe Weglarz.

MR. WEGLARZ: Good morning, all.

MR. ROBERTS: Good morning, Joe. And his alternate Dom Chase. I don't see Dom but we- I will let you know when he joins us. Representing civil rights organizations and consumer advocates, we are joined by Carolyn Fast.

MS. FAST: Good morning.

MR. ROBERTS: Good morning, Carolyn. And her alternate Magin Sanchez.

MR. SANCHEZ: Good morning.

MR. ROBERTS: Representing financial aid administrators, we are joined by JoEllen Price.

MS. PRICE: Good morning.

MR. ROBERTS: Good morning, JoEllen. And her alternate Zack Goodwin.

MR. GOODWIN: Hi, everyone.

MR. ROBERTS: Hi, Zack. Representing historically black colleges and universities, tribal colleges and universities and minority serving institutions, we are joined by Dr. Charles B.W. Prince. Good morning, DC.

DR. PRINCE: Good morning.

MR. ROBERTS: Good morning. And his alternate, D'Angelo Sands.

DR. PRINCE: He won't be joining us

until this afternoon.

MR. ROBERTS: Oh, okay. Thank you. Representing institutional accrediting agencies recognized by the Secretary, we are joined by Jamie Studley.

MS. STUDLEY: Hello.

MR. ROBERTS: Very early morning to you, Jamie. And her alternate, Michale McComis.

MR. MCCOMIS: Good morning.

MR. ROBERTS: Representing institutional accrediting agencies recognized. Oh, sorry. Legal assistance organizations, we are joined by Robyn Smith.

MS. R. SMITH: Hello.

MR. ROBERTS: Hi, Robyn. And her alternate, Sophie Laing.

MS. LAING: Good morning.

MR. ROBERTS: Good morning, Sophie. Representing private nonprofit institutions of higher education, we are joined by Erika Linden.

MS. LINDEN: Good morning.

MR. ROBERTS: Good morning, Erika. And her alternate, Scott Dolan.

MR. DOLAN: Good morning.

MR. ROBERTS: Good morning, Scott.

Representing programmatic accrediting agencies recognized by the Secretary to include state agencies recognized for the approval of nurse education, we are joined by Laura Rasar King.

DR. KING: Good morning.

MR. ROBERTS: Good morning, Laura. And her alternate, Amy Ackerson.

MS. ACKERSON: Good morning.

MR. ROBERTS: Good morning, Amy.

Representing proprietary institutions of higher education, we are joined by Jillian Klein.

MS. KLEIN: Good morning, everybody.

MR. ROBERTS: Good morning, Jillian. And her alternate, David Cohen.

MR. COHEN: Good morning.

MR. ROBERTS: Good morning, David.

Representing public four-year institutions of higher education, we are joined by Jason Lorgan.

MR. LORGAN: Good morning.

MR. ROBERTS: Good morning, Jason. And his alternate, Alyssa Dobson.

MS. DOBSON: Good morning.

MR. ROBERTS: Representing two-year institutions of higher education. I believe our primary, Jo Alice Blondin mentioned that she might be absent this

morning but correct me if I'm wrong. I think we are joined by her alternate, Michael Cioce.

MR. CIOCE: That is correct. Good morning.

MR. ROBERTS: Good morning, Michael. Representing state attorneys general, we are joined by Diana Hooley.

MS. HOOLEY: Good morning.

MR. ROBERTS: Good morning, Diana. That alternate position still is vacant. Representing state officials, including state higher education, executive officers, state authorizing agencies and state regulators of institutions of higher education, we are joined by John Ware. Good morning, John. And his alternate Rob, will be absent today as well. Representing students or borrowers, including currently enrolled borrowers or groups representing them, we are joined by Jesse Morales. I don't see her but I will let you know once she joins. But we are joined by her alternate, Emmett Blaney.

MR. BLANEY: Hello.

MR. ROBERTS: Hi, Emmett. Representing U.S. Military service members, veterans or groups representing them, we are joined by Barmak Nassirian.

MR. NASSIRIAN: Good morning.

MR. ROBERTS: Good morning, Barmak. And

his alternate, Ashlynn Haycock-Lohmann.

MS. HAYCOCK-LOHMANN: Good morning.

MR. ROBERTS: Good morning, Ashlynn.

Representing the Department, we have two negotiators with us today. It'll be, Herman Bounds and Greg Martin.

MR. MARTIN: Good morning.

MR. BOUNDS: Good morning, everybody.

MR. ROBERTS: Good morning to the both of you. And of course, joining us from OGC, we are joined by Denise Morelli.

MS. MANGOLD: Denise isn't here this morning.

MR. ROBERTS: Oh, apologies, but we are joined by, Donna Mangold, also from OGC.

MS. MANGOLD: Good morning.

MR. ROBERTS: Good morning, Donna. Did I forget anyone? Apologies if I did. Okay. I think what we're going to do because we kind of left the discussion yesterday in the middle of a section of the regulatory text is Herman, I'll turn it over to you. A, if you have any opening announcements that you'd like to make, but B, if you want to reshare where we are in that issue paper and then I'll turn it over firstly to Jillian Klein once we turn it over to the committee as she was last in our queue when we ended things for public comment yesterday.

So, without further ado, Herman, I'll turn it over to you.

MR. BOUNDS: Yeah, if we could basically just go to the very beginning of 602.20. And I just want to hit the highlights since, you know, we didn't finish that section up yesterday. Yeah. We'll hold right there for just a second. I did want to mention, too, that we did receive a data request here that I was going to talk about yesterday. But again, we ran out of time. And it was related to information on whether we have seen, you know, an increase in agencies allowing institutions to be non-compliant for a certain amount of time. Of course, I think we stated before that we just didn't have that information just being too new of a requirement. What we did do though, is we did collect information on the number of agencies that have expanded their enforcement timeline from what it was previously prior to the 2020 reg changes which is what we brought back here. And so there are- there's actually- there was 36 accrediting agencies who have- that did not expand their timelines to the, you know, to the 150% of the program, what we currently have in current regulation. So again, 36 agencies have not expanded their enforcement timeline. So I wanted to point that out to everyone. So with that said, we can scan down- and I think we had

another information request from the agency, from the committees but I'll get to that here in just, yeah right there. This is where we talked a little bit about yesterday. This is where we're bringing back the requirements that we previously had. And there was also a discussion here yesterday about was the term, immediate adverse action. Was that- is that also in current regulation and it is in current regulation also the term will take immediate adverse action. And I think that is in 602.20 (b) right now. I'll look up- I had it open, but I let it get away from me. This whole right there. I want to make sure I give you the right- So right now. Yeah, that's in 602.20 (b). And it still uses the term, the agency must have a policy for taking an immediate adverse action and take such action when the agency has determined that such action is required. So I wanted to clear that one up from yesterday too. And so if we look at (b) in this section here, this is the carve-out that we have now for non-compliant issues related to student achievement. And again, I think we've discussed this in the previous session. We just think that those non-compliant areas related to student achievement might take an agency some additional time to correct. So we have the carve-out there. If we go ahead and scan down to (c), we address extensions for good cause here. I think I talked

about this yesterday, that we have a maximum amount of time for an addition, excuse me, an extension for good cause at one year. Also, note that we have- this is the first time that we have put a time limit on the amount of time an agency can award an extension for good cause that was not in the regulations prior to 2020 and it was not in the regulations that were effective 2020. So this is a new requirement. I think we had some just a lot of discussion about that in the previous session. I think if we go down to the next page. We made the change language from the statute here in (f) where we talk about initial arbitration requirements. And then, in (g), no change. We just made some reference to some student achievement provisions, excuse me, student assistance provisions, here. And (h) is where we had some discussion yesterday. This is the provisions that allow agents to be noncompliant for some additional time based on, you know, circumstances beyond their control, natural disasters, and other things that we- similar things that we have listed here. And then if we scan down to the- and that continues down through the next page. And then we did put in (5) to kind of address some concerns of committee members. Which basically, you know, talks about here that unless the special circumstance described in this paragraph constitutes a new and independent cause for

noncompliance. So we're trying to help prevent some agency just trying to extend that time based on this. But I think Jamie and I had a discussion. There could be some instances where an institution is non-compliant with a certain thing and then something happens and, you know, we would expect the agency to use their judgment, you know, to explain, you know, this incident may allow some additional time for this but there's really nothing that the institution could do about that. So just wanted to recap what we talked about yesterday and I'm happy to open it up to the floor for discussion.

MR. ROBERTS: Alright. Excellent. Thank you, Herman. Jillian, if you're all set to go, I have you, the only person on my list right now, but take it away.

MS. KLEIN: Great. Thanks. Good morning. So I have a question on the bottom of page 20, which I apologize because now that I'm seeing that it's not highlighted, I'm assuming we saw this in January. And so I'm sorry I didn't raise a question then. But the line that says it talks about student achievement and it says the timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150% of the length of the program. I'm confused about how this works. For example, for a

doctoral program where maybe the time to complete the program is 6 or 8 years, as outlined in a catalog. And I think if I'm understanding this and it's really early and I'm not a math person, but I think this language would mean that even a program that takes students six years, as documented in the catalog to complete, would have to meet a better student achievement standard within four years. Which I feel like is super punitive to institutions and not representative of how long these programs are and sort of how long it takes for students to move through them. So can you speak to that? And then I have one other question.

MR. BOUNDS: Yes. Then that was- I guess that one was directed to me or were you asking the agencies how they?

MS. KLEIN: No, I'm asking you.

MR. BOUNDS: Yeah. Yeah. So yeah, it's- so take a- and I know you gave me an example of a doctoral program. But you take a four-year bachelor's degree program, 150% of that program, they would have, what, six years right, to complete- to come into compliance. So we're saying.

MS. KLEIN: I'm sorry to interrupt. Doesn't it say the lesser of, again, I don't do math but.

MR. BOUNDS: No, no, no, no, you're

right. I was just giving you an example of 150, but- or the lesser of, you know, of the lesser of four years.

MR. ROBERTS: Herman, we can't quite hear you. Did you want to speak to the question? I'm sorry, go ahead.

MR. BOUNDS: Yeah, I was just getting- I just wanted to get back to the page where we were referring to. Yeah. So the timeline may include intermediate checkpoints along the way. Must not exceed the lesser of four years or 150% of the program. So the lesser of four years, that would be the requirement in that case. Yes.

