

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING
SESSION 1, DAY 3, MORNING
July 2, 2025

On the 2nd day of July 2025, the following meeting was held in-person, from 9:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MS. WEISMAN: Good morning, everyone. Welcome back to day three. Today is our final day together, with our goal to finish our discussion, take a series of pulse checks, revisit any unresolved points, raise any issues of concern, and conduct consensus checks on proposals. As a reminder, there is no public comment this afternoon. The point of the public comment is to inform the committee, and at that point, the committee's work will have been concluded. So we'll use the full time for deliberation and documenting our outcomes. Do we have any questions before we get started? Tamy, I believe you had said that you had someone who wanted to do a data presentation. Is that first thing or- ?

MS. ABERNATHY: The way that we plan to do that is, as we're going through the proposal- (inaudible)- as we're going through the proposals, I'll ask Eric from our operations team to come up and address the rationale for why or why not for the proposals that we've received, and provide additional information on what we currently do and what the system is able to, you know, to handle so that there's a little bit more content about the what and, and what we're doing and what we're not going to do, so we'll do it as part of that.

MS. WEISMAN: Okay. Thank you. Yes,

ma'am. So I have a new document that I just received from the Department that I will be circulating to you in just about a minute. And I do see that Mary Lyn has her card up, so we will dive right in.

MS. HAMMER: I wanted to make sure that was (inaudible). Good morning, everybody. First, I would like to thank the Department for all of the work that you've done and the language that you came out with and what we received last night, and we really appreciate that. I would like to ask for a ten-minute caucus of the non-federal negotiators just to discuss the negotiated rulemaking consensus and a little bit about that process so that we all get in the right mindset to get consensus today.

MS. ABERNATHY: Annmarie?

MS. WEISMAN: So you want the non-federal negotiators for a caucus. For what duration?

MS. HAMMER: Ten minutes.

MS. WEISMAN: Ten minutes. Okay, so what we will do then- Tamy?

MS. ABERNATHY: We would like, if possible, negotiators, if you would allow us to go through the proposed- the proposals and where we landed with those with some of the amendatory text. If we could do that first, Mary Lyn, I think that would help frame

some of your conversations as well, because we've actually made changes from last night that we want to point out. We're not going to go through the whole red text, but there's certain things that we would like to point out and have Eric give a- give his- give the information to you guys before you caucus, if that is okay. Would that be all right, Committee? Thank you.

MS. WEISMAN: Okay then, Tamy, you can take it away.

MS. ABERNATHY: Good morning, everyone. Forgive me. We- I'm trying to get all of my pages in the right order. While we go through this and find all of the proposals that are somewhere in my stack of information. So I would like to open today up with saying that we are very happy to present the red text to you that we just circulated. It is a compilation of our initial proposed language, with all of the many changes that we've made based on our discussions, based on your proposals, based on your recommendations, where we could make the changes. We feel like what we are providing you is the very best that we can provide you. We have looked and massaged and gone back, discussed with our leadership, and we are proud to present what we have to share with you. I guess in the- if you don't have it yet, you will have it in just a few minutes. In doing so, one

of- we're going to go back to some of these proposals. Rebecca, you had submitted proposals to us and one of them we said we were still considering it. And what we want to do is let Eric come up, and Eric is going to talk about two different things. One is about Thomas's proposal, about the section E, and we're going to try to do that through a preamble. But we want Eric to explain to you what those notifications look like, how that- you know, all of that process. And then we are still looking at the lovely qualifying employer and that employer identification number issue. And so I would point our attention to Eric, who's at the podium, because he's going to share both of the- so we have adjusted the language on qualifying employer. We've adjusted it and it's on 27. And so what we've done is how we've taken what you've wanted and what you've needed in a very important aspect of this whole package. And looking at employers overall, and this is the language that we've come up with. And so Eric, if you would discuss either E first or the other one first, whichever one. Thank you, Eric.

ERIC: Can you hear me now? Okay.

Thank you. First time at the mic that wasn't the pass-around mic. So in all likelihood, and I've asked Tamy and company if I start veering into the policy side just to

kind of correct me. Some of this is difficult to discuss without- from a purely operational perspective, especially once we get to the EIN discussion, this piece is a little more straightforward. In all likelihood, the way that we would solution this through the system, and this actually complements the way the system currently works, once a- an employer is notified that they are potentially ineligible, we will immediately place- for now, I'm just going to call it a conditional status within the employer database. And what that means is when the borrower pulls up that employer to submit their form, it will, it will tell the borrower, hey, this employer is in conversations with this employer or whatever the appropriate language is. And then that would- however, it would not stop the certification from going through. We would still- the borrower could still certify. It would just be some warning language. Hey, we're, we're in conversations with this employer. They might be ineligible in the future. We'll let you know. The same will happen on- and that would be immediate upon decision. The second piece on determining that an employer is no longer a qualifying employer- and this kind of goes along, along the lines with some of the other conversations we've had. Once that determination is made, right now the potential solution would be that we

email every borrower that has certified with that EIN. It may or may not be a shared EIN. However, as part of this process where we're working with the service- or I'm sorry, with the employer to determine their eligibility, we are going to ask the employer to identify if it's a shared EIN. So then in the employer database, and this will take us to the EIN conversation in a minute, but we will be able to (inaudible) the employer database to break those, those subcomponents of the EIN out. It's already broken out if you're- for instance, if you pulled up the Department today, you'd see about 40 employers because we share an EIN with a number of other agencies. But it will- it would be a blast either to everybody associated with that EIN or if we make a determination that only one subcomponent, if we can identify those borrowers in the past, that's not necessarily possible, since we would not have all of the same breakouts of subcomponents in the past, we would, we will send out the appropriate email notification letting them know that it's been immediately suspended. Let me just get the last one, and I'll jump over to you. The same with the corrective action plan. As soon as that determination is made, we would update the employer database. The- that conditional status would go away if they had already been conditional. If they were ineligible and then regain

eligibility, that will be date-driven based upon the date that the Secretary determines that the employer is now an eligible employer. That Secretary's date gives us some flexibility where if we need to- for instance, in, in number ten, if we need to push that eligibility out for a month, because let's say, let's say, for instance, that the employee- we reach out to the employer- so they hit number nine where they're conditional and then we reach out to the employer and they say, nope, we're not interested, we don't need to have discussions. That would move us to number ten now where we would put, put the denial within the employer database. If we so choose, right, and this is where I think we have a much- an elegant solution here with the Secretary's determination date, we could say, okay, this is going to be 30 days in the future so that we give that an additional 30 days of the conditional display, if that's what's appropriate. So sorry, Laurel. What can I answer for you? Oh, Annmarie, sorry.

MS. ABERNATHY: I just want to make sure that everyone understands this is not a new status.

ERIC: Ineligible status is not new.
And we already have-

MS. ABERNATHY: Right.

ERIC: The employer database already

has a concept where an employer is only eligible for a certain amount of time. They could lose eligibility and then regain eligibility.

MALE SPEAKER: I also just want to clarify really quick that being conditional wouldn't limit employees from PSLF credit.

ERIC: Right.

MS. TAYLOR: Thank you, Eric. Question for you. First, I want to start with gratitude. Tamy, thank you, and Eric, for starting with when the rubber hits the road pragmatically how this would be experienced by borrowers, really focusing on simplification of execution and supporting the borrower. This is a fantastic conversation. Thank you. A question for you because there's so much weight placed on this from a caucus perspective yesterday of trying to solve the problem that I think you just articulated from a current system perspective could be supported. So if we have a number of employers that share the same EIN as you shared within the selection that the, the eligible employee would be pulling from so today, I think what I just wanted to clarify today there is the ability to segment within an EIN shared by multiple employers, the specific entity qualifying entity that, that employee is working for, whether they're in active status or whether that

status is conditional or actually been revoked at any period of time. Appreciating some of this doesn't- like depending on may not (inaudible) existing status in the system, potentially. But the core question is, from segmentation, it sounds like the system today does have the ability to identify sub-employers to a parent.

ERIC: It does. So for instance, if you pull up Department, you'll see 40 other agencies in a random- and some of them are even in the legislative branch because we share an EIN, our payroll processor processes for all those agencies. Today, when an employer certifies within- I'm sorry, when, when the employer- when the borrower comes in, we don't necessarily track which sub-EIN- subcomponent of the EIN that the, that the borrower certifying under outside of the display name. And that's where it gets really interesting, where in the past the initial population and the employer database was based on what a borrower would write on a form, and then we would approve and that would create- then that- the employer as listed on the form gets into the database. Now we've gone through and cleaned up a fair amount where like you might see FSA associated with one EIN versus we're actually the Department, FSA, and the Department are the same, same organization. So we've gone through to try to clean those up as much as possible. But right now-

and that's why I'm saying in the past, it might not- we might not be able to identify, especially the distant past, which subcomponent of the EIN the borrower was certified under.

MS. WEISMAN: We have a number of questions.

MR. ANDRADE: Sorry. When we get to the next part of this, which is on page nine, I think that will become clearer how the- how that's going to work, what we're, what we're talking about. Do you want to, do you want to flip to that or, or do you want to stay on this?