MS. KLEIN: So I think for the reason that I specified, this doesn't make sense for program- I mean, I understand your answer, and I think it's telling that your answer was regarding a bachelor's program, which I understand that's probably the lens through which most of the language was written. But obviously, there are many, especially postgraduate programs that are much longer by design than four years. And so, my recommendation is that this language should just strike the lesser of four years part, and it should just be based on 150% of the length of the program.

MR. BOUNDS: Okay. Yeah, we can definitely take that back. I just want to remind, that

this has been in place too since, you know, since 2020.

MS. KLEIN: Okay. And then my second question or my second comment, I guess is, and this is similar, I think, to what you indicated with respect to the data request and not having the data. So I'm expecting that to be your answer. But I just- this group I think has heard me say this before, I get nervous about putting- like codifying lengths of time for anything if it's not based on data. So the addition of the for a maximum of one additional year. What I would ask is, what data do you have to support that this is the right timeline for an extension, in this section? I think what you're going to say is we don't have that data. So I would say I think it's a bit arbitrary to put in a timeline that's not based on actual data that indicates if that's an appropriate length of time or not.

MR. BOUNDS: Right. And we welcome that comment. And that's like I said previous, you know, this is the first time that we've actually added a timeline for an extension for good cause because previously it was unlimited. There was no end cap on it. I think we just took a stab at one year. I think we may have gotten some committee recommendations on it. I'm not sure, but yeah, we would definitely, you know, kind of have to take a look at that. But we really.

MS. KLEIN: I would say taking a stab at a length of time feels arbitrary to me. So it would just, you know.

MR. BOUNDS: Yeah. Yeah. Yeah, I would agree. We just don't- we just have not tracked that data since all agencies, you know, there's 53 recognized agencies and all 53 have, you know, they all had different timelines in this area. So point well taken, though.

MR. ROBERTS: Would you mind putting the proposal to the language to strike in the chat just so we don't lose view on it? Thank you.

MS. KLEIN: Thank you.

MR. ROBERTS: And just, I think, Dom Chase, our alternate for business officers has joined us so good morning, Dom. But I'll turn it over to Barmak now.

MR. NASSIRIAN: I want to stay on the same text, if I may, and just take one step back and point out to the committee that this text sort of, embodies the tendency of the Department's approach to accreditation. Which is to extend the benefit of every doubt to institutions with almost no regard for the harm that could ensue if the institution remains non-compliant during- even if it does manage to turn itself into a

compliant participant the period during which the institution is non-compliant could do a lot of harm to students. I certainly understand Jillian's point about lengths of programs, but I want to make sure people understand these are non-compliant programs. So it's not- the Department isn't attempting to shorten the duration of a doctoral program that really takes six years. The real effort here is to figure out what do you do when the doctoral program is not complying with the requirements that it's supposed to be complying with? And it seems to me that giving them this opportunity is already a mulligan. Then on top of that, there is an objection that when they fail a second time, somehow an extra year is an arbitrary and unfair treatment of that non-compliant program. So I would actually encourage the Department to rethink this language and understand that during these periods of noncompliance, there is tremendous harm that could potentially damage students and taxpayers. That wasn't the reason I raised my hand, but I just wanted to make that point. And then I wanted to also point out in the last sentence before we go to subsections (1) and (2), the text reads, the timeline may include intermediate checkpoints. And I want to say may? So what, we're going to roll the dice? The entity again has failed to comply with the requirements that it agreed to comply

with. We're giving it extra time and we're going to just walk away and hope for the best. We are not going to insist that they do have intermediate checkpoints to make sure that their hope and belief that they are going to be compliant is based on some level of effort that can be measured and reassure us that they're actually on the way to coming into compliance. So I would suggest replacing that may with must or shall.

MR. ROBERTS: Thanks, Barmak. Robyn, we'll go to you next.

MS. R. SMITH: Sure. I have a question. I just need to Department to clarify. There're three different time periods proposed. There's subsection (a) with the lesser of two years, or 150%, (b) with the lesser of four years that have 150%. And then you have the (h) with the three years. And I just want to ask, are those periods- is (h) in combination with (a) or (b), is it cumulative or is it consecutive? In other words, can a school actually keep a program up to seven years? If they could clarify whether those are cumulative or consecutive, that would be very helpful.

MR. BOUNDS: Yeah. So I just want to remind everybody in (h), (h) is really for a special circumstance. And I think maybe Jamie and I kind of went and talked about this a little bit yesterday. If and I

think the example she used and Jamie, you correct me if I'm wrong, I think the example was talked about, if you have an institution that may be non-compliant for financial issues, I think that maybe may have been the case. And if that institution had been making some significant progress to correct that issue but then because of a natural disaster, that particular institution was damaged in a tornado or something to that situation, there could be, I mean, logically, there could be a reason for the agency then to allow additional time because of that natural disaster which may extend where they were, previously. And those things are going to happen. But when we put in (h), we were really just thinking about some of these situations where the institution does not have- where there's no control. And, you know, we would think that those situations where I just explained would be pretty minimal. So to answer your question, maybe yeah it could. You know, but again, we would leave that decision- the determination to the agency decision making body to determine whether there was a correlation between an existing event and a natural disaster, you know, that may require that. It also depends on how much- and I don't mean to be talking a long time here, but it also depends on where the institution is in the agency's review process. They

could, you know, they could be at the beginning of a decision in some cases or in this case where the institution has made significant progress, they could be at the very end of that, you know, review or action period. So. I know I talked a long time here but all I can say is it just depends on the situation.

MS. R. SMITH: And thanks. It's, I mean, it's not just limited to natural disasters, which is, there's six different.

MR. BOUNDS: Well, sure.

MS. R. SMITH: And that's why it's a little concerning that, you know, they could be, in some cases, cumulative where a program could be open for up to seven years in some cases in noncompliance, which is, again, seems way too long from the perspective of students. And I'm not sure that that is an appropriate time period when you're talking about a teach-out or and do hardship on students. It's hard to imagine that long of a time period for a lot of these different circumstances. So we've suggested one year would be appropriate, but because it just seems way too long.

MR. BOUNDS: Yeah. And I would agree and not to go back. But in those situations where there is no existing period of noncompliance. This is a new issue. This is really one of these special circumstances.

You know, one year, two years or three years, what would be a significant amount of time in a case where there is something new? And we try to address some of that in (5) where we talk about constituting a new and independent cause for noncompliance. But you're not going to- I think here would be hard to write a perfect reg. But again, we would, you know, we would take any other suggestions that you all may have in this area. And again, I would also like to say this is not a new regulation. We moved this from 602.18 delta. So this has been here since 2020 also.

MR. ROBERTS: Thank you both. Jamie, we'll go to you next.

MS. STUDLEY: Thank you. Robyn's asking some good questions about length, and this is something where history may have a little to offer us. While we're looking particularly at natural disasters, we could think what Katrina meant for institutions. We have a situation where we've had natural disasters in the South Pacific institutions. So we may be able to get some actual experience that can help us. Because it doesn't need to be unreasonably long. We're not looking for, you know, excessive flexibility. But we do want to be able to help institutions that experience one of the several factors that are included to be able to manage toward coming back into compliance. But the more important question is, I

think it would be helpful to come back to good cause extensions, which are not granted easily. And even with multiple screens, like Herman, I don't have it in front of me, I wonder if the Department could share with us the requirements for a good cause extension. Because I know that ours require a very specific finding about the grounds for a good cause extension that the commission looks at seriously before they grant them. And the question about whether the student program- whether the services and academic program being offered to students are the basis for the problem or are meeting our standards while other things need to be improved for long-term reasons, is a very important part of that determination. So I think understanding how carefully a good cause extension needs to be considered, might be helpful in having people realize that these are not done lightly. And the current situation for students getting their education is something that a commission ought to be looking at. Because it's one thing to say add new board members who bring new expertise or, you know, you have a long-term financial issue to work out. But the academic program and student services and arrangements that you are offering meet those standards is a big part of it.

MR. ROBERTS: Do you want to speak to

that, Herman?

MS. STUDLEY: I don't know whether Donna can put her hands on the good cause exception language or if not, I'll look for it and we'll get it to everybody.

MR. BOUNDS: Yeah. It's, I think, you know, under, again, under the current regulations, it's 602.20 (a) (3). And basically, it just reads that the agency must follow its written policies and procedures for granting a good cause extension that may exceed the time frame described in the current 602.20 under, you know, (a) (1) or (a) (2) of this section when such an extension is determined by the agency to be warranted. So again, we don't put any specific requirements. We just say an agency must have a process for awarding and evaluating when an extension for good cause, you know, should be given. Under what we have here proposed, I think we say the same thing. We don't put the brackets around the agency's thought pattern here. We just say that the agency has to have a process and policies for granting the extension for good cause. And then here with our new language here, this is then when we said we put in the maximum time frame. You know, I can talk about historical thinking, you know, on extension for good causes. But it's really a determination for the agency's

decision-making body, you know, to make- and our regulations are looking at decision making, body making that decision. Not that we would substitute our expertise for the agency's decision-making body. That's not really what these regulations are intending to do or would or should be intended to do.

MR. ROBERTS: Thank you. Carolyn?

MS. FAST: A couple of quick points I wanted to make. One is that I think it's actually very important in section (c) that there be a limitation on the time period in which there could be a good cause extension. I think it makes very much sense to limit that to an additional year. I think that that is an important protection for students to make sure that they're not in a situation where they're being harmed by the period of noncompliance that could be extended beyond the normal requirements for that. And it does not sound to me like the regulations on good cause extension specify any particular rules that would protect students in that situation. Secondly, and separately in (h), I know that it has been characterized as this sort of thing that would only happen in cases of natural disasters or other odd circumstances where the extensions of the noncompliance period would be considered. But I want to point out that in each- it also mentions as a condition

the normal application of the agency standards creates an undue hardship on students. I honestly don't know what that means, but it seems like it could- and I'd be interested to know what the Department would consider an example of a time where noncompliance with an agency standard should be excused because somehow the standards themselves would create an undue hardship on students. Perhaps that I'm just not understanding, but perhaps someone else does. I'd be curious about that. It raises some concerns for me because it seems like it is potentially a very wide potential loophole that could add to a period of noncompliance. But perhaps I'm just not understanding what that is.

MR. BOUNDS: I mean, I think it could depend on several circumstances. Maybe it has to do with, you know, it could be due with, you know, economic situations where, say, an agency that has a, you know, that has a standard 75% employment rate. Well maybe because of the situation, you know, in a location, you know, several major employers for that particular discipline go out of business and that then affects an institution's ability to meet that specific standard. I mean, that's just one example. I'm sure that people could probably find others.

MS. FAST: Sure. But on the other hand,

you would want the institution to maybe not continue offering a program that where, you know, where they couldn't find employment for their students. Like that would be a good reason for them to, you know, shift their resources to a program that does meet the requirements, you know, from a perspective of looking at students.

MR. BOUNDS: Yeah, I mean, that's a good point. I just put myself back into a, you know, a career and technical education institution who has a welding program. I don't think a lot of people can argue that welding programs are usually pretty successful. But if you're catering to a couple of specific businesses there and they have a down year, I mean, I think to me that would be a reasonable application there. Again, that's just one example. I'm sure there are others that other folks can think of. But again, your point is well taken.

MR. ROBERTS: Thank you both. Robyn will turn to you. I just want to note that David is coming to the table on behalf of proprietary institutions. But first you, Robyn.

MS. R. SMITH: So I just want to point out again, Herman, I agree with Carolyn's suggestion and what you just described isn't an undue hardship, it falls under section (3). So it's already accounted for by the

economic recession or closure of a large local employer. So I just want to reiterate, I also have the same concerns as Carolyn and don't understand the undue hardship and would like to hear examples of that that don't fall under the other.

MR. BOUNDS: I mean, it is, you're right. It is under that section. And I just think there could be other examples. But again, I think we can take a look at that and come back. As I said, I think there could be other, I mean, there could be other situations where, you know, I could state maybe, you know, pilot programs or new programs. I mean, there are a lot of things we think that could apply to, but we will take any suggestions that you have or any thoughts and we'll look at that when we come back.

MR. ROBERTS: Okay. We've got Scott coming to the table as well for private nonprofits. But first, David, go ahead.

MR. COHEN: Thank you. If the ultimate goal of, you know, what we're doing here is to strengthen higher education for the benefit of students and taxpayers, and really, in an era where we're seeing an unprecedented closure of schools with few new ones opening, I'm wondering, you know, if the Department has any data on the agencies that did expand the time frame

or give this extra time. Does the agency have any data on what the final disposition was of those schools? What ultimately happened? Or stated another way, did the expansion of the time frame ultimately strengthen higher education by saving some good schools that ultimately came into compliance? Or at the end of the day, did we lose more schools and thereby maybe potentially reduce access in areas of the country where we're already facing, you know, schools that are closing? So I think the question of time frame is important. But what happened with the time frame extensions, was it good ultimately for the taxpayer and students or was it not? And I'm just wondering if the Department has any data on that.

MR. BOUNDS: No, no, we don't have any data on that because reporting of extensions for good cause is not something that they're required to report on when they, you know, when they apply that policy. So yeah, we don't have any data on that.

MR. ROBERTS: Alright, we'll take Scott. And then if there are no new hands, it might be appropriate to take a quick temperature check and move on. But Scott, go ahead.

MR. DOLAN: Yeah. I hear loudly and clearly what Carolyn and Barmak are suggesting, you know,

about wanting to protect students. Though I also am listening to Herman talk about let's make sure we're really paying attention to concrete examples. And, you know, Jamie's point about, you know, long-term financial sustainability might be one of those issues that an institution would need to work on for compliance reasons. And the language here says that an accreditor must take immediate adverse action. Can we just make sure we're clear on what adverse actions are? Withdraw or deny accreditation would be one of those. And can we also think through what impact that might have on the students that are currently being served by an institution that is trying to get back in compliance and develop a roadmap for how to be sustainable financially. So I want to protect students too, and I want to protect students at that institution that is in a position that's working through their financial issues, doing the right thing to get back on the right track and serving students well currently. So I agreed. We're all in agreement about protecting students. It's just about doing this in a reasonable and a sound way. And there are multiple examples of noncompliance. So we need to use judgment too. So I think that's just one thing I think it's important for us to pay attention to as we're moving through this, especially when we're thinking about

students.

MR. ROBERTS: Thank you, Scott. Herman, if there's nothing else on your end, I don't see any hands from the committee. We can take a temperature check and move on if you'd like.

MR. BOUNDS: Yeah, sure. I just wanted to say too, yeah, the definition of adverse action, I think as Scott just mentioned that's, you know, that's been around for a long time. So there's- and we already talked a little bit about yesterday that, you know, before the adverse action is taken, you know, the institutional program would have to be afforded the due process requirements in 602.25. So, I'm ready for a temperature check if there are no other questions.

MR. ROBERTS: Alright, folks, if you wouldn't mind just indicating where you stand on 602.20 as it's currently written, by indicating your thumbs. Again, thumbs up, no problems with it. Sideways thumb, you can live with it. Thumbs down, serious reservations. And try to hold them here just while we capture it. I have JoEllen Price as a thumbs down, I have Barmak Nassirian as a thumbs down, Robyn Smith as a thumbs down, I have Jillian Klein as a thumbs down and I have Erika Linden as a thumbs down. Did I miss anyone? Alright. Would anyone like to come off of mute and add any new

considerations? Any new potential ways that you could see yourself moving to a minimum a sideways thumb for the committee's consideration or has everything been covered? Not seeing any new feedback. Thank you all for that. And if it's okay with everyone, I'll turn it back over to Herman for 602, I guess the next change is point 22, Herman?

MR. BOUNDS: Yeah. Nothing in 21. So the next section would be 22. And we're going to kind of waddle through all these. There are a ton of changes in this in this particular section. And I also may call on my colleague, Donna Mangold, for some assistance, especially when we get to some of the issues with distance ed and some of the other sections in sub-change, change of ownership, change of control which have implications with Title IV eligibility. So we will start. And I'm just going to hit these change by change just because, you know, these regulations sometimes stack upon one another. In paragraph (a) (1) there we have substituted adequate for written. As we scan down to (2) we have stricken covers high impact, high-risk changes. And we just have basic definitions of substantive change includes at least the following. (b), we have stricken legal status form of control. We've added some new language here. And we referenced 602.31 (h). Of course,

602.31, again, affects Title IV eligibility. That's why it's in 600. And it's basically, you know, in Title change of ownership resulting in a change of control for private nonprofit private for-profit and then public institutions. And then (h) talks about, I'm sorry, go back. I didn't mean (h). I meant, in (b) the reference to 602.20 (h). I'm sorry. Thanks. And again, that has some information about timelines for the approval of sub-change. When we get to the end, if you all have any specifics on that, I will definitely have to punt that to Donna if you have any questions there. And then the next section under (d), that's where we added information about requiring an additional approval or an institution who begins to offer an increase of a distance education program that exceeds a 50%, you know, 50% threshold. You know, logically when I read this, if you have an institution that's already 80%, then this, you know, this wouldn't apply. But once you get to that 50% threshold, (d) would apply. And then we've added some language in (e), I'm sorry, yeah, in (e). And let's scan down to (h). We added the change in the agency's most recent accreditation group of 25% or more of clock hours and credit hours awarded. And if we continue to (j) some language changes. (k) we have another- this is a carve-out provision for additional locations. This is related

to some of our prison education regulations. So we wanted to import that requirement in here so that there was not any conflict with those regulations. Basically, the accreditation requirements for prison education programs. Not my expertise, but I do have the regulation, the specific regulation copied if there are any questions there. If we move on down. We added (l) the additional branch campuses as defined in 600.2 And (m), we have information on new requirements for (m) to written arrangements. I think we had a bunch of comments and discussions about this. So we would definitely, you know, welcome any feedback we have about written arrangements, in general. This one is there as a requirement if [inaudible] offers 25% and up to 50%. Additional language here about written arrangements with ineligible institutions. Again, we will welcome any conversation here. And again, like I said before, we did receive a number of negotiator questions about referencing written arrangements. And they would move down to (b). And basically, what we're saying here is that if an agency approves a subsidy change request for an institution that's, you know, the subject of probation status, negative action, provisional certification, there should be a notification provided to the Department within 30 days, kind of explaining the agency's rationale for

approving that. And I would say that's really similar to a requirement that we have in 602.28 (c) where we say, if an accrediting agency accredits an institution that is the subject of an adverse action by another agency, they can accredit that institution, but they must write in and provide us a basically a rationale of why that other agency's action did not preclude their accreditation of that institution or program. And in both cases, you know, we think if the institution is in one of these statuses, that an explanation should be made why the agency, in this case, decided to approve the substantive change or in 602.28 (c), why the agency determined it was okay to accredit that institution that was in, you know,- that had action taken to by- taking on it by another accrediting organization or state agency I think it says there. And I think we are getting down to- we're looking at (c). A little word change here but sort of significant. We're saying here that the agency must have an effective mechanism for conducting, at reasonable intervals, visits to all additional physical locations. I think I got this question during the last session and I'm glad we're back to it here because I don't know if I gave a complete and clear explanation of what we're talking about. You know, if you look at this, what we're saying is, you know, if you- and it says at reasonable

intervals, but what we're kind of looking at here, if you give a ten-year grant of accreditation or a 5 or 7-year grant at some point within that grant of accreditation to that institution, you should have reviewed all of those additional locations. And we're saying at reasonable intervals, however you want to conduct those reviews. But at some point, during that grant of accreditation, you should review those additional locations. And then we added branch campuses approved, also. If we scan down. Yeah, I do want to stop. This is not marked. I think I'll get to it and let you know. So, some strikethroughs in (e). I want to get down to (2) on this page. So where it talks about- and there's no marking there. But I just want to explain because it's unclear. Where it says a mechanism for conducting reasonable visits to a representative sample of additional locations or institutions that operate more than three locations. We are planning on striking that language because that doesn't, I mean, that doesn't make any sense. In particular, when previously we said, we want you to review all additional locations. So we are going to- I just want to let everybody know we're going to strike (2) here. And we may get some recommendations. Maybe we need to rearrange the order, so it makes sense or flows better. But having (2) there makes absolutely no sense

based on, you know, based on what we say previously. If we look at (f). We have some language inserted here. I'm happy to get some thoughts on that language. And that kind of takes us to the end of substantive change. And, before we open up, I think I had one other comment I needed to- I wanted to make because- could you put the text back up? Let's see. So if you guys will- if everybody will bear with me just for one minute. So if you can go to page 25 and go up to the highlighted the highlighted area on page 25. So on page 25, I think the portion of the highlighted that talks about or organization and administrative and physical capacity and expertise to deliver the portion of the program provided under the arrangement. I think that was some added language from folks that are on the committee. So we would definitely like some feedback with the language here. So we I know we've gone through this quite a bit so I will stop there and ask for questions or open it up for discussion from the committee.