ERIC: I can go either. Whatever the- whatever is preferred. All right. Great. Thank you. I think it's a little further down. Oh, no. Sorry.

MS. ABERNATHY: Number two, right?

ERIC: Yep, thank you. So not, not, notwithstanding subsection 11, the Secretary may in the event an employer is operating under a shared identification number or other unique identifier, consider the organization to be separate for the purposes of determining whether an employer is eligible. So to that point, we, we wanted to also list just both the, the employer identification number as well as the other unique identifier, knowing that eventually we might have

to start breaking, breaking these employers out into their subcomponents. And we didn't want to be restricted to only doing that on the EIN. And so basically we're kind of future proofing as well that if we need to, to utilize a separate identifier, although we're still going to need the EIN because the, the borrower needs to match up there, their W-2 with, with, with the listing and the employer database, but we would create a process within that corrective action plan where we would be notified and could then split those employers out officially. The, the other consideration, and this kind of bleeds in as well, is, for instance, you know, we might have put in both the Department and FSA might be listed within the employer database, and that's where the decision is made. Are those the same organizations or not? And this piece will allow us to determine- based working with the employer, which components are specific to that employer that we're either excluding or including as eligible. Does that help?

MS. ABERNATHY: Are there any additional questions for Eric?

MS. WEISMAN: Emeka?

MR. OGUH: Eric, thank you for that explanation. I always love talking about the nuts and bolts in operations, and it was helpful for us to see,

you know, how the Department is thinking about implementation. I know Scott brought up some comments yesterday about wanting this to be efficient, and you know you know, expensive for the taxpayer. My question specifically for those employers that today don't have these sub-EINs broken out, at what point during that process will, will those be introduced? Will it be during the review process where they will be able to break out that separate EIN? I'm just trying to understand at what point, because if the Secretary goes in and it doesn't exist at that point, I'm assuming then she'll just treat it as one. So any-

ERIC: Right. So within- when- within that correction- corrective action plan process where we're working with the employer, that's where we would, we would reach out to the- that specific employer and ask them if they are a shared EIN, we- and we have a number of ways that we could potentially do that, whether it's listing everybody that we have already in the database in a letter and saying, hey, check a box. But we have, we have flexibility there to address that.

MS. ABERNATHY: And so we're not going to prescribe, we're not going to prescribe that in the regs, though, because we don't want to lock us into, you know, like Eric said, we want to future-proof. So you're

not going to see everything in the regs. But we have the ability and the infrastructure to do what you guys brought to, to the table. And so this is why we wanted Eric to, to share that some of this is already existing. And now we will be able to use this with the process, with the regulations that we're, you know, promulgating through this process.

MS. WEISMAN: Next question is from Mary Lyn, and then we have Scott.

MS. HAMMER: Thank you. Sorry, I can't look at you.

ERIC: That's okay.

MS. HAMMER: So when they go into the tool and they put in the OP- or sorry, I keep saying OP- the EIN, will that direct them to the subset in the future?

ERIC: Potentially, yeah. We're still going to have to list out all of the organizations. And you know, you would see- terrible example, but FSA is not valid. Department is valid. The borrower still has to select the appropriate employer. And then upon certification like let's just say the borrower sent it to an employer that they're not truly employed at, then it would be up to the employer to not certify because the borrower doesn't work for that organization.

MS. HAMMER: Thank you.

ERIC: Yep.

MS. WEISMAN: Scott?

MR. BUCHANAN: Yeah. Thank you. I appreciate this and I appreciate the Department sort of considering especially- some of the notification processes here. You know, we submitted some comments about this, and I appreciate sort of the inclusion of making sure that in the database that most of us rely upon the PSLF help tool, the- that these statuses would be updated. I think that's a great addition. And also, though I do want to ask about- you know, part of my recommendation was also striking in the application process, so E11, just because, and I expressed this in my communication to the, to the rulemaking committee, but I do worry about sort of these bespoke communications. And I just wanted, you know, some thoughts from the Department. I realize this may be creating some belts and suspenders, which is probably always a good thing, additional notifications, but any of your thoughts about sort of the operational nature of how that would work? I just- one of the concerns I did have is we're going to have people who've applied or have gone through the certification process, and we can capture those, right? So the Department has that contact information. But then

there are others who mainly just look up the employer eligibility, and we won't know them, right? So that's something that's going to be an area, and I want to make sure that when we're communicating with borrowers, we're clear about where to go to find this out and not to rely upon notification, because the proactive notification may not capture everyone who's interested in this world. So I just wonder if you could offer some thoughts about how that would, how that would happen. And I worry about relying upon saying, oh, if something changes, you're going to get notified, when not everyone may be notified because we can't capture them. Anyway, just interested in your thoughts on that.

MS. ABERNATHY: Eric, may I take that?

ERIC: Please.

MS. ABERNATHY: You indicated a proposal-

FEMALE SPEAKER: Yes, I was going to-

MS. ABERNATHY: Oh, you guys are good. My goodness, mind meld here, or did you have something to do with that? We received a proposal last evening from Scott that- exactly what he just mentioned, striking number 11 on- I'm sorry, I don't have everything in front of me, so what would it be, I? E, yes, E11, and adding K, borrower notification of regained eligibility. We took

most of Scott's recommendation. We did not say once an organization, we said if an employee regains eligibility under paragraph J of this section, the Secretary shall update within 30 days of the qualifying- 30 days, the Qualifying Employer List, which is accessible to borrowers for the purposes of certification or application. So there's your 30 days that this- the, the database will be updated. So that will allow exactly- I think that will alleviate the concerns, Scott, that you presented to us about relying on a notification and still pointing our borrowers where they need to be to that PSLF help tool. That is their best source of information. That is the best way for them to submit their certification and their- you know, if it's an initial or whether it's a recertification, all of the current information and the processes and the belts and suspenders that we have will be there through that process. So we again, are notifying, we're not changing, the fact that, you know, there is notification there, but we're also saying within 30 days, the very tool that assists our borrowers with this process will indeed be updated to reflect.

ERIC: Yeah, and can I- ? And to your point, Scott, the- it would be both the, the searchable database that you don't log in under as well as within the login where the borrower is looking up their specific

circumstance. Also, to note, right, we will potentially have split eligibility as Mary Lyn was flagging yesterday where the borrower's certifying for a period of time at which they were eligible, that it was an eligible employer in the past, and the system already handles that today. We direct- we tell the borrower, hey, this is a split employment situation. Here's what that means. Here are the dates that are applicable to each employer or to the employer where they were eligible versus ineligible. And we would treat these ineligible organizations that are ineligible due to this reason, the same way where we would have a separate ineligible status. So we can say, hey, this is not something you can open a case on, because this is an organization that we have deemed ineligible due to what we're negotiating this week.

MS. WEISMAN: Scott, your card is still up. Does that finish your concern? And then, Tamy, the same with you.

MS. ABERNATHY: Actually, I need to follow up, okay? Please forgive our oversight. When we discussed this this morning, we did not- we have since changed it, but on the email that was sent to you, number 11 under E will- was not deleted. Was not marked for deletion. We are proposing to remove that and add K. And so we did not adequately present that in the materials

that you have. But what we have on the screen is what we are expecting you guys to look at. So the one change that we failed to do is to make sure to draw attention to 11 that has been since deleted, because we've replaced it with K with a new subsection. Okay.

ERIC: Thank you for that.

MS. WEISMAN: So we have a question next from Rebecca, and then to Mary Lyn.

MS. STANLEY: I have two questions, and you probably will be able to answer it. So right now, if I put in an employee for the state of South Carolina, multiple South Carolina agencies come up. But it just says state of South Carolina, usually. State of South Carolina, no address on file. State of South Carolina, state of South Carolina. Sometimes it'll have SCDNR or something like that. If by chance they can- if there would be an option where they could click on one- when you do, and it says no address on file, you go to that next field and you fill in the employer's address. Is that somewhere that they could then specify what department they're in? If that could be something that's already existing, it might be a helpful way to differentiate what department you're in.

ERIC: I guess my, my follow-up question is, do you mean just overall for any employer or

employers that we- ?

MS. STANLEY: For the employers that we're discussing with a shared EIN in that situation. Because my fear is like what you're saying, they're going to be put out there to- for you all to sort through and find out which ones are with the wrong organization. But if they didn't know and they just put State of South Carolina, then that's going to be very hard for y'all to differentiate, you know? So maybe if that next field where the address goes in, I don't know if that's somewhere that they could differentiate what department underneath, if it says this is a shared EIN.

ERIC: From, from a technical perspective, generally keying off address is not a great approach because you know, you might- borrower might type in Ninth Street, S-T-R-E-E_T, or Nine S-T. Although, you know, we- I know we have better technical tools than we did probably when I was still working in DB2. I- we could take a look. That's something we could take a look at.

MS. STANLEY: Yeah, I definitely don't think it should be differentiated by address.

ERIC: Yeah, we'll- we're going to- definitely once we have final rules, we'll, we'll take a look at what exactly makes sense.

MS. STANLEY: I just worry a little

bit about them getting still bogged into that unqualified employer and then having to do what you guys are trying to prevent them from doing is asking for a reconsideration or, you know, creating a backlog.

ERIC: Yeah. I mean, certainly if they choose and one of the employers that's not qualified, they could recertify with a qualifying employer instead of doing it.

MS. ABERNATHY: I would say that would be a correction and not a reconsideration. Yes. So I mean, if they've submitted it under the wrong EIN-

MS. STANLEY: No, no, no.

MS. ABERNATHY: Or the wrong- well, if they've submitted it. And that is, in my opinion, that is more of a correction than it would be requesting us a reconsideration for a qualifying employer, which we are not planning on doing. So they would submit.

MS. STANLEY: Yeah, I don't think I'm express- saying it clearly then, because the way it's set up now, if that was a shared EIN and one of the persons with that EIN are ineligible, then when I put it in there under that shared EIN, it's just going to go to your bucket of ineligible. How are you going to sort out and know that, that is somebody that's in an eligible department under that shared EIN?

ERIC: I am sorry, I- maybe I glanced over this too quickly. Within that process where we're working with the, with the employer on the corrective action plan, that's where we would be working with that specific employer if they are a shared EIN, so that we could break that employer out appropriately. Yeah.

MS. WEISMAN: We have Mary Lyn, and then Laurel.

MS. HAMMER: Thank you. I wanted to thank Scott for, for providing that language. I think it's important to have timely updates to the data. And I just want to say that I think that if borrowers are getting individual notifications of ineligibility, that it's equally important that we have a follow-up individual notification that it's been resolved because they may miss that and leave the employer based on the- that they still think there's a problem. And so I just wanted to say, I think it's equally important for the borrowers to have that follow-up, specifically.

MS. ABERNATHY: We would look at that sub-regulatory. We would not put that in the regulations. And so we will take that back and see what we can do to mitigate that. That's not something that we're going to put into the regulations.

MS. WEISMAN: Laurel?

MS. TAYLOR: So in the last, just from yesterday and today, we have received an outpouring of constituencies on the employer and on the employee side of public interest. And so I want to be really explicit about a throughline that we're having in the discussion here, which is, I think, obvious. But for those who are participating remotely, this may sound fairly technical, like we're very much in the technical detail of solving problems, operationalizing, solutioning, as we're also talking about commas and periods and language, that this is really in service of improving the borrower experience and borrower outcome. So we have part of the, the feedback that we've been given is- that I would like to address, is that it's sounding a little tone deaf the way that we're having the discussion, because it is more technical in orientation as we're here to solve problems together. And again, just making that explicit throughline that we are acknowledging, I believe acknowledging, the complexity of the systems and the deployment and the ease in which we can execute to reach these borrowers at a current 31% default rate. This is where part of this feedback is coming in, that it's so difficult today to understand what's happening. And part of that has been because of the nine-time boy who cried wolf. Right? Not having to enter into repayment for nine

periods and the 90-day sequence. And then also the volatility of Income Driven Repayment plans that have been taken on and off the shelf, and then waivers and different statuses and treatments. So I want to be of service to the constituencies that we're representing an employer and employee, to explicitly acknowledge that this is- the work of solutioning now, is to address that complexity and confusion, and attempt to simplify the process. I just want to make sure that, that does not get lost in the work that we're doing here at the table, for those who are remote or listening in to the discussion. So, thank you for the opportunity to address that.

MS. WEISMAN: Alyssa?

MS. DOBSON: I just want to say I appreciate this, this solution. I think it could potentially work well for borrowers who have maybe already submitted some, some years of service. My concern still lies with those individuals who- I imagine these events are going to be a little bit louder than, than Public Service Loan Forgiveness initially. And so I expect some borrowers to want to certify their years of service when they were eligible, and they haven't yet. And it's my understanding that this won't help them because they won't be able to submit the form because now they're in an ineligible status, that a paper form would

be their only recourse. It would- I would like to suggest perhaps a specific paper form for that purpose for, for prior years of eligible service.

MS. ABERNATHY: Eric has his hand up. We'll let him address that.

ERIC: Mike, can you pull up the first screenshot I provided to you? I'm going to show you how- what it looks like today. If a- when an employer has split eligibility, we do not prevent the certification from going through, we, we just will only- we will only request certification for the dates in which it was ineligible employer. So here- you can go ahead and just scroll down a little bit, Mike and then we're- we can see- first we're going to display the employer as split. So we- that we know that this particular employer has been- has some, some dates that are eligible, some dates that aren't eligible. Mike, if you could pull up the second from that same email. So then we display why is the employer split. And then a little further down, we- that's where we actually display the dates. And then we'll allow the borrower to proceed with the certification. In this situation, only for the second row. The first row, this is because- this is today, not how ineligible employers will work in the future. The second row then would potentially open up a case, if

appropriate, to determine if the employer dates are incorrect. But the- we don't prevent that certification from going through.

MS. ABERNATHY: Thank you. Eric.

MS. WEISMAN: Betsy?

MS. MAYOTTE: Quick PSA. I'm getting a bunch of messages from people saying they never got a link to today's recording. I mean, today's live feed. Some of them have figured out that yesterday's link works, but you may want to send the email out because apparently it didn't go out.

MS. ABERNATHY: Val, did you hear that? Margo heard it. We're good. Thank you.

MS. WEISMAN: Next, we have Laurel.

MS. TAYLOR: Thank you so much. I wanted to make a quick comment in response to the type of form that submitted a paper form or otherwise. As the Department continues to solve through systems technology, as a technology operator, I think it is absolutely essential that borrowers have access to the most modern systems available. The rest of the financial services industry is applying AI to automate and personalize to radically improve borrower outcomes, and particularly at the employer from a public private partnership perspective, there are providers like Candidly, that are

working with that employer to operationalize down to the employer and employee level, which is part of that 67% that we're recognizing that have not yet discovered the ability to get into the program. So I think it is very important that there is the opportunity for the private sector with zero taxpayer dollars to help reach and serve borrowers, and that we avoid trying to impose a specific form, paper form. Really, it's the outcome that we are optimizing for, which is to help the borrower get into these programs and to help the employer continue to retain their employees in public service as a result of the ability to return those outcomes. Thank you.

MS. WEISMAN: Tamy?

MS. ABERNATHY: Thank you for the continued suggestions about improvements and solution managing and things like that. We're going to circle back to this particular negotiations and focus more on some of the additional things that we need to get through on the red text today. Are there any other questions about the process or what we plan to do for the shared identification number for Eric, before we excuse him from the hot seat? Thank you, Eric, we appreciate you coming up and mitigating. It was excellent. See how great we work together as a team? So, Annmarie, I can go on with the proposals, if that's okay. So, Bob had submitted a

proposal. And in doing such, we've rejected the proposal that Bob submitted. But I do want to point your attention to the language in the standard on H, if my colleagues would share the screen, please. Because our color printer didn't work, I want to make sure that I get the exact what- we've changed from the first time we presented this to what we- what we're changing now. So the change from yesterday is that we have removed a preponderance of the evidence to a clear and convincing- to clear and convincing evidence. So we increased the burden of proof in H from that preponderance of evidence to clear and convincing. And that means the evidence is highly and substantially more likely to be true and untrue. This is substantially greater than a preponderance of evidence standard, which simply means that evidence is more likely to be true than not. I think I said and untrue, but- this burden of proof precedent in the Department as it is currently used- this is a burden of proof precedent that we currently use in our civil rights office already, so that it's not unrealistic that we would apply that particular standard here of evidence clear and convincing. So the change that we made in reference to Bob's proposal, rejecting his proposal but upping the clear and convincing burden of proof evidence here.

MS. WEISMAN: We have a question from

Kaity.

MS. MCNEILL: Just had a quick question about the use of clear and convincing evidence versus at the bottom of the paragraph where it says conclusive evidence. Is that sort of saying the same thing, or do we need to say clear and convincing and- in both (inaudible)?

MS. ABERNATHY: No. Those are two separate things. The conclusive evidence, if you will see enumerated by the romanettes one, two, and three, those are three things that are conclusive evidence that the employer engaged in a substantial illegal activity, whereas the Secretary determines in clear and convincing evidence after notice of comment, it's kind of- and of course, we also went on to say in activities that have a substantial illegal purpose, the materiality of the illegal activities or actions, and Jacob is going to rescue me with his lawyer-ease here. And I appreciate that. Yes, it is two different things, but he's going to explain it a lot better than I could.

MS. MCNEILL: Thank you.

MS. ABERNATHY: Thank God.