MR. ROBERTS: Thank you, Herman. This is a large section that covers quite a pretty large diversity of topics. If folks are able to, if you wouldn't mind kind of taking these sort of chronologically as they sit in the document. As much as you can. I mean, obviously we'll go through the entire

section, but just for the sake of conversation, it might make sense. Do folks want to begin questions and comments for the committee's consideration looking at, I guess we'll start with letter (a) through, I guess halfway through page 25? Yeah, Julian, go ahead.

MS. KLEIN: I guess I don't know if this is what you're saying, but Jamie's suggestion in the chat, I think is a really good one, which is, can we literally just go through each change? I mean, just so we can all be specific about the change that we're speaking to and not be jumping all over. Because I don't know if that's possible.

MR. ROBERTS: Sure. I'd be happy to do that. In that case, Herman, do you want to pose the sort of the first element that the Department solicited feedback on?

MR. BOUNDS: Sure. Well, I think there are only a couple that we directly ask for feedback on. I think maybe the suggestion is we maybe we put the document back up and hit each area. Would that make sense to everybody? Okay, let's do that. So again (a), there's a small minor change there and maybe we make comment on down including (d). Yeah.

MR. ROBERTS: Gotcha. Any comments or feedback (a) through (d) taking us to the top of 24?

Yeah, Jillian.

MS. KLEIN: Yeah, just one minor drafting thing. If you guys stick with the new proposed (d) about 50% of a program or whatever is being offered through distance education. I think there should just be a conforming change in the second to the last line of that, where it says one course offered through distance education. I think what Musser told us yesterday is that there may be a new definition of distance education course. So I would just suggest that that phrase should align with then- it should say at least one distance education course, as opposed to at least one course offered through distance education. Just for consistency.

MR. ROBERTS: Anyone else on that sort of first five sections? Yeah, Jamie. Oh, you're muted right now by the way.

MS. STUDLEY: To stay with the structure. I'm just going to flag the branch campuses is referred to here for visits. When we get to the other ones that relate to required visits. I think there's a whole set of things related to what promotes good practice related to visits to branches and additional locations. But this is just a small piece of it. We will come back to it later. But there's some real questions about risk-based and reasonable management.

MR. ROBERTS: Thank you, Jamie. Anyone else on that (a) through (d)? Yeah, Barmak.

MR. NASSIRIAN: Not to belabor phraseology, but I'm a little bothered by striking the word adequate and replacing it merely with written. Only because it suggests that, like, inadequate written arrangements would be acceptable. So you may want to retain that phraseology. Adequate written would be a better- would capture, I think, what the Department wants to do. I also want to flag the issue that Jillian just raised about the proposed definition that David mentioned. And I made the point when the issue was on the table. But I want to reiterate that the Department has to make sure that it doesn't create loopholes where an institution can just put a perfunctory in-person meeting to evade the definition of distance ed. Just because you're referring to it here and it's fairly consequential in this context that definition needs to be pretty ironclad. Thank you.

MR. ROBERTS: Thank you, Barmak. Any new considerations for the committee? Not seeing any. Herman, do you want to have your team reshare the document? We can take the next section.

MR. BOUNDS: Yeah. Wow. So I don't know where we want to go here. I guess not too significant

here. So if we scan down through- any questions on (j) or (k)? Let's- yeah, let's-

MR. ROBERTS: The end of 24 (j) or (k), I guess [inaudible] a little bit in 25.

MR. BOUNDS: Yeah (h). Yeah, I think (h) through (k). Any questions or concerns there?

MR. ROBERTS: Yeah, it looks like we got some. Scott, go ahead.

MR. DOLAN: Yeah on (k). So I heard you say that that was trying to carve out something specific to prison education programs. I don't know if I'm the only one at the table that doesn't truly follow the language there, but it reads unclear here. So I understand we're trying to do a few things but that's the way it reads and I don't know. So maybe a better understanding of the intent of what you're trying to do there. We could come back with some potential language to make it clearer because it's confusing as written.

MR. BOUNDS: Donna, did you want to come on and talk about this? I have the regulation pulled up. But it's basically we have this separate regulation that gives provisions for prison education and how and when they have to review or the frequency that they have to review additional locations. And that's what the purpose of this is. Maybe if we can, let's see, I don't

know, maybe we can put that in the chat for people to read. Maybe that'll make sense to folk, I don't know.

MR. DOLAN: I might suggest maybe that's a sentence that follows the overall intent. And then clearly, because when it's embedded within the in the language, it just- it's unclear what's being carved out there, I guess, to me, as a reader. I don't- I'm looking at other negotiators. I don't know if that's the case for others. Okay. I see some nodding. Yeah.

MS. MANGOLD: I think we can take it back and redraft it too. I hear what you're saying. Sometimes it's just trying to work with the existing regulations and then plugging things in. So we can try to move that around and make it clearer.

MR. DOLAN: Yeah, I brought it up and I also didn't have a solution for you. So I can understand the challenge of doing that.

MS. MANGOLD: Go back to the drawing board.

MR. DOLAN: Yeah exactly.

MR. ROBERTS: Thank you, Scott.

Jillian, did you want to add something to that?

MS. KLEIN: I mean, yeah, I had a, and I'm sorry, I think this is what Scott asked, or maybe slightly different, but so is that just to be clear, is

the new (k) supposed to only apply to instances of prison education programs? I'm sorry if this is a dumb question.

MS. MANGOLD: No. Prison education programs are dealt with separately. And so it would only be for the first two additional requirements, the first two additional locations. Otherwise, this is all additional locations but because prison education is considered- a prison education program is considered to be an additional location and they have their separate set of regulations, we're trying to carve that out from here. So I think that we could go back and maybe make it clearer.

MS. KLEIN: Okay. So just, I'm sorry, not to belabor the point, but so (k) is supposed to be, if it's not a prison education program, the addition of a new location. Is that right? Okay.

MS. MANGOLD: Yes, a physical location, yes.

MS. KLEIN: So I think, and Scott, I'm sorry I'm maybe going to misquote you, but I think Scott maybe sent in a proposal on this section. Or to Jamie's point, I think there's several places where additional physical locations have been inserted where I am also confused. I think about what the Department's intention is or how exactly those pieces work together. But I think

Scott's recommendation leaned in and I may be misquoting it, but sort of to narrow the scope a bit on when either visits are required or arises to sort of sub-change level in terms of additional- in terms of locations and sort of bifurcating between additional locations where more than 50% of our program is offered. And I'm not sure if this is just a Middle States nomenclature, but what I understand to be other instructional sites where less instruction is happening. And so I would just suggest, I think it would be beneficial to look at his proposal and also to edit once you guys come back with a different draft, something in this language here that specifies that you're talking about additional locations for more than 50% of a program is offered, not other instructional sites, where much less than 50% of a program can be offered. And I'll add these in the chat.

MS. MANGOLD: These are defined terms. And so additional location is defined in 600.2.

MS. KLEIN: Yep, I understand but you've inserted the word physical in that phrase. Which to me makes me believe that definition does not apply to what you're trying to do here.

MS. MANGOLD: The new regulations are going to have physical location in it.

MS. KLEIN: Okay. So additional

physical location will replace the existing additional location. I'm sorry.

MS. MANGOLD: Yes. And it's because in addition location is now going to include a virtual location, a physical location in a prison location. So that's why we're saying physical to distinguish it from virtual.

MS. KLEIN: Got it. So this would then encompass physical locations where more than 50% of our program has been offered. Okay, Thank you. That was super helpful.

MR. ROBERTS: Scott, I saw you went down and then you popped back up. Go ahead.

MR. DOLAN: Yeah. I mean, and some of the pieces probably should be addressed given the process that we're using later when we look at the reasonable intervals piece of it. However, I guess the question I would have right now would be just asking for a little bit more clarity around the intent here. You know, I understand some of what we've discussed throughout and what was provided previously, and I would go into more depth when we were talking about the all-visits piece later on. But I just want to make sure I'm clear from the perspective of the Department of what the intent of this change is. It just would help kind of maybe frame later

questions that we might have.

MR. ROBERTS: Not see anything immediate additional from the Department. Jamie, do you want to go ahead?

MS. STUDLEY: Sure. Thank you. Like Scott, I have questions that relate to this in another section but let me share the theme which is and I realize this is in existing regulations, but we have a chance to improve existing regulations that are tied to this. There are a number of pieces here that seem to be the reason for doing a site visit to an additional location that are actually questions for the institution. The institution is financially stable. The institution has engaged in long-range planning, showing up to evaluate the quality of an additional location and how it affects the standards meeting. Those pieces just, you know, don't relate to the requirement for an actual physical visit. Accreditors will do what we are required to do, and we will arrange to conduct these. But as we think about where our focus and emphasis should be to protect students, it's a real question whether some of these matter. Let me also share what I thought yesterday was an obscure question that I got from somebody who's listening to these negotiations that I thought I could answer. And now I really want to ask the Department what they have in

mind. We go back- in the distance education provisions that we were talking about, there is a proposal for reporting on virtual locations, which I understood to be and supported. Because it seemed- I thought that the purpose was to help the Department understand where distance education was being provided to allow analysis of outcomes. And that made sense as a way to understand where it is successful and where it's not. But what Donna just said about three categories physical, virtual, and prison made me wonder whether the effect of that provision in the distance rules is much more far-reaching and will trigger a whole lot of other consequences, possibly, in terms of how institutions- the question I got was how does it affect their marketing or things where different locations have to be treated differently? I thought it was a statistical analytic reporting requirement. I know you may not be prepared for this question, but I think it's important because it could- if it changes a whole lot of other things that institutions have to do, then that distance conversation was the consequences were understated and we should appreciate them. I hate to be so technical, but I think that we need to think about the integration of that provision and what else the Department is expecting. And I understand you may not have an answer right now.

MR. BOUNDS: Yeah, I think Dave Musser is maybe on since that's definitely his area of expertise. Dave, are you out there?

MR. ROBERTS: Go ahead, Dave. Yeah.

MR. MUSSER: Sure. Thanks, everyone. It's a good question by Jamie. And I believe her initial interpretation of our intent is correct. We intended the virtual location concept to essentially be an extension of the institutions, otherwise authority to offer distance education, not a mechanism to create new oversight requirements or authority over the institution. So to the extent that an institution has been approved to offer distance education by its accrediting agency and is otherwise authorized to do so by its state, we would accept those things that are already in place when the institution reaches out to us to add the virtual location. So this is really not intended to be more far-reaching. The virtual location concept is primarily intended to take the oversight process that already exists and create a better tracking mechanism for students who are enrolled through that modality.