MR. LALLO: So yeah, the difference here is effectively this is a standard with two standards, I guess you could phrase it as. The conclusive

evidence effectively functions. That is a rebuttable presumption. If there is one of those enumerated things that basically gives us, in absence of proof that there's not something mitigating a judgment, a plea of guilt or an admission and a settlement that an organization or entity is engaged in an activity with a substantial legal purpose, that on its own would be enough evidence to surpass the clear and convincing bar. But if enough evidence can be produced, you know, in the alternative to show that something hadn't happened, that presumption can be rebutted by the organization. The clear and convincing evidence basically just increases the standard. We heard, you know, many comments that were concerned that basically we could be pulling in evidence that could just push it over a preponderance standard. The idea with clear and convincing is that we were raising that to a much higher level. I know that, like in some ways, you know, just looking at that, the change from preponderance to clear and convincing might not seem a particularly substantive change, but it has great legal meaning. You know, we usually describe it as, in shorthand, as, you know, 51% guilt or liability is a preponderance standard. Clear and convincing is more like 75 or 80. It's just shy of effectively a criminal standard, which is 95%. It's the same standard that's used for things like wills and

probate and conservatorships. It's used for things that are much more serious than just a civil matter. And while we think preponderance still works technically because this does fall within our civil administrative world, and we do use it in other things, we recognize the concerns here and, you know, want to be responsive to that. And we think that we can still accomplish our goals of, you know, administering this effectively within the clear and convincing standard and then with the rebuttable presumption. So we only now have that one standard. And I think that we should be really clear about how that works. And it's effectively clear and convincing. There's a rebuttable presumption that if there's conclusive evidence that in absence of anything else, those three things would demonstrate that there's a substantial legal purpose. But if an organization can provide mitigating evidence, it could push it below that bar, and then the organization would still be qualified.

MS. ABERNATHY: The only thing I would add, Kaity, is that this was a second proposal by Helen, Alyssa, Mary Lyn, April, and Sarah. And so what we've done is we've obviously changed to clear and convincing. So I just wanted to address the proposal that you submitted. Thank you.

MS. WEISMAN: Any further discussion?

I see no cards. Abby?

MS. SHAFROTH: Thank you. I just wanted to, to note that while clear and convincing standard is preferable to a preponderance of the evidence standard, it still doesn't address the concern that, that Bob raised and his proposal circulated last night that, that this still leaves the Secretary of Education to be determining whether a local or state government or nonprofit has violated immigration law, terrorism law, state medical laws, or a variety of other laws that the Secretary of Education doesn't have expertise in and hasn't been specifically authorized by Congress to adjudicate. It also leaves room for what I think a lot of our constituencies are concerned about, which is that the Secretary of Education might pursue novel legal theories for violations of law. So, for example, we know that the administration recently released a list of over 500 cities that they described as sanctuary cities and asserted a new theory that those cities are aiding and abetting violation of immigration law. No court has found that to be the case. And so it's not, not necessarily true that those, those cities are violating immigration law, but by giving the Secretary of Education authority to determine that they are, without a court finding, this would be dramatically expanding the power of the Federal

Government to, to make determinations of law and enforce penalties against states and local governments without court order.

MS. WEISMAN: Next, we have Bob.

MR. CAREY: So I appreciate the, the Department taking into consideration my various proposals. I'm, I'm relatively satisfied with, with, with this and addressing my concerns. I mean, the clear, convincing standard is pretty high. And I think while, you know, while any federal agency can try to bring forth novel legal standards in order to be able to adjudicate various issues, that's the process of government. And that's the process of policy. And, and the courts can adjudicate that. But a clear, convincing standard, I think, gives a lot of opportunity to currently qualifying employers to be able to push back and push back effectively. So- and this coupled with the other elements that you know, specifically state that it has to be a violation of law, state or federal law also, you know, alleviates a lot of my concerns. I mean, look, I don't understand why the Department has an Office of Civil Rights. You know, that's what the Department of Justice does, not the Department of Education. I- you know, from the logic of expanding their, expanding their power. I'd say get rid of that office, also. But, but then I'm a

pretty strict federalist, and I believe the states have ultimate authority to determine what is and is not constitutional by nullification or interposition. So, so-but, but I do appreciate the Department doing this, and it satisfied most of my concerns.

MS. WEISMAN: Jacob?

MR. LALLO: Yeah. Bob kind of hit on the point there at the end that I was going to make. But, you know, this is not a situation where the Secretary is suddenly in a position to make lasting final statements about everything. Yes, we do have the ability to determine certain things under, again, the broad rulemaking power delegated to the Secretary, but as an agency, any decision that we make is technically subject to judicial review. This is not a position where the Secretary can just use a bully pulpit to exclude organizations based on, you know, hypothetical novel legal theories. You know, indefinitely any organization that, you know, felt that it was unfairly excluded for one reason or another would still have its opportunity to challenge that decision in Federal Court. So I think it's important that we recognize that, like that is built into the Constitution, and it's just part of the procedure. And every- it accounts for every agency decision made by every other agency within the limits provided.

MS. WEISMAN: Mary Lyn?

MS. HAMMER: I just wanted to point out that some of the new language that we have to look at today includes, and you can correct me if I'm wrong, but it includes the intention of the Secretary to get an approved correction plan approved without any gap of eligibility. And I think that right- you know, that process is where evidence can be given to the Secretary to avoid those concerns. So I think you did a fabulous- I was so happy to see that, I just have to say. So I think that our concerns have been addressed.

MS. WEISMAN: Betsy?

MS. MAYOTTE: You know, it wouldn't be a neg reg if the word triad wasn't brought up. So for those of you playing neg reg Bingo, I'm giving you your triad. But no, it's- I'm not just bringing it up for- to get a cheap laugh. It's relevant here. Just like, you know, relying on the triad of oversight to determine whether an institution is eligible. I think we need to rely on a different sort of triad to ensure that employers are not doing bad things. And I don't think- you know, I think the Department of Education has a lot of experience and purview and authority to determine things under the broad higher education umbrella. I still remain very skeptical and concerned, especially with the

arbitrary aspect of it, but also because we're dealing with non-higher education things, like terrorism, and you know, the child trafficking and so on. So you know, I think the bullet points, you know romanettes one, two, and three, where the entities that do typically make those decisions are the ones making those decisions in a, in a non-arbitrary way, and in a way where there is a clear due process is appropriate. So I'm still very uncomfortable with each one.

MS. WEISMAN: And if I can just insert in there, for those who are not familiar with the triad, we may have some people watching who are not. It is the cooperation between the Federal Government, the state agency, as well as the accrediting agency. So I know Betsy has been playing neg reg bingo, and a lot of these themes come up many, many times. But I do want to acknowledge that there are people who may not be as familiar. And maybe Jacob, I stole your question. So you're up.

MR. LALLO: Noted. No, I actually just wanted to respond overall. You know, I think that's why- one, why we put the conclusive evidence in there. We feel that, you know, the clear and convincing evidence bar does increase it quite a bit. I would bristle a little bit at the characterization of any decisions made under

that as arbitrary. It's a very specific term with underlitigation under the APA that we've provided an opportunity for due process of consideration of evidence, and we've given far greater weight to, you know, decisions made by courts, tribunals, or again, in settlement agreements where an organization is making a statement against their own interest. Those- we put those bars in there, again, to ensure that, you know, those concerns are met and that this is not a black box procedure by which the Secretary can just knock organizations out. There's an opportunity to respond. All of that information that would be provided in there is inherently going to be, you know, (inaudible). It will be part of a public record. It's findable. This is not something that's going to be completely hidden from anybody, much less the organizations at play, who will have an opportunity to engage with us to rebut evidence, including evidence that has been put as of a- you know, guilty plea of a settlement or anything else. Yeah, and no loss of eligibility will occur until that procedure is completed. And as was pointed out, our goal is to not ever even get to that point. We would like to work with organizations through a corrective action plan. We'd like to fix this before- I mean, that's how the Department works in everything. I know, you know, we've talked about

how we use the clear and convincing standard in OCR, and I think when we were discussing this yesterday, I think it was mentioned that OCR has taken one case all the way through because it's almost always worked out in a settlement process, and that's really the way we like to work. It's why we're doing neg reg today. We want to work collaboratively with everybody involved, and we don't anticipate this process being any different.

MS. WEISMAN: Betsy, did you have a follow up?

MS. MAYOTTE: I just wanted to clarify, I didn't, I didn't- and if I said it this way, I didn't intend to, that the decision would be arbitrary, but the choice of which employers would be looked at. You know, and I'm dovetailing on Abby's prior comment about the- you know, the list of cities that have come out. And the clear and convincing, I still argue that if it's not under the higher umbrella, it's not the Department of Education's expertise to be making a decision about things like terrorism and so on, which is why, you know, romanettes one, two, and three, I can live with that. To put it maybe a little crassly, I think you're a little out of your sandbox with those.

MS. WEISMAN: Jacob?

MR. LALLO: Just in a quick response,

you know, I the reason we do it the way we do it, or we're proposing to do it the way we do it is because, you know, under the APA and, you know, the way agencies work in general, we are, you know, delegated power by Congress. We can't delegate that to third parties. So we still have to have, you know, our own procedures and operations. We can't just look at a court's finding of things and- you know, again, this falls under our broad rulemaking power. It's a program that we administer. And while we acknowledge the importance of other procedures or other tribunals and their expertise over these issues, we are reliant on those as evidence, and we are taking that into account within the process that we have.

MS. WEISMAN: Tamy? I think- we do have- I'm sorry, Abby has her card up.