MR. ROBERTS: Thank you both. We'll go to Michael next. Go ahead, Michael.

MR. CIOCE: Thank you. So I guess, and I don't want to open a totally different can of worms

here, but, you know, there's a prevalence around the dual enrollment opportunities with high school partners. So I guess I'm curious why prison is back to the carve-out. Like, why the prison programs are specifically cited and not the other types of programs? Right. So I think to Dave's last point, it's not to- if your state has authorized you and your accreditor has authorized you, why the carve-out on prison programs, and not high school programs? Because then if 50 plus percent or more than 50% of students or whatever in (d), it was already approved on- it's really a question out loud. And I don't know if there's an answer or if it's a rhetorical question but just wanted to raise that.

MR. BOUNDS: Yeah, I think for me, and Donna and Dave can definitely chime on here. This is probably their area of expertise, but, you know, the high school areas aren't Title IV eligible. I think that's the main difference between the prison education programs and say, you know, the high school programs.

MR. CIOCE: And I saw that in the chat. And I agree with you, Herman. I guess the question is though, the definitions- the overlap and the intersection of the definitions, that's a little blurry, right? So I know there's a focus on Title IV eligibility but sites and students that are taking classes we don't

disaggregate by who's eligible for Title IV and who's not eligible for Title IV. So I think that's where it gets- there's a conundrum baked into that somewhere. Even if it's- I agree with your point and whoever put it in the chat. So that's the numbers- when IRT polled how many students are enrolled in program X or Y or site X or B or Z or whatever, we're not sort of parsing out by Title IV programs or not. So.

MR. ROBERTS: Okay. We'll take Jillian and then if there's no other questions, we can move along. But Jillian, go ahead.

MS. KLEIN: Yeah. Sorry. So back to Donna's comment about the definitions of additional location changing slightly. So, and I'm so sorry to do this you guys but if I look back at the red lines we went through on the distance education day, whatever that was, feels like five years ago. I see 600.2 and definitions, and I see additional physical location, and I see the virtual location language, but I don't actually see a red line that indicates that we're changing the sort of nomenclature here to additional physical location, additional virtual location. That wasn't in anything that- I mean, that section is here, but that red line was not provided to us and we didn't talk about that on the distance education day. So, I guess I would like to see

it and I'm surprised it wasn't in here when we talked about the definition section related to this. I don't know if that's a question for Dave Musser. It wasn't really a question. There wasn't a question mark at the end of my statement, but I guess I'm trying to understand why we're hearing now that those are going to be different definitions and different descriptors, but it wasn't provided in the red line. And if there's any way I would say we can get visibility to that, certainly prior to our last week together, I think that'd be helpful as negotiators so that we have time to respond.

MS. MANGOLD: David, maybe that definition's already in the new regs?

MR. ROBERTS: I do see. Dave, did you want to speak to this? I do see your hand is up.

MR. MUSSER: Sure. So I'm going back to the existing regulations that define additional location, to which we had proposed to add the definition of a virtual location. And when you go to 600.2 and the definition of an additional location that's currently there, the first part of that definition is a physical facility that is geographically separate from the main campus of the institution. So what I understood our attempt to be here was to refer to that one for all non-prison locations. And essentially the prison locations

fall under the second part of the additional location definition that already exists, which is a federal, state, or local penitentiary prison, jail or dormitory, etc. So the physical facility concept is baked into the existing regulation and we were not proposing to change that.

MS. KLEIN: Okay, so I feel like that's slightly- you guys, I'm so sorry. This is so painful for me. I'm very sorry to be even having this conversation. But I feel like what you just said is slightly different than I think Donna's answer to my question, which was additional location is like that phrase is changing to additional physical location. And I'm being a stickler about this because it matters to an institution that reads this and thinks, oh, additional physical location is not defined in 600.2. That must encompass other instructional sites, support centers, like whatever, because what I would expect to see here would be additional location as defined in 600.2.

MR. MUSSER: I just want to confirm my understanding of what Jillian's concern might be here. Because when you talk about an additional location as defined under 600.2, you're referring to a location at which the institution offers at least 50% of a program and the Department has long interpreted that to mean,

with the Title IV eligible program to Title IV eligible students, which for example, would not apply to a high school where only students who are enrolled in dual enrollment courses would be enrolled. So I think Donna and I can talk and see if there is anything else that we think we can do with that language. But I want to defer back to my accreditation colleagues, but I believe that the intent was to refer to the additional location concept that's in the 600.2 regulations. But let me make sure that that's the case with them.

MS. KLEIN: So I can put this in the chat too. And thank you, Dave. I would- so I think an easy edit if what you're saying is the intention and we don't want to change the definition of additional location is if you switch the order in which these words appear, physical additional location, I think is very clear and doesn't require you to go back and fix 600.2. That's just some non-lawyer feedback.

MS. MANGOLD: I had the same reaction, Jillian, as I was looking at it.

MR. ROBERTS: Can you add that to the chat as well, just so we keep track of that? Thank you. We'll take Michael and then it might be time to move to the next section of this section. But, Michael, you'll have the last word on this.

MR. CIOCE: Thank you. And I think based on Dave's answer and Jillian's question, that recommendation may resolve or mollify my comment in the introduction of the high schools because that definitely helps. But I guess, Dave, maybe this is just more for you back on the 50% in the earlier section. I have it on page 24. It starts on page 23. I think there probably should be some clarity around where that 50, both 50%. Right. 50% of the students and yeah. So that part. The 50% threshold for distance offerings. Whether it's Title IV eligible. Like I'm struggling to articulate what the issue is but where those 50% numbers come from, Title IV eligible or not, you know, we look at students in credit-bearing and our [inaudible] files and our IR files and our state files and everything else, we're not parsing out. I say we. The majority of schools probably don't. So, I want to throw that caveat back into the mix, and maybe the part on (k) gets resolved with the rewording and fronting out prison stuff versus the high school-type locations. But I just wanted it on the table. So enough rambling for me.

MR. ROBERTS: Thank you, Michael. Herman, is it okay to- do you want to- I'll turn it back to you. Do you want to walk through looking at (l), (m), and (n) maybe?

MR. BOUNDS: Yeah, I think we're going to have a lot of discussion maybe on (m). So maybe let's just look at- and we just added the addition of a branch campus here. I think there's some other discussions later about branch campuses. But I did want to ask the question. Was there a question about another gentleman about where we changed the word all, reviewing all additional locations? Was there a question on the rationale for that? I just wanted to make sure that I didn't miss anybody.

MR. ROBERTS: Scott, did you want to- I see you.

MR. DOLAN: Yeah. That was a question. I mean, we can also talk about it when we get to (c) around the reasonable intervals piece. But yeah it was a switch from representative sample to all, so. Yeah. Yeah.

MR. BOUNDS: Yeah, and I'm sorry, Scott. Yeah, we just look at- right now when you look at a representative sample, I mean, there could be a case where recently an additional location especially if an agency has an institution that has multiple additional locations, they may not ever get looked at during, you know, that accreditation process. That's why we put in language that would say, you know, based on how the agency schedules to review those. And that's what I

wanted to make the point. You know, if an agency gives a ten-year grant of accreditation at some point within that ten-year grant, we would just think it would be important for that agency to review all those additional locations. Even look at it in the aspect of complaints an agency may get in. Say an agency gets, and I know this is all hypothetical, but say an agency gets in to complain about something that happened at a different location and they've never even been out to visit that additional location. That could cause some additional issues there, too. But that's the main reason the way the language is written now. It could be conceivable that that location never gets looked at.

MR. DOLAN: I'll withhold because I have other questions related to that.

MR. BOUNDS: Yeah, I got you, I got you.

MR. DOLAN: So let's just keep going and we'll address it there. But thank you, I appreciate it.

MR. ROBERTS: So, Herman, is it okay to turn to the committee for (l), (m), and (n)? Or do you just want to do- you let me know what's going to be easiest for you.

MR. BOUNDS: I think let's go to (m)

and open up the floor there on (m) because this is one area where we asked for feedback for. I think some of the language was at the request of some committee folks. So I think we just open up for discussion under (m).

MR. ROBERTS: Sounds good. Carolyn, take us away.

MS. FAST: Thank you. First, I want to thank the Department for looking at this issue, the written arrangements with ineligible organizations. What we're talking about here, just to make it transparent to anyone who might not be familiar with this already. We are talking about arrangements with online program management companies and coding boot camps and others that are often outside companies that, you know, aren't subject to the same standards because they're not Title IV eligible. And this raises risks for consumers. So we're, we appreciate the Department paying attention to this provision. And we appreciate the language that's added. We note, though, that the Department recently had to offer to provide guidance because there was concern that some written arrangements with ineligible- or institutions are not, complying with requirements about the percentage of the program that's being outsourced. In other words, too much of the program is being outsourced to actually comply with the law, which obviously

increases risks for students. So, we would- we have some concerns that the Department's proposed changes, while helpful, do not explicitly codify this guidance. And we think that it is important to do that. To codify the agency's obligation to oversee the percentage of a program provided under an arrangement with an eligible entity. We think there is- there has been research that shows that there are problems in this area and that there are non-compliant agreements and that the accreditors must do more to address this concern to try to protect students from abuses that we have seen related to the use of these ineligible institutions. We'd like to see additional language codifying that in the provision and we have proposed some language.

MR. ROBERTS: Thank you, Carolyn. Any other comments on letter (m)? A couple of hands. Jamie, go ahead. Oh, you're muted by the way. Sorry.

MS. STUDLEY: We did it at the same time. I'll let Jillian go first.

MR. ROBERTS: Okay, yeah. Jillian, go ahead.

MS. KLEIN: Oh. Thanks. So I'm a tiny bit out of my depth here because I don't really know much about OPM, so I might be speaking a bit out of school, but pun intended. But I don't understand- I understand

what you're saying, Carolyn, in terms of the spirit of what you're trying to do here, and I think I support it. But I don't know that this language does what you're saying, and I don't have a suggestion either. But just even looking at this. So I'm seeing several different words in terms- which I think you're getting at, like an entity that's providing instruction. Is that this, I'm sorry, Carolyn, I'm asking you this question because I think this language came from you, but are you specifically concerned about another entity that's providing instruction to students?

MS. FAST: Well, an online program manager could be involved in recruiting students, for example. They could be involved in curriculum development. They also could be involved in instruction. Essentially, they're outsourcing some of the core program functions to another company that is not regulated under Title IV or specifically under the accreditation standards, which is what causes the risk. So it's not just instruction, it's other core services as well.

MS. KLEIN: Okay. So how and again, I just have a lot of dumb questions I think because it's not my bailiwick. But how if we're not just talking about just instruction, which I feel like is maybe cleaner, how would an institution or the accreditor calculate the

percent that's being offered? If we're talking about like recruitment activity, like how- I'm just trying to understand how that would get captured in here based on the words if it's not just instruction?

MS. MANGOLD: I might be able to help clarify. So we cross-reference section 668.5 (c) (3), which provides that a school can only outsource up to 25% of a program to ineligible entities without accreditor approval but it has to get accreditor approval for up to 50%, so between 25% and 50%. So we're cross-referring to what is already required by the Federal regulations and asking that accreditors confirm that schools are in fact complying with that. So the scope would be whatever's already covered by that requirement. The 25% of a program. So we'd have to look back at what that means. My understanding is, that it's primarily whatever a program encompasses which is instructional services.

MS. KLEIN: Which I agree. So I agree with that. But I feel like what I heard was slightly different, which is recruiting, and other functions and I don't the first part, which I agree with you and I understand, I think we talked about this, Robyn, you and I and others in 2019. So I understand that in terms of like the instruction piece and it feels easier to calculate, it makes more sense to me if we're talking

about like providing instruction of 25 to 50% of the program. But I don't understand how an institution. And I think part of it is just like there's so many different verbs in here, right? Like to deliver a portion of the program assessing- like I'm just trying to figure out how an institution and an accreditor would be able to calculate, interpret, and know what those percentages would be if we're talking about something besides just instruction. So that's maybe a question for you too. But also, Herman since he proposed this.

MR. ROBERTS: I do want to point out that I think Dave wants to weigh in. I see him. Dave, do you want to jump in?

MR. MUSSER: Sure. Just briefly. I do think given the conversation here, that there may be an intent by Carolyn and the group that submitted that proposal to have accrediting agencies look at something that is broader than the relationships that are defined in 668.5 for written arrangements. A written arrangement as defined under 668.5 only involves cases where there's actual instruction going on. So those would not include relationships that only dealt with, for example, recruitment or only dealt in part with instructional functions but did not rise to the level of full instruction. So if the intent is to address those kinds

of practices and those relationships, I think it would be necessary to refer to a broader set of contracts and relationships than only those contemplated in 668.5. Those, as Jillian pointed out, are the ones that create the greatest concern for the Department because they involve actual instruction and coursework that is Title IV eligible. But there are certainly many other functions that are surrounding or related to instruction that OPMS and other entities provide that aren't necessarily captured in the written arrangements definition.

MS. KLEIN: Okay, so that's super helpful. Thanks, Dave. I would just suggest that maybe the Department can be more clear in some of the language here that it's speaking specific to just instructional delivery. And then my follow-up question, which is probably for Jamie. So just set it up for her. Was I just curious? I know, I know, I'm running out of time. Just really quick.

MS. K. SMITH: You are- it's at three minutes at this point.

MS. KLEIN: Okay, I'll just hop back in line. Thanks.

MR. ROBERTS: Thank you. Sorry, Jamie. We'll go to you next.

MS. STUDLEY: Sure. Let me speak first

to the provision in yellow that the Department is offering. The fundamental premise to be aware of is that the institution is always responsible for meeting the accreditation standards. So however, they get help. If they hire a, you know, cleaning service, if they, have a, you know, food service provided by somebody, if they ask the Museum of Art to, you know, provide an internship location or a professor, it's the institution that is responsible to meet the standards, and that includes anybody that they involve in doing so under all these rules. So, what our reaction is that the existing yellow language that the Department has added, while it might require a little bit of reorganization or reporting that accreditors that we're aware of do that and look at those conditions in order to make a judgment about a sub change. So we may have some wording tweaks but we think that the concept is a reasonable one. As to the proposed changes, I see two things going on. Robyn has spoken to whether there's an intent to broaden the written arrangement definition. So, if that's true, that's helpful on one score. On the other, it's a fair question, but it's not one that requires more regulatory language. It's an enforcement question or a follow-up question for the Department to ask whether accreditors are doing what they're supposed to be doing. I think the expectation

that she's describing is already there and that we cloud up the regulations if we say multiple times, you should do what you were required to do, or the Department should make sure you did what you are required to do. If we have a problem, we should solve it, but I don't think it's by more words in this location it's by learning how to and monitoring whether it takes place. So it's not unreasonable but just it seems not a good thing to put into a regulation. But there certainly is responsibility by the institution and the accreditor to review these.

MR. ROBERTS: Thank you, Jamie, and thank you, Jillian, go ahead.

MS. KLEIN: Yeah, thanks. My question, which it is for the Department, but also if Jamie has thoughts on it, I would love to hear them in terms of and a little bit she got to this, I think. But the Department's expectations in terms of an accreditors assessment of the ineligible provider. Is the expectation that that assessment relies on the expectations you're already putting on accreditors for eligible institutions? Is there going to be a different set of expectations the Department is proposing in terms of how an accreditor assesses and ensures that the ineligible entity is complying with the expectations that you have for the accreditors? Should we just rely on the standards that

you're already expecting accreditors to use for Title IV institutions? I'm just unclear in terms of the last part of that sentence. What the exact expectation is on the accreditor. And then the question a little bit for Jamie is like, is that feasible? Is that a thing that typically happens and are there concerns with how the accreditor would do that?

MR. ROBERTS: Herman, do you want to weigh in? And Jamie, we'll turn it over to you if you want to offer any insight.

MR. BOUNDS: Yeah. I mean, I guess there's- I think I need to answer that in two parts. And then, you know, I'll welcome any of the accreditors to come on. To address I think the first issue is that, you know, our regulations have requirements for recruiting and admission practices. I just want to talk about that first. So I think Jamie covered that if. If an accrediting agency is conducting an accreditation group at an institution and an institution has farmed those functions out to someone else, the institution is still responsible. So we would expect to see in a site visit report a review of an institution's recruiting, admission practices, and all those things. And if that other entity is somehow substandard, then the institution has to be held responsible for that as part of an accreditation

review. To get, I guess, to the other part of that question, the agency is responsible for ensuring it as it is written here, that that ineligible institution has that organizational, administrative, or financial capability as it's saying there to deliver that program. I mean, the program is still responsible to ensure those things happen. So. I would just. Yeah. The agency is responsible, and the institution is responsible to ensure whatever is farmed out is being conducted properly.

MS. KLEIN: So the expectation is that just to clarify, we said that the expectation is that the agency is going into the ineligible entities [inaudible] and doing that review, you know, at to you or whatever. I'm sorry. I'm sorry to use that exact name but I'm trying to understand what the expectation is exactly.

MR. BOUNDS: Yeah. I mean, the agency is responsible for holding the institution to its standards. So as part of the review of that institution's accreditation standards, if the institution has this written arrangement with an ineligible entity, then that institution is going to be held responsible to ensure that it's meeting the agency's accreditation standards. I get what people are thinking. This ineligible entity is not the accredited organization. But the institution is the accredited organization. And if that institution,

based on what it's doing, is not meeting the agency's accreditation standards, then the institution is going to be held responsible for this.

MS. KLEIN: Okay, so I think I am confused more than when I started. So I'm going to say one more thing and I'm going to stop talking about this because I obviously don't know what I'm talking about. But I think if the Department can just be clear and if the expectation is that the institution has policies in place to ensure these things in their relationship with the ineligible provider, or if the expectation is that the agency is actually going to the other building of the other company and doing a review of that other company. Whichever it is, just please be clear about that in here because I feel like it reads both ways. And I got more confused after I asked the question. So thanks.

MR. ROBERTS: Jamie, did you- I see- do you want to weigh in?

MS. STUDLEY: Sure. Thank you. And then I'll ask whether Michale or my alternate or Laura wants to add as well. I'm not the only one. Jillian makes a really good point. And I would explain it exactly the way Herman did. That it's the agency's responsibility to hold the institution accountable. No, I do not envision us visiting every additional location of a third party that

is providing something to the institution we accredit. But we ask that institution to understand the capacity and expertise of someone they're relying on and in their proposal to us to get the approval, they would have to demonstrate. When I said that we might have some language changes, it would be, I think, to provide the clarity you're looking for Jillian. Which is that, whether it's an assessment of the total package from the institution or do we do an independent assessment? It is the first that is what we do and is close enough to current practice that we are not resisting it, but we do it in the context of saying, why do you think this will work? And how do you think this total arrangement that you are proposing will allow you to deliver a new activity at an acceptable level of program support? I think, you know, we do not expect to go read the books of a third party, but we expect to get an answer about why this is an acceptable arrangement that meets the sub change standards. Let me see if- I'll go off-screen so Michale can participate.

MR. ROBERTS: Oh, wait. So there's a couple of folks that are signing. I see Laura raised her hand. And then, Robyn, did you want to add to this discussion? Sorry, I'm just trying to keep pulse of. Oh, you're muted right now Robyn by the way.

MS. R. SMITH: Pushing the wrong button. Sorry. I feel like the language that we are proposing would sort of respond to Jillian's concern, which is we are urging the Department to be clear about its expectations. We know that there's possibly widespread noncompliance going on based on the research that I posted. There's also research from 2021 that identifies that accrediting agency's policies are inadequate. They're not catching this noncompliance and they should be. They should be looking beyond sort of what an institution says, yes, we have- it's only under 50% of the program being taught by the OPM. But they need to look at underneath those numbers. They need to scrutinize those relationships in the matter that they deem fit to ensure that schools are, in fact, complying, because this is a huge area of potential abuse and enormous concern for student advocates. So I think what we're proposing is that it be very clear that accrediting agencies do a level- some scrutiny and actually confirm that what the school represents is what is happening. Thanks.

MR. ROBERTS: Thank you. Laura, do you want to hop in?

DR. KING: Yeah, I have kind of a slightly different question about it. OPMs, I understand

what those are and it seems like that's what we're talking about. But the way that the language is written it's pretty broad. And so I'm wanting to clarify, do you mean this to cover hospitals, for example, or others that are providing clinical instruction for students? That might be a question for Herman. Is that the intent of this?