MS. SHAFROTH: Thank you. So I, I totally understand and appreciate the point that an employer can, can challenge in court, can bring suit against the Department. Based on the, the Department's determination that they've violated state law on medical treatment or immigration, immigration or terrorism law, etc. Employers can, can do that, but it's expensive. Not every employer is, is able to, to muster the resources to, to sue the Federal Government. It's slow. Litigation is slow and takes time. And in the meantime, the damage

is often already done, because this is an instance where the Department punishes first, and then we have a court decision later. You can imagine, again, taking an example of City of Boston. The Department determines that its sanctuary city policies violate state immigration law and makes it a non-qualifying employer. All of the thousands of teachers, police officers, sanitation workers, civil engineers, etc. across the City of Boston lose their PSLF status. And as a result, employees leave and new potential employees, new teachers, new police officers. They take jobs in the neighboring suburbs that haven't lost their PSLF status, because it essentially means that they're making something like \$6,000 a year more. So that's already dramatically damaged, not just the, the employees and the City of Boston, but the people of that city. You know, the students in those schools, the people living in the communities who don't have a fully staffed police force or fire department. There's a lot of potential damage and danger in this proposal. And that's why I don't feel sort of my, my concerns are not put to rest by the fact that there can be subsequent litigation by the employer, because the damage at that point is often already done.

MS. WEISMAN: I see no other cards.

Tamy, do you have remarks or would you like to move to

pulse check?

MS. ABERNATHY: Oh, I don't have any remarks. I think we need to go to the caucus. I believe what we said we would do is to just get through the proposals. The one other thing that I want to mention is, Heather, I want to go back to your question yesterday or your comment. We obviously- there is not one thing we can do when the statute dictates that a qualifying employer is necessary for PSLF. But I thought about it, and I thought the only thing that we could offer and it's completely out of our purview, but perhaps it would be an interest of Vanderbilt and other institutions that have relationships with these hospitals to explain to these hospitals what is going on, that these are new rules that are being promulgated by the Department of Education. There's a possibility that should- again, it would have to be a finding, a court finding would have to be all that we've discussed under, under the standard at this point. But maybe we could, could ask those entities to reevaluate current contracts, or at least going forward, have language put into the contract that says should the employer lose eligibility as a qualifying employer, we'd be able to either renegotiate the contract or have a contract termination so that the student, the doctor, could at least have some out in those instances. Because

it's beyond our purview, we can't dictate anything like that. But I did not want you to think that we did not go back and try every way possible. But we are held to the statute that they have to be a qualifying employer. So that's not- that's the best answer we could give you. Thank you.

MS. WEISMAN: Okay. So to move to our caucus. Oh, I'm sorry, Emeka.

MR. OGUH: So Tamy, Jeff, and Jacob, really appreciate again, you're hearing our arguments and the flexibility in the in the policy documents. I did have a question specifically because this was something that we had caucused yesterday about around the EIN, and I saw the language in here, and we appreciate that. Just particularly, it says the Secretary may, in the event an employer's operating under a shared identification number or unique identifier, consider the organization to be separate for the purposes of determining whether an employer is eligible. I just want to talk about that word may, right? And obviously there's a- Jacob, you brought some language before about 51% versus 75%. Obviously, may gives, you know, a little bit of subjectivity to it. Is there an opportunity there to strengthen that a little bit, to talk about the spirit of what we all discussed here, which is you know, expected to should, you know,

sort of change may to that? Because that's the intent, right? We know that there are going to be some situations where she may not. But is there a chance to upgrade that word may to is expected to? Which is, I think the expectation of all of us in the room is that in that multiple EIN situation, they will look at that separately and there won't be situations where it's subjective here versus not so. Thank you.

MS. ABERNATHY: We would like to talk about that when we go back. So thank you for bringing that up. We will look at that while you all are caucusing. Thank you.

MS. WEISMAN: And now I'm seeing no card. We have a card? Helen?

MS. FAITH: So before we caucus, I wonder if we could just briefly, especially since we have a lot of new folks around the table, just briefly walk through what the consensus process looks like. Sort of step by step that we'll be going through, I think that might help us as well.

MS. WEISMAN: Sure. Since Mary Lyn had asked for the caucus, would you like to do that caucus first, or would you, would you be okay with me outlining that first?

MS. HAMMER: That was part of what I

was going to talk about in the caucus.

MS. WEISMAN: Would you rather have me walk through that though first, or would you rather have your discussion in advance?

MS. ABERNATHY: I think it would be appropriate to go to the caucus. And then as we get closer to- after we've gone through and done pulse checks, because we haven't even done that yet, as part of that, maybe the pulse checks, you can kind of explain the difference between the pulse check and then what will happen when we are going for consensus.

MS. WEISMAN: I'm trying to, to bridge the gap here and make sure I'm meeting the needs of Helen and Mary Lyn, and that we're doing this in a way that makes sense, uses the time well. Mary Lyn, you asked for the caucus originally. So I want to make sure we're, we're getting in what you were asking for.

MS. HAMMER: Yeah. I mean, if, if people still have questions about it after the caucus-

MS. WEISMAN: Okay.

MS. HAMMER: -then- I just want to get us together as a team.

MS. WEISMAN: Okay. Helen, does that work for you? Okay. Thank you very much. Just to confirm, the caucus is the non-Federal negotiators, which means

that non-Federal negotiators will stay here in this room. The production team will stop the live stream, but remain in the room in the back, not participate in the discussion. All others in the room will leave. And you said you wanted ten minutes? We'll send someone back in just to make sure you're- you've wrapped it up. If you need a couple more minutes, that's fine, but let us know. And I would expect we'd be back then in 10 to 15 at the most.

MR. ANDRADE: Mary Lyn, do you want Anmarie to stay here as a resource?

MS. HAMMER: Yeah. I would love for her to stay here.

MS. WEISMAN: Okay. Welcome back. We have concluded the non-Federal negotiator caucus. We covered some good ground, and we'll have a report on that shortly. The team has asked for a break. We've been going strong this morning and the caucus was, was certainly not a break. We did some good work there. Right now it is 10:35. So let's aim to come back at 10:45. Welcome back from our break, everyone. As we had discussed, we would like to do a report out from the caucus. If I could get a volunteer to do that. Mary Lyn?

MS. HAMMER: So we- I believe we had a successful caucus and, and just we, we covered the whole

process of negotiated rulemaking when it started and, and why it was brought about and the focus of what we were supposed to do during the negotiations. And, and then defining what, you know, the, the ultimate outcome is that we all want while also maintaining our proper representation of whoever nominated us to be here. And so I think just having a greater understanding, especially for those who haven't gone through this process before, was super important. And so I appreciate being given the opportunity for us to talk through that as, as negotiators. So, thank you.

MS. WEISMAN: So I'd like to do the pulse check, seeing no other cards. Tamy, did you have anything you wanted to review before we start those?

MS. ABERNATHY: The only thing I would like to say is, we did take Emeka's suggestion and we'll get to that language. We tweaked it slightly for clarity purposes as well. So we are changing the word may to shall. And we are- we just tweaked it slightly to make it a bit more understandable. The other thing is we've had 14 substantive changes since we started- when, when we started with this proposed regulatory language. Because of the activity around the table, the conversations we've heard you, 14 substantive changes. I think that is something for us to give each other a hand on. So as we

go through the subsections, prepare, you know, the, the lowercase alphas, we're going to start with, with that, and Annmarie will walk us through all of that. But thank you for allowing us to present our language and working with us to get to where we are. We feel like we have presented the best possible outcome to this committee for review on pulse checks, and we look forward to seeing the rest of what's going to happen in the next few minutes. So, thank you.

MS. WEISMAN: So just a reminder, these are pulse checks. So, on a pulse check, we are trying to get a sense of tentative agreement. This does not mean that this is your final way to speak on this topic. We will have a consensus check, I would anticipate later this afternoon. But for right now, we'd like to see where we have some basic agreement, where we may still need work to tweak language, where people might still have suggestions or points of disagreement. So the way we're going to do these is there will be three options. The first option is if you can support the proposal. And again, it's just going to be by piece. So Tamy will announce each item just to make it really clear which one we are taking this pulse check on. You can either have your thumb up to say that you support it. And when I say you, this would be the primary members, or in the case

that your primary is absent, then it would be the alternate. Thumbs up, you support it. Thumb to the side, you're not sure or you're kind of lukewarm on it. Thumb down, you disagree. And if it were a proposal that we were looking at for consensus, you would at that- you would be saying your intention is to block. Is that clear? Okay, Tamy, let's start with our first one. Also, I would just let you know that I'm going to be recording each response. So it may take me just a little bit to type them in. If you're wondering why we're waiting. It's likely that you'll be waiting for me. Yes, Betsy?

MS. MAYOTTE: I think I know the answer, but one never wants to assume because it's been different at every neg reg. Is this an all-or-nothing consensus, or is it possible for a partial consensus?

MS. WEISMAN: This is an all-or-nothing. So when we do the consensus check- no, it's an excellent question. I was going to cover that later. But yes, it is all or nothing. When we do the consensus check, we'll be really clear about that as well, that here for the pulse checks we're going section by section. But at that time, it will, it will really be one consensus check we're looking for, do you agree on the package? Thank you. Tamy?