MR. BOUNDS: Yeah. I'm probably going to ask either, you know, Dave or Donna, to come on. I think we're looking at- so I guess it could include a hospital or clinic, but I don't think clinic, or a hospital are included. Greg, can you come in and speak to that?

MR. ROBERTS: Greg's got his hand up. Go ahead, Greg.

MR. MARTIN: Yeah. So, I mean, I think it's important to understand that, you know, in this conversation about, you know, it seems to be skewing towards online program managers. And while they certainly are part of what can be included in 668.5, it's important to note that this certainly goes beyond that. It's broad for a reason. And I remember, our Dear Colleague Letter 2207 was referenced and remember that the title of that Dear Colleague Letter. Written arrangements between Title IV eligible institutions and ineligible third-party

entities. So any time there is an agreement that is between an eligible institution and an ineligible institution to provide, an eligible entity, I should say, to provide education, then the appropriate way to do that is through a written arrangement. So it would encompass any entity that is a third party that is not eligible. And I see Donna has her hand up, so I'll let her address.

MR. ROBERTS: Go ahead, Donna.

MS. MANGOLD: There is also an exception at 668.5 (h) (2), that deals with externships and internships. And that depends on the amount of control the institution itself has over those programs. So sometimes the clinical in response to the question about clinical, sometimes the clinical issue can be dealt with in (h).

DR. KING: Thank you. That's helpful.

MS. MANGOLD: By the age exception which would then not apply here.

MR. MARTIN: Yeah. If it's an internship or externship arrangement, then it would be covered by that exception. It's actual coursework, that's different.

DR. KING: Okay. Thank you. That's helpful.

MR. MARTIN: Thanks, Donna, for coming

in.

MR. ROBERTS: Alright. Thank you, both. We'll go to Barmak and then Michale next.

MR. NASSIRIAN: I certainly look forward to Jamie's potential edits to this language. But I want to emphasize that at least you know my take on it indicates that the responsibility is being explicitly assigned to accreditors to verify representations made by institutions about outsourced instruction. That it is insufficient for the, you know, a broad statement that, of course, anything institutions are subject to they're responsible for regardless of how they choose to execute it. That's fine. You can say that. But we see in practice that institutions are in fact assigning significant responsibilities to entities that have not been vetted, that have not gone through the triad, and they're doing so subject to this 50% limitation. And we want to be very clear that, yeah, you know, you may actually have to visit that building. You may actually have to look at those curriculum materials. You may actually need to make sure that the instructors are qualified. This is very similar to, I mean, to just give an analogy to raise our concern. You know, you can't have licensure requirements for physicians and have a physician go through all of that. Begin to practice, hang a shingle, and then choose

to spend half of his or her time on the golf course and have them hire me to do surgery on patients. That may be a good idea, but it seems to me that the licensure board should then make sure that maybe I know what I'm doing. So it seems to me that this is not simply a matter of paper representations made by institutions in a formalized written agreement, but also some validation that those representations comport with reality. But I do look forward to edits if they can improve this and clarify it for all participants, that'd be great. Thank you.

MR. ROBERTS: Thank you, Barmak. Michale, your hands up. I just looked at the time and candidly the length of the rest of the document. Would folks be okay if this were the final comment on this section of 602.22 and then we just take it to the rest and then endeavor to move on a little bit before lunch? Nods. But Michael, take it away.

MR. MCCOMIS: Look, I won't be labor the point. Jamie and I are working on some language that tries to do both of those things. And probably breaks this- the highlighted language that the Department has under (m) into maybe a couple of romanettes that would talk about the responsibility being retained by the institution. But also the responsibility of the

institution to demonstrate that whatever entity that it enters into an agreement with has that capacity. As opposed to putting the assessment responsibility squarely on the accreditor because that has issues of authority that we may not always be able to exercise. But we have that authority over the institution, and we can ask for that demonstration and that the institution has the responsibility to make that showing that in that agreement, they've made those determinations and they understand that third party, that contracted entity is in fact, you know, parcel of the institution's overall accredited schema and therefore has a role to play in its ongoing accreditation. So we'll work on that language. And I think that we've got something that we might be able to share.

MR. ROBERTS: Thank you, Michale. Emmett, would you like to be the last word on this section?

MR. BLANEY: That'd be great. Thank you. Sorry for jumping in on the last second. Just want to make sure student perspectives are also heard for this specific issue. I just want to kind of refute something about the regulations being clear enough already. In fact, I would re reference the document that I believe Robyn dropped. It has a couple specific case studies. So,

if we're looking for more data, there it is. Saying that, like, current regulations are not doing enough. So I don't feel that it would muddle the regulations to add specific language that's requiring accreditors to verify that institutions are doing what they're saying they're doing. It doesn't feel or it isn't enough to believe them when they're telling you that they're conforming to what's in the regulation now. If it were working, that would be one thing. But it's not working. It's harming students. And so, I strongly disagree with the notion that adding more language around that would muddle current regulations. Thanks.

MR. ROBERTS: Thank you and thank you all for that discussion. Herman, with about a little over ten minutes before lunch, do you want to take us through the rest of 602.22?

MR. BOUNDS: Sure. Let's- we can actually go to (b). Because I'm sure there's going to be some discussion there. So let's. Yeah, I think we should take (b) separately and discuss that language there.

MR. ROBERTS: Yep. Jamie, I see your hand first. Do you want to turn on your video if you're able to? Okay, go ahead.

MS. STUDLEY: Yeah. On this section the most troubling part is subject to a negative action over

the past three years. It just seems overbroad. I apologize if I mentioned this the last time. You know, in general, does the Secretary need these? Are they worth the effort? Is a question worth asking about everything. But if this remains, the idea of any negative action over the previous three academic years unrelated to the purpose of the sub change that's made here, no matter how narrow and if already fixed and resolved, just seems unnecessary to the purpose. And if the Secretary would have use for this notification and there's a clear need for it. It's, you know, so be it. We understand if the Department thinks it would be really helpful to know about that, but it seems to be too broad.

MR. ROBERTS: Thank you, Jamie. Anyone else on the (b)? Not seeing anything new. Yeah, go ahead.

MR. BOUNDS: No, I would just- the main reason for this is that, you know, substantive change is approved when agencies are under some sort of negative action. And we use negative action because some agencies may say show cause. They may have a warning status that's a negative action. We just think that those things could, you know, could put students at risk. And we just think that it is important that the agency kind of explain or provide information on, you know, their rationale for approving that substantive change. I mean, it's again, I

think I talked about before, it's akin to what we require under 602.28 (c) when an agency decides to accredit another institution that might be the subject of a probationary or some other action by another agency. Again, we're willing to listen to any other, you know, comments or suggestions here but we just think it's important as far as protection for students.

MR. ROBERTS: Anyone else want to offer any comments or? Yeah, JoEllen, please.

MS. PRICE: So, in listening to this conversation, this is a question for the Department. When an institution has a program review and they have an open program review when they're going through recertification, they are put on provisional participation until that program review is concluded. Would that be considered a negative action in this broad sense?

MR. BOUNDS: I could let- I think I can let Donna come on here, but I think that's one of the areas listed here. Or is provisionally certified under 668.13. So I think that may not be under our definition of what we consider a negative action under accreditation regulations. But I think that was added because that is a concern related to Title IV eligibility. I don't know Donna if you want to come on and add to that but that's

why that was added.

MS. PRICE: Thank you.

MS. MANGOLD: It's a separate category. And actually, it is part of the existing regulation on substantive change. If it's provisional in existing 602.22 (b). It talks about provisional.

MR. ROBERTS: Laura, go ahead.

DR. KING: I just think it may be helpful to include all of the actions or all of the words that you need to include there because negative action isn't really a term that we use. It's not really a defined term, is it?

MR. BOUNDS: Yeah. You're right, Laura. It's not a defined term and the only reason it was inserted, again, is because we may list probation show cause but then another agency may have, they may have a, some sort of warning status that they consider to be a negative action since it's not defined. So if we list some and then we leave one out.

DR. KING: Right. I Think you can probably get around that if you said something like probation show cause warning or a similar action. Because I think then an agency would know what a similar action is to probation or show cause or warning, depending on what the terminology that they use. But just the term

negative action is not, I mean, you know, I might think that a compliance report is a negative action. I mean, it's not really in the Department's definition but it's not a positive action. So I just think it might- there might just be better words there that could be more specific about what you intend. That's all. Thanks.

MR. ROBERTS: Herman, with about five minutes remaining in this AM section of today, do you want to tee up letters (c) and (d) maybe? Do just want to take us through the remainder of the section? You let me know.

MR. BOUNDS: Yeah. Hold on one second here. I had another note on (b). One second. I got a couple of screens open here. Yeah, I also want to say to Laura that under- I think if you look under 602.22 (b), there's the reference of negative action there too. So that's been existing prior. And again, I just think that is because there are so many different things that could fall under that, you know, under that definition or category. Donna do you have anything to add there? I saw you shake your head or something.

MS. MANGOLD: No. I was just looking at negative action already existing but if the negotiators have language that they would like to, you know, sort of a list of those kinds of actions to give us more

precision. I know you said, show cause warning or similar action. If there's something else to make sure that we're capturing everything.

DR. KING: Yeah, I would say probation show cause warning or a similar action. Because I think those three terms probably encapsulate what the vast majority of accreditors use. And they would know if they use some other term that is not- that equates to those.

MR. BOUNDS: Yeah, or maybe we could- I just want to be sure of the terms. I think we could definitely look at that. I just want to make sure we don't, you know, leave out a major term or maybe in the case of warning. Maybe it's a warning that you're about to enter a situation where you're non-compliant which may in some cases may not be a negative action, it may be a precursor to a negative action. So I just want to be careful that we don't include something that's not representative of what an agency might consider to be a negative action. But I think we can take what people suggest and maybe do some research on our own.

MR. ROBERTS: Yeah. There's a little bit of continuation in the chat. Some other suggestions. Yeah, Jillian.

MS. KLEIN: Thanks. I like Laura's recommendation on the language. Just circling back to the

provisional certification item. Can the Department- because I know, you guys have been working in this industry for way too long. I know in the past, like, maybe at least a decade ago, the Department had a tendency to use provisional certification in instances where, for example, a program review ran long. I think this was JoEllen's comment, but like a program review ran long or an audit ran long, or the Department was working through paperwork. Can the Department serve here on the record, attest that that's not the practice anymore, and that provisional certification is only being used in instances where there is actually a risk that's happening at the institution? Because if that's the case, then I think I can maybe get to a place where I'm okay with this. But I know that's not consistently been the practice of the Department.

MS. MANGOLD: I can speak to that. Provisional certification is used for a wide variety of things, including following a change of ownership [inaudible] provisional. So, I cannot commit on the record that it's not being used for a wide variety of things.

MS. KLEIN: Okay, so then I'm uncomfortable with this language because I think if it's being used for anything except actual risk at the

institution. And I will even give on change of ownership, and I mean I think it's fine if you want to use that as a lever for provisional, but I think I have personally seen other instances where the Department has used provisional certification in instances where the institution is literally just waiting for the Department to make a decision about something that is not a compliance issue, or the Department is behind due to staffing issues or whatever. And so given that that continues to be what I understand you're saying, potentially current practice, I have concerns about how this language is written.

MS. MANGOLD: 668.13 the reference to that is in the existing 602.22. If there is some language that the negotiators want to suggest, we will consider whatever is submitted.

MR. ROBERTS: Okay. I'm glancing at the clock right now. I think we do need to take our scheduled lunch break. Carolyn, we'll pick up with you at one. I will just say thank you all. I know this was this was a lot of discussion. I appreciate everyone, and their diligence and the comments that they made. For the public, as it's been this week, there's a new link for the afternoon session. So this link will not work. The live viewing link that you're using will cease when we go off live. So you can pick that up at 1:00 p.m. But

without any other housekeeping items, we'll see everyone  
at 1:00 pm eastern. Thank you all.

**Zoom Chat Transcript**

**Program Integrity and Institutional Quality- Session 2, Day 4, Morning, February 8, 2024**

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

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

Can we have a temperature check on neg-reg versus reg-neg?

From P, Jillian Klein, Proprietary Instit to Everyone:

Reacted to "Can we have a temper..." with 😂

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

Reacted to "Can we have a temper..." with 👍

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

Reacted to "Can we have a temper..." with 😂

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

Reacted to "Can we have a temper..." with 😂

From Carolyn Fast to Everyone:

Reacted to "Can we have a temper..." with 😂

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

Reacted to "Can we have a temper..." with 😂

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

Removed a 👍 reaction from "Can we have a temper..."

From Krystil Smith | FMCS Facilitator to Everyone:

Please remember your naming conventions

From P. JoEllen Price, Financial Aid Administrators to Everyone:

Reacted to "Can we have a temper..." with 😂

From Jamieenne Studley to Everyone:

also early for Robyn!

From Robyn Smith, Legal Aid orgs. to Everyone:

Happy I can sleep in a little tomorrow!

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

the challenge is that the language might only be speaking to four year programs.

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

Reacted to "the challenge is tha..." with 👍

From P, Jillian Klein, Proprietary Instit to Everyone:

On 602.20(b), I recommend ED strike ".. the lesser of four years" and keep "must not exceed 150 percent of the --"

From P, Jamie Studley, Institutional Accreditors to Everyone:

can the department share the test for a good cause extension?


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

Reacted to "can the department s..." with 


From P, Jillian Klein, Proprietary Instit to Everyone:

I would also recommend that ED strike in 602.20(c) "for a maximum of one additional year" in the absence of data to support

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

Reacted to "I would also recomme..." with 


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

Reacted to "I would also recomme..." with 

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

Reacted to "can the department s..." with 


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

Reacted to "On 602.20(b), I reco..." with 

From P. JoEllen Price, Financial Aid Administrators to Everyone:

Reacted to "I would also recomme..." with 

From P. JoEllen Price, Financial Aid Administrators to Everyone:

Reacted to "On 602.20(b), I reco..." with 

From P, Jillian Klein, Proprietary Instit to Everyone:

David Cohen will join the table to ask a question for proprietary institutions


From P - Erika Linden, Private Nonprofit IHEs to Everyone:

Scott Dolan entering for Private Nonprofits

From A, Michael Cioce, 2 Year Colleges to Everyone:

I read the "hardship" as being tied to the timing - if the 150% of time falls in the middle of a semester, schools would want to tie things to the end of a term

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

Reacted to "I read the "hardship..." with 

From A-Michale McComis, Inst. Accreditors to Everyone:

The normal application of transfer of credit limits that could adversely affect students in a school closure situation is an example.

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:  
Erika can step back in


From P - Erika Linden, Private Nonprofit IHEs to Everyone:  
Scott Dolan will return to the table for Private Nonprofits


From A-Michale McComis, Inst. Accreditors to Everyone:  
For the Department's Consideration:

From P, Jamie Studley, Institutional Accreditors to Everyone:  
Facilitators: might it be possible to do these item by item, otherwise we could swirl through a wide variety of topics?

From P, Jillian Klein, Proprietary Instit to Everyone:  
Replying to "Facilitators: might ..."

Yes please! This!!

From P. JoEllen Price, Financial Aid Administrators to Everyone:  
Reacted to "Facilitators: might ..." with 

From A-Alyssa Dobson, 4Yr. Public Institutions to Everyone:  
Reacted to "Facilitators: might ..." with 

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:  
Replying to "Facilitators: might ..."

i agree

From A-Michale McComis, Inst. Accreditors to Everyone:  
For the Department's Consideration: §602.20 Enforcement of standards.  
(a) \*\*\*  
(1) Immediately initiate adverse action against the institution or program when the agency has determined that such action is warranted; or... This will help with due process requirements both of the Department and legal challenges


From P, Jamie Studley, Institutional Accreditors to Everyone:  
isn't the concept of adequate inherent everywhere in the regulations?

From P., Diana Hooley, State Attorneys General to Everyone:  
I agree with Barmak's comment to reinstate "adequate" in the language.


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

+1 to Barmak. Writing in chat for posterity: 602.22 (a)(1) "Adequate written substantive change" rather than "Written substantive change"

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

Reacted to "isn't the concept of..." with 

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:

Reacted to "+1 to Barmak. Writin..." with 

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

Reacted to "+1 to Barmak. Writin..." with 

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

just to be clear. all for all programs except prison education programs?

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

Reacted to "+1 to Barmak. Writin..." with 

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

Responding to Jamie's point about "adequate" being inherent throughout, that may be, but "adequate" is used in description of faculty and facilities, description of standards, description of opportunities for public comment, etc. throughout the text. Removing it here would create a strong presumption that any written policy would satisfy the reg.

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

agreed about the importance of ensuring we are focusing our efforts. given the department's goal of protecting students from significant changes that may impact the institution's resources and capacity.


From P. JoEllen Price, Financial Aid Administrators to Everyone:

Could it be because high school students do not qualify for title IV aid?


From P, Jamie Studley, Institutional Accreditors to Everyone:

indeed, why only first two prison locations and MORE review of other types of locations?

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

Reacted to "indeed, why only fir..." with 

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

Reacted to "indeed, why only fir..." with 

From P, Jillian Klein, Proprietary Instit to Everyone:

On proposed 602.22(K), I propose the language begin with "The addition of a physical additional location, provided ... "

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

Reacted to "On proposed 602.22(K..." with 👍

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

Maintaining accreditation is important and as such, is also expensive, that said creating the requirement to visit all locations will increase that cost. Anytime our costs go up, they eventually reach the students pockets. What value does visiting all sites rather than a representative sample bring to the process?

From Robyn Smith, Legal Aid orgs. to Everyone:

Here is the Department's guidance: <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program>

From Robyn Smith, Legal Aid orgs. to Everyone:

Here is some research re non-compliance by major OPM provider:  
<https://tcf.org/content/report/outsourcing-online-higher-ed-guide-accreditors/>

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

+1 on Carolyn's point

From Robyn Smith, Legal Aid orgs. to Everyone:

Here is our proposed language: The agency must also confirm that, for a written arrangement between an eligible institution and an ineligible institution or organization, the arrangement complies with limitations on the amount of the program that the ineligible institution or organization provides as described in 34 CFR 668.5(c)(3).

From Robyn Smith, Legal Aid orgs. to Everyone:

We do not intend to go broader than 34 CFR 668.6(c)(3).

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

agreed with Jillian that clarity is important here

From Robyn Smith, Legal Aid orgs. to Everyone:

Sorry, 668.5(c)(3).

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

important point here by Jami. institutional responsibility

From Robyn Smith, Legal Aid orgs. to Everyone:

And one other source of research regarding non-compliance issues:  
<https://tcf.org/content/commentary/its-time-to-make-repairs-to-online-higher-ed/>

From P, Jillian Klein, Proprietary Instit to Everyone:

Per my earlier comment, my recommendation to ED is that they clarify in this section that they are speaking specifically to an ineligible entity offering instruction. There are a lot of different verbs here ("offers," "deliver," etc) that I think make it sufficiently unclear what the intention is.

From Donna Mangold - ED OGC to Everyone:

Here is the link to 668.5 <https://www.ecfr.gov/current/title-34/section-668.5>

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

Appreciate Michale's comment but have to point out that jurisdiction is not an issue: if a third-party does not voluntarily agree to allow the accreditor to validate an eligible institution's representations, the accreditor can deny the institution's request. "Trust, but verify"

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

Concur that ensuring oversight by accreditors of institutions utilizing OPMs is an important step to protecting consumers.

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

in agreement that there is more we can do for oversight of written arrangements. I look forward to proposed language from Jami. And all due respect to the provided links and their authors, but I am not certain what was shared was truly research. Seems more like a blog post with some examples of issues that have arisen. With that said, I am open to a conversation about how we enforce good practice

From P, Jamie Studley, Institutional Accreditors to Everyone:

Probation or equivalent would include show cause if it's serious. A vague word like negative plus 3 years just seems overbroad.

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

Reacted to "Probation or equival..." with 👍

From P, Jamie Studley, Institutional Accreditors to Everyone:

Laura said it well.

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

Reacted to "Laura said it well." with 👍

From P, Jamie Studley, Institutional Accreditors to Everyone:

use "equivalent" v similar so that it doesn't broaden or become more vague

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

negative action conveys the meaning well. Enumeration is a trap because some accreditors may simply revise their current nomenclature to evade the reg

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

Reacted to "negative action conv..." with 👍

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:

Reacted to "negative action conv..." with 👍

From P, Jamie Studley, Institutional Accreditors to Everyone:

"Warning" when it is a formal action indicating non-compliance v a plain language "warning"

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:  
Replying to "negative action conv..."

I think this would help to address the issue raised by JoEllen and Jillian -- being provisional due to a delay or similar non-compliance-related issue should not be considered negative.