MS. ABERNATHY: There are 35

definitions. So in subsection B definitions, there are 35 of them. I would hope we don't have to sit here and read every single one of them. But what we can do is make sure that had there been any changes- this is just about the definitions and the paragraph restructuring. So we're not really going to spend a lot of time on that. We're going to dive into the actual subsections C, D, E, and all of that. So any- Annmarie, I think you should just go ahead and do the pulse check on that.

MS. WEISMAN: I'm just- I need to make a couple of notes. We have two alternates at the table, so I need to make sure I have their names recorded.

MS. ABERNATHY: Absolutely. And I would point out while you're doing that, on 17, you'll see yesterday where we added to that or any other Federal Immigration Laws at your, at your request or your recommendation.

MS. WEISMAN: Okay then let's begin our pulse check on B definitions. Again, if I can see thumbs up, thumbs to the middle, or thumbs down. And I'm going to be looking going in this direction and around. We have a question first from Alyssa.

MS. DOBSON: I'm just questioning what all that includes under B. Yeah. Yeah.

MS. ABERNATHY: So each provision with

its discrete number. So it would be all of the definitions. Or do we just want to say the definitions restructuring? No, it's all of the definitions. So every term- discrete term that has a number beside it is its discrete definition. All the romanettes underneath it and everything.

MR. ANDRADE: So, B1 through 35.

MS. ABERNATHY: B1 through 35.

MS. WEISMAN: Robert has a question.

MR. ANDRADE: We can, we can go through it slower.

MS. ABERNATHY: I mean, we can go through-

MR. CAREY: I think you'll get more consensus on more of the sub definitions if you, if you let people talk about specific sub definitions, having all-

MS. ABERNATHY: I mean, I can go through it one by one if you want.

MR. CAREY: (inaudible)

MS. ABERNATHY: All right.

MR. CAREY: Just, just let people do it by, by exception. Like, you know.

MS. ABERNATHY: We'll do it. We'll do it in order. B definitions. The following definitions

apply to this section. One, aiding or abetting has the same meaning as defined under 18 U.S.C. Code 2. Do we have to talk about every single one, or are we going to-?

MS. WEISMAN: Only by exception if people-

MS. ABERNATHY: Got it. Two, AmeriCorps. All we're doing is a paragraph restructuring there. New definition on number three. Chemical castration or mutilation means romanettes one the use of puberty blockers, including GnRH agonists and other interventions to delay the onset of progression of normally-timed puberty in an individual who does not identify as his or her sex. And romanettes two the use of sex hormones such as androgen blockers, estrogen, progesterone, or testosterone to align an individual's physical appearance with an identity that differs from his or her sex. Four, child or children, for the sole and specific purpose of this section-

MS. WEISMAN: Okay. I think there was a little confusion. Right now we're just reading through these. We're not taking individual checks on each one, it's just to get through them. If you would like to do individual checks on each item, each definition, we can do that once she reads through all of them.

MS. ABERNATHY: Child or children, for

the sole and specific purpose of this section means an individual or individuals under 19 years of age. Nothing to five, nothing to six, nothing to seven, nothing to eight, nine. Ten, foreign terrorist organizations mean, mean organizations on the list published under paragraph (a)(2) capital A romanettes two under the Immigration and Nationality Act of 8 U.S.C. Code 1189. Give me a second. My cursor jumped. (inaudible) time. No definition. Twelve, illegal discrimination means a violation of any federal discrimination law, including, but not limited to, the Civil Rights Act of 1964 42 U.S.C. 1981 et sequence Americans with Disabilities Act, 42 U.S.C. 12101 et sequence, and the Age Discrimination and Employment Act of 1967 29 U.S.C. Code 621 et sequence. Thirteen, law enforcement no change, no change to 14, military service. Fifteen, non-governmental public service 16, non-tenure track employment. Seventeen, other Federal Immigration Laws mean any violation of the Immigration and Nationality Act, 8 U.S.C. Code 1105 et sequence, or any other Federal Immigration Laws. Eighteen, other school-based service. Nineteen, Peace Corps position. Twenty, public education service. Twenty-one, public health. Twenty-two, Public Interest Law. Twenty-three, public library service. Twenty-four, public safety service. Twenty-five, public service for

individuals with disabilities. Twenty-six, public service for the elderly. Twenty-seven, qualifying employer means romanettes one capital A, a United States-based Federal, state, local or tribal government organization, agency or entity including- I don't think I have to read all of that because none of that- all of, all of the qualifying employer stays the same until and romanettes two. This does not include organizations that engage in activities that have a substantial illegal purpose, as defined in the section. Twenty-eight, Qualifying Repayment Plan. Twenty-nine, school library services. Thirty, substantial illegal purpose means one romanettes one aiding or abetting violations of U.S.C. Code 1325 or other Federal Immigration Laws. Romanettes two, supporting terrorism, including by facilitating funding to, or the operations of cartels designated as foreign terrorist organizations consistent with 8 U.S.C. 1189, or by engaging in violence for the purposes of obstructing or influencing Federal Government policy. Romanettes three, engaging in the chemical and surgical castration or mutilation of children in violation of Federal or State Law. Romanettes four, engaging in the trafficking of children to states for purposes of emancipation from their lawful parents, in violation of Federal or State Law. Romanettes five, engaging in a pattern of aiding and abetting illegal

discrimination or engaging in a pattern of violating state laws, as defined in paragraph 34 of this subsection. Thirty-one, surgical castration or mutilation means surgical procedures that attempt to transform an individual's physical appearance to align with an identity that differs from his or her sex, or that attempt to alter or remove an individual's sexual organs to minimize or destroy their natural biological functions. Thirty-two, terrorism is defined under the Crimes and Criminal Procedure 18 U.S.C. Code 2331. Trafficking means supporting a child or children from their state of legal residence to another state without permission or legal consent from the parent or legal guardian for the purposes of emancipation from their lawful parents or legal guardian in violation of applicable law. Thirty-four, violating state law means a final non-default judgment by a state court of romanettes one, trespassing, romanettes two, disorderly conduct, romanettes three, public nuisance, romanettes four, vandalism, or romanettes five, obstruction of highways. And 35, violence for the purpose of obstructing or influencing Federal Government policy means violating any part of 18 U.S.C.- U.S.C. Code 1501 (inaudible) sequence by committing a crime of violence as defined under 18 U.S.C. Code 16.

MS. WEISMAN: Okay. What I'd like to do is to start broad and then go narrow. So if we can broadly say just to get the pulse check on where we are with all of the definitions combined in there, in their totality, if I could see thumbs, either thumbs up, in the middle, or down. Keep those thumbs up for me, please. Okay. Thank you very much. For anyone who had their thumb down, and I believe that was just Alyssa, do you have anything that you can share to say what you'd prefer to see?

MS. DOBSON: Sure. So I really only have one issue, and that is number four, defining children as under 19 years of age. For my constituents, that, that removes too much agency for my folks who have reached the age of majority. I think an easy fix would be maybe we don't even need to define child if we substituted the word minor wherever a child or children is used. You know, I just, I think it's just- it's too much for me to agree to.

MS. WEISMAN: Does the Department have a response? Jeff?

MR. ANDRADE: I think we have to keep in mind on this standard as compared to maybe other instances where the age or age limits are used, that this is a standard that is designed to protect children with

regard to medical procedures. And when you look at other instances in the healthcare field, for instance, the Affordable Care Act, keeps individuals on their parents' health care plans until age 26. Tobacco products can only be purchased by people over the age of 21 and over. So these are instances- again, this is, this is designed to protect children from irreversible medical procedures and very strong drugs and chemicals.

MS. WEISMAN: For those who had their thumbs in the middle. Is there anything that you'd like to mention that you'd like to see different that would put your thumb up? Or are you comfortably in the middle? Betsy?

MS. MAYOTTE: So, we had three that made us (makes sound) instead of (makes sound) or (makes sound). One is Alyssa, and I won't re-articulate it. Pretty much exactly what she said. The other is under 27, we maintain that the definitions should at best include only non- 501(c)(3) nonprofits. So if it were- if that definition were to exclude government or 501(c)(3)s, we would- the thumb would tick. And then under 30, as Abby has articulated previously, we remain very concerned about the fact that discrimination is listed under 30. We find that very problematic for several reasons, and I won't rehash her entire argument that she gave before,

but, you know, it seems counterproductive and unfair. I mean an organization can be- you know, have instances of discrimination but still be providing a public service. For example, I'll use the example of a fire department. You know, ideally they would not be engaging in discriminatory practices, but they're providing arguably one of, the one of the most important public services, which is to, you know, save people and property from fires. So those are our three why we're in the middle.

MS. WEISMAN: Does the Department have a response to any of that? Not required, just- okay.

MS. ABERNATHY: No.

MS. WEISMAN: Anyone else who had their thumb in the middle that has a different issue that had not been expressed? Faisal?

MR. SULMAN: I just want to say same reason, same sections that Betsy mentioned. Although slightly understand the Department's rationale regarding section 30 in that, like, you have this rebuttable presumption or rebuttable argument by the courts and further fleshing out the process, but still qualms exist.

MS. WEISMAN: Betsy, just for awareness, your mic is open. Anything else on definitions before we move on? Then we'll go to C for borrower eligibility. Tamy, do you want to give just a very quick

recap of C?

MS. ABERNATHY: We have added except as provided in paragraph C4 of this section, a borrower will be considered to have made monthly payments under paragraph (c)(1)(iii) of this section by. So basically the recap is we're clarifying what would count as a qualifying payment when an agency or the employer has been deemed unqualifying. So we're just clarifying that there.

MS. WEISMAN: Any questions about C before we do a pulse check? Okay, then let's see thumbs. Up, side, or down. Alex, it looks like you're the only one that is at the side. Is there anything that you would like to mention that would make you support this proposal more strongly? Okay. Thank you. I believe there's no D. So we are then on to E, application process.

MS. ABERNATHY: Forgive me, Committee. I forgot four under that as well. So four was under, I just missed it. So excuse me. Under C, we added what we added in two. And then in number four, we talked about effectuating on- effective on or after July 1, 2026, through a standard as described in section- in subsection H of this section, no payment shall be credited as a qualifying payment for any month subsequent to the determination that a qualifying employer engaged in

activities that have a substantial illegal purpose, as described in this section. So I'm sorry, I think we have to redo that. I apologize. Sorry, Committee.

MS. WEISMAN: Okay. Given the addition that Tamy just made, we're going to look at C again. If we could please do thumbs up, to the side, or down. So we're looking at all of C, not just four. This is a- we'll just say this is a redo. Okay, we have tentative agreement on borrower eligibility. I believe next we have E, application process. Tamy, would you go through that?

MS. ABERNATHY: Subsection E, application process. We've added a 9, a 10, and we've removed 11. And we've made a subsection K on that, that we'll get to later. If the Secretary has notified the employer that they may be an ineligible employer under subsection H of this section, the Secretary notifies the borrower of the employer's status. Ten, if the Secretary has determined that the employer is no longer a qualifying employer under subsection H of this section, the Secretary notifies the borrower of the employer's status.

MS. WEISMAN: I don't see any questions. Emeka?

MS. ABERNATHY: I did say that earlier. I'm sorry if it's not on your written word. It

is showing on my screen, which is what should be up on the screen here. So for the purposes of the consent pulse checks, please make sure you're referring to the screen share so that you're seeing the latest. But yeah it, it is struck out. I'm sorry if that- because we added subsection K.

MS. WEISMAN: Emeka, if you could make sure you use your microphone so they can hear you.

MR. OGUH: Yeah. Just- you said you moved to another subsection. Okay.

MS. ABERNATHY: We took Scott's language in his proposal and made it its separate subsection K, tweaking it slightly.

MR. OGUH: Thank you.

MS. ABERNATHY: Yes, sir.

MS. WEISMAN: Okay. So let's do a check for borrower process, E. So we have Emeka in the middle. Is there anything we could do that would change that to a thumb up?

MR. OGUH: Yeah, I think I just need to- just more time to digest this thing. I don't have any questions right now.

MS. WEISMAN: So I believe there is no F and that we go right to G, borrower reconsideration process. Tamy, do you want to outline those changes?

MS. ABERNATHY: In G, borrower reconsideration process we've added seven, notwithstanding, paragraph (g)(1) of this section, a borrower may not request reconsideration under this subsection G based on the Secretary's determination that the organization lost its status as a qualifying employer due to engaging in activities that have a substantial illegal purpose under the standard described in subsection H of this section.

MS. WEISMAN: I don't see any questions, so let's go ahead with the pulse check for G borrower reconsideration. Okay, I see two with thumbs to the side. If either of you have anything you'd like to share that would shift that to a more positive for you, you're welcome to do so. Not required, but welcome to. Alyssa?

MS. DOBSON: I'm not saying that I wouldn't give consensus. It's just I think it's tied too closely to age. I mean, it references age- that it's hard for me to give any determination without also considering that.

MS. WEISMAN: Okay, let's move on to H. H is the standard for determining a qualified employer engaged in activities that have a substantial illegal purpose. Tamy, do you want to outline that?

MS. ABERNATHY: Yes. Let me adjust my screen slightly so I can (inaudible). This is the standard for determining a qualifying employer engaged in activities that have a substantial illegal purpose. One, the Secretary determines by a- by clear and convincing evidence, and after notice and opportunity to respond, that a qualifying employer has engaged on or after July 1, 2026, in activities that have a substantial illegal purpose by considering the materiality of any illegal activities or actions, by gauging both frequency or severity, and will not find that the organization has, has a substantial illegal purpose if it has only engaged in illegal activities or actions that are minor or purely technical. In making such determination, the Secretary shall presume that any of the following is conclusive evidence that the employer engaged in activities that have a substantial illegal purpose. One, final judgment by a State or Federal Court, whereby the employer is found to have engaged in activities that have substantial illegal purpose. Romanette two, a plea of guilty or nolo contendere, whereby the employer admits to have engaged in activities that have substantial illegal purpose, or pleads nolo contendere to allegations that the employer engaged in activities that have a substantial illegal purpose, or a settlement that includes admission by the

employer that it engaged in activities that have a substantial illegal purpose, described in subsection, subsection H of this section, and, two, nothing in this subsection shall be construed to authorize the Secretary to determine an employer has a substantial illegal purpose based upon the employer or its employees exercising their First Amendment protected rights. I would like to state here that if you look at number one, we have changed to clear and convincing. We have made sure that we have provided notice and opportunity to respond. We have indicated that the qualifying employer is a prospective approach, meaning it is on or after July 1, 2026. We have stated that the illegal substantial purpose is by considering materiality or any other illegal activities. And we're gauging both frequency and severity, and we will not find the organization has a substantial illegal purpose if it is only engaged in illegal activities or actions that are minor or purely technical. So the reason I bring those points out is we have made considerable efforts to capture the discussions around the table to give ultimate deference to exactly what you guys have wanted us to do, and this is what we have come up with. We further made sure that we protected the First Amendment rights to not violate any agency in that regard.

MS. WEISMAN: I see no questions. So let's do the pulse check for H. Okay, I see only one thumb down. That is Betsy. Betsy, would you like to talk about what you would prefer to see here?

MS. MAYOTTE: Yes. Thank you. So I'm not going to rehash everything that I've said over the past couple of days. I know, disappointed. But, you know, the two primary concerns are, while we appreciate that you clarified that it would, you know, be on- or it would not be retroactive, what it doesn't clarify is that the actions or evidence that's being used isn't from- you know, it could be from 20 years ago. But again, the primary issue here is number one, we, we, we remain steadfast in that we don't- we think it is out of the Secretary's wheelhouse to be determining if an entity has been engaged in illegal, substantial illegal activities under the, the definitions that we- that are listed.

MS. ABERNATHY: So, Betsy, to your first point, we are looking at a qualifying employer who has engaged in activity on or after July 1. Nothing prior to July 1, 2026, is considered. So to mitigate your first concern, that is how- while it isn't retroactive, we're also not looking back at 20 years ago. This is a new provision of qualifying employer that we're looking day forward, from July 1, 2026, forward, if the employer at

that point engages in a substantial illegal activity. So just want to point that out in case that does clarify that for you. Additionally, I forgot the other thing I was going to say. We are going to say again that we do have a basis and authority to do what we are doing here and by, by doing such, and by the way that we have crafted this to where we are not looking at minor or technical infarctions or anything like that, we are looking at when an employer has committed an illegal, substantive, illegal activity purpose. We're looking first to make sure that there is either a final judgment, that the State or the Federal Court- there has to be something that they have done with that- they have been a- final information on that. If we don't have that, and there's clear and convincing evidence as- and you've heard us talk about that earlier, we're also giving a notice and comment. We're also engaging with the employer to see what we can do to make sure that that eligibility- that we don't have a final determination. So we're doing everything we can up to the point of making a final determination to give that employer a way to say, okay, we're not going to do that, we have a corrective action plan. Borrowers are not penalized when this is going on. We're looking for final determination as the outcome. But we have to give the Secretary- we have to have the

ability to do what we are doing here. And the only way that we can do it- we've gone as far as we can go with this, and this is the best that we can offer the committee.

MS. MAYOTTE: I would just respond that I think you can still do those things but allow a judicial body to actually be able to make the decision. We- I can live with romanettes one, two, and three. And, you know, to be clear- I am going to stop right now. I'll leave it at that. But I- you know, I won't repeat myself anymore.

MR. ANDRADE: All right. I'll let Jacob jump in on this. Again, I think we said we can't delegate our decision-making authority to someone else. In this case, I think the law, the case law is pretty clear. And I know you're going to say you don't, you don't agree, and that's, and that's fine. That's the position. But I will reiterate, you know, we, we spent a lot of time before we came into this trying to propose something that was going to be viewed as reasonable and negotiable. This- and I'll reiterate what Tamy just said, this is the best and final offer on this. You will not see this deal again on this. And so if you want to abstain on it, I mean, we- we've, we've worked very hard, but we can't go any further on this. We can't go from we

believe we have the authority, and we clearly have a disagreement on, on that, but we can't go any further on this. This deal goes away if we don't reach consensus.

MR. LALLO: Just to respond to your point about delegation, and I think that was- it wasn't on the record. So I'll just clarify on the record we were discussing about how debarment is handled and how that- the Department of Education plays into that. And the delegation of authority within that. Debarment lives in a completely separate bucket from everything else. The entire government handles debarment kind of in a pool. We name people to be debarred, and then they report people who've been debarred to us. It's not really a true delegation of power. It's all just kind of a circular thing that the entire government processes and, and moreover, it's very clearly spelled out in statute how debarment works and how it is utilized. The APA is very clear that we only have the powers that are granted to us by Congress, which include regulation and administration of the PSLF program. We do not have the authority to delegate to another agency, or to a court, or any third party, unless specifically laid out by statute. And so it's necessary for us to retain some form of independent judgment- or judgment-making inside the Department of Education to let the Secretary who's entrusted again with

overseeing and administering this program, to handle this process internally. And while we can consider evidence that's produced by other agencies, and we really want to put heavy weight on that. Again, that's why we created this rebuttable presumption. We want to, in most cases and really when at all possible, use the information that's produced and adjudicated in courts which, you know, I think provides a very clear basis for things. We do still need to retain some independent decision-making process. You know, in recognition of the concerns expressed by the committee and in the public comment, we've increased the bar to a clear and convincing bar that's a much higher standard than a preponderance standard. And I think, as Jeff said, this is a pretty good deal as far as we're concerned.

MS. WEISMAN: Faisal, you had a comment.

MR. LALLO: Yeah, just a question. I understand the whole not being able to delegate and looking internally and having the Secretary do it, but would, would a, would a middle ground of, of the two thoughts between the Department and Betsy be like something of an internal tribunal composed of the Secretary, maybe like an internal council of sorts? Or you're just, just floating the thought of you still

keeping the-

MR. ANDRADE: The Secretary is the tribunal, as- I mean, in any adjudication we make, it's either a designated Federal official or the Secretary, depending on how the appeal process works on that. So you know, I, I think it accomplishes the same, the same thing. Because generally speaking, the Secretary is, is looking at the case and the facts as laid out by department staff, you know, along with, along with the recommendation typically, so.

MS. WEISMAN: Mary Lyn, and then Betsy.

MS. HAMMER: I just want to point out that there is the process of an approved correction plan, and that is where the negotiation happens for the employers to get past this. So, you know, if you're only looking at this without considering that, I understand where you're coming from, but there are processes for them to get through this without having any gaps in eligibility.

MS. WEISMAN: Betsy?

MS. MAYOTTE: I'm hearing- picking up what you're putting down. And so I think it just might be- just so everybody understands the, the entire decision here. We remain firmly convinced that the

proposal as a whole and the ability of the Department of Education to exclude specifically government and 501(c)(3) is unlawful. But, you know, this is not my first neg reg. I love neg reg. And I appreciate a good compromise, and I'm not- I know I'm sounding flippant, and I do not intend to. I take this very seriously. And so I thought long and hard about this and talked robustly with my constituency and our compromise, which would, would be a very big concession on our part, because we don't believe the thing is lawful to begin with, would be if H1 was excluded, which is what you just said was a (inaudible) but maybe I just changed your mind. So that, that is- that's sort of where we're at. We would consider that an enormous concession. And to respond to your explanation about why you feel you need this, I think you- the Secretary, still has the ability to, you know, properly administer the program with romanettes one, two, and three. You know, if you find evidence that you feel an employer is, is engaging in illegal activities, you can certainly pick up the phone and call somebody to investigate it outside of your agency. And if there's a settlement or, you know, other type of agreement then, you know, you still have romanettes one, two, and three, you can exclude them from PSLF. But anyway, bottom line is, in the interest of compromise, we would be willing to

come to consensus, despite the fact that we feel very strongly that the proposal is unlawful if H1 was struck. And in all our other things that we've already listed, we would also be willing to concede on those.

MS. WEISMAN: Jacob, and then Jeff.

MR. LALLO: So I'm not going to presuppose the decisions of policy, so I just respond to a couple of the points here. So all the romanettes are directly tied to H1. There's no separating them as currently written. The romanettes are, by definition, subordinate to H1. I think to your point that we could just pick up the phone and call somebody else. I don't think that's within our (inaudible). We are charged with administering the program. I think, you know, we have to do that efficiently and effectively. And as we've stated repeatedly, you know, while there is sometimes, you know, overlapping jurisdiction, and so far as the IRS is looking at their own thing, 501(c)(3), which again, very separate from what we're doing. And while that does interplay with us a little bit, you know, they have their own processes. It takes a long time, and they have a lot of stuff to do as well. We need the ability to act, and we want to be able to work with organizations to, you know, come to a corrective action plan with us. If, by your proposal, we would just tell the IRS and hope the

IRS kicks them out of 501(c)(3), then they're not a qualifying employer. There's no way to bring them back in line. And we want to do this in a way that doesn't harm them or, you know- it allows them and the borrowers to stay within the program. But there's not a corrective action plan process.

MS. WEISMAN: Jeff, Mary Lyn, and then Tamy. Tamy, would you like to take Jeff's space?

MS. ABERNATHY: We would like to call a caucus with Mary Lyn, Betsy, and Alyssa, please. And Tracy, excuse me. School people. That's fine.

MS. WEISMAN: Okay, so we've got, again-

MALE SPEAKER: We'll do it in the, in the green room.

MS. ABERNATHY: Mary Lyn, Alyssa, Tracy, Betsy. So it would be Abby, it would be April, it would be Helen, and, and Jeff, you also want Heather and Todd, correct?

MR. ANDRADE: Yeah, I'm sorry.

MS. ABERNATHY: And Heather and Todd. And Kaity.

MS. WEISMAN: I have eight people, so I think I'm missing some.

MS. ABERNATHY: Okay, y'all stand up.

Hold your hands who's coming to the caucus. Ready? We have Kaity, Heather, Todd, Tracy, Alyssa, Helen, April, Mary Lyn, Abby, and Betsy.

MS. WEISMAN: And from the Department?

MS. ABERNATHY: Myself, Jacob, and Jeff. And John Houston, will you be joining us? John Houston. Do we need a facilitator? We do not need your wonderful expertise, Annmarie. Thank you.

MS. WEISMAN: And you'll be in the green room for how long, approximately?

MS. ABERNATHY: 15 minutes. Please bring your computers in case you need them. I don't know if you will or not. And I'm sorry, we're going to need one other staff member. Either Renee or Michael, one of you will need to join us. Renee.

MS. WEISMAN: Okay.

MS. ABERNATHY: John (inaudible) will join us to, to make sure-

MS. WEISMAN: Just keep in mind we're getting close to the lunch hour, so if you- another different conference room. Okay. So we'll expect 15 minutes. If it's going to go a little longer, if you can just let me know. Thank you. Thank you for joining us. We need to let everyone on the live stream know what our plan is. If you want to go ahead and announce your, your

group again. Is it the same group for caucus?

MS. ABERNATHY: After lunch?

MS. WEISMAN: Yes.

MS. ABERNATHY: Yes, it will be the same individuals. Kaity, Todd. Heather, Tracy-

MS. WEISMAN: I have the list.

MS. ABERNATHY: Them.

MS. WEISMAN: Good.

MS. ABERNATHY: I thought I had to say it for the people. Somebody just tells me what to do. Like every other day of my life. Sir?

MALE SPEAKER: Do the people in the caucus want a short lunch to 30 minutes and then start the caucus 30 minutes before?

MS. ABERNATHY: People- oh, blessed Jesus, people on the caucus, would you agree to a shortened lunch to 30 minutes, and we would start the caucus at 12:30 so that we could be finished, finished by 1:00? Everybody agrees, raise your hand.

FEMALE SPEAKER: (inaudible)

MS. ABERNATHY: I like the way you said that. I hope I hear that again. Oh, I'm sorry. I liked the other- I was going with you on that. I do too.

MS. WEISMAN: Okay, so just to confirm, it is the Department staff, Tamy, Jeff, Jacob,

along with-

MS. ABERNATHY: John and Michael.

MS. WEISMAN: -John and Michael. We'll have Betsy, Alyssa, Mary Lyn, Tracy. We'll have Abby, April, Helen, Todd, Kaity, and Heather.

MS. ABERNATHY: Correct.

MS. WEISMAN: We'll all be returning, whether from lunch or from lunch and caucus at 1:05.

MS. ABERNATHY: Yes. Now, for the purpose, for the purpose- blessed be the Lord above. For the purposes of getting you guys into the room for the 12:30 caucus, one of the staff, one of- Jeff will be out there. You have to be escorted in there, so we will wait. If you all could gather about five minutes before so that we can all get there and then get in at one time, we can start right at 12:30. Okay?

MS. WEISMAN: So just a reminder, we will reconvene in this room, 1:05 p.m. Thank you all.