

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING
ACCOUNTABILITY IN HIGHER EDUCATION AND ACCESS
THROUGH DEMAND-DRIVEN (AHEAD)
WORKFORCE PELL COMMITTEE
SESSION 2, DAY 3, MORNING
January 7, 2026

On the 7th day of January, 2026, 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. MACK: Good morning, everyone. Welcome back to day three of session two with the AHEAD Committee. I'm going to jump right into our roll call before we get into our substantive agenda items. I will call your abbreviated constituency names, primary and alternate. Please speak your name into the record for everyone. For our students constituency, our primary?

MR. ATCHISON: Eric Atchison.

MS. MACK: Thank you, Eric, and our alternate?

MR. NOBLE: Magnus Noble.

MS. MACK: Thank you. And for our veterans constituency, our primary?

MR. FEEHAN: Matthew Feehan.

MS. MACK: And our alternate?

MS. HOWELL: Julie Howell.

MS. MACK: Thank you. And for our employers, our primary?

MR. KAFAFIAN: David Kafafian.

MS. MACK: Thank you. And our alternate?

MR. CARIELLO: Dennis Cariello.

MS. MACK: Good morning, Dennis. And for Legal Aid, our primary?

MS. HOFFMAN: Tamar Hoffman.

MS. MACK: And our alternate?

MS. KEMMERLING: Zoe Kemmerling.

MS. MACK: Thank you, Zoe. And I would note for everyone that for Legal Aid, our alternate is at the table as we continue topic four. For public institutions, our primary?

MS. HULTQUIST: Kristin Hultquist.

MS. MACK: Thank you. And our alternate?

MS. WILLIAMS: Tonjua Williams.

MS. MACK: Thank you. And for private nonprofit constituency, our primary?

MR. LACEY: Aaron Lacey.

MS. MACK: And our alternate?

MS. ROUSH: Joanna Roush.

MS. MACK: Thank you. And for proprietary, our primary?

MR. ARTHUR: Jeff Arthur.

MS. MACK: Thank you, Jeff. And our alternate?

MR. CLAYBAUGH: Ryan Claybaugh.

MS. MACK: Thank you. And for state workforce agencies, our primary is in route. Will be here soon. Our alternate is at the table, please.

MS. DESANTIS: Andrea DeSantis.

MS. MACK: Thank you. And for state grant agencies, our primary?

MR. MORROW: Ritchie Morrow.

MS. MACK: Thank you. And our alternate?

MS. MCCLOUD: Elizabeth McCloud.

MS. MACK: Thank you. And for state higher ed, our primary?

MR. STAMPER: Randy Stamper.

MS. MACK: Thank you. And our alternate?

MS. DELANGE: Heather DeLange.

MS. MACK: Appreciate it. For accrediting agencies, our primary?

MR. MCCOMIS: Michale McComis.

MS. MACK: Thank you. And our alternate?

MR. LITKE: Gary Litke.

MS. MACK: Thank you. And for taxpayers, our primary?

MR. COOPER: Preston Cooper.

MS. MACK: Thank you. And our alternate?

MR. POLLACK: Ethan Pollack.

MS. MACK: Perfect. And our Federal negotiator?

MR. MUSSER: Dave Musser.

MS. MACK: And from the Office of General Counsel?

MR. LALLO: Jake Lallo.

MS. MACK: Appreciate it. And our Deputy Assistant Secretary?

MR. ANDRADE: Jeff Andrade.

MS. MACK: Appreciate it. Good morning, everyone. Dave, I will turn it over to you to get us started.

MR. MUSSER: All right. Thanks, Kayla. So I think we'd like to come back to topic four. I think we had some discussion on that. If I remember, there were at least 1 or 2 cards.

MS. MACK: So I rushed everyone last afternoon. Some cards went down, some cards went up. Appreciate you, Jeff, limiting it to 30 seconds. Please raise your cards if you have something more to say or add on topic for. Ritchie, I'll get started with you.

MR. MORROW: Thank you. So I just had a clarifying question. So a lot of the areas say you want information for award year. So that includes summer?

MR. MUSSER: Yes, that's correct.

MR. MORROW: So they'll just -- like if they're doing cost of attendance, they'll add cost of attendance from the academic year and the summer and give you a total amount.

MR. MUSSER: So yeah, we will -- we do plan to provide specific guidance about what we mean when we say award year. We've already provided guidance for the current regulations on this. And schools have had -- have had to do this for some time. We interpreted annual to mean for the award year. And essentially what we said was if you have a cost of attendance that crosses over into summer, then the values for that summer period get included in the year that is assigned to the award year that you're reporting for. Yeah.

MR. MORROW: Okay. Second question, you had a section here where the data will be required to be reported to you by October 1st. If this goes into effect July 1, 2026, that's going to be a really time crunch.

MR. MUSSER: So keep in mind that the components of this, of this regulation that -- well, we'll say several things about that. The components of this regulation that are part of the statutory changes from the One Big Beautiful Bill are self-implementing and will apply as of July 1, because that's when the law

states that the schools must enter into the agreement to comply with those provisions. All of the transparency reporting requirements and the GE requirements are regulatory in nature and are subject to master calendar. However, the Department plans to offer the opportunity for schools to early implement changes to those provisions. We are still working out exactly what that means for reporting specifically. But there will be reporting requirements as of July 1. And I would mention, you know, schools have already set up their reporting apparatus to comply with the current regulations. What these changes mean is that essentially schools will have to use that same process, but they'll just have less to report if they choose to early implement this part of the regulations.

MR. MORROW: Okay. All right. That's what I had. Thank you.

MS. MACK: Thank you, Ritchie. Thank you, Dave. Kristin, I'll go to you next.

MS. HULTQUIST: Thank you very much. And good morning, everyone. Sorry about that. A couple things. One, I wanted to applaud that you've added the net price data to this. I think that's incredibly important and has taken almost 26 years to get into place. I would also like to ask, you know, we in the

language you deleted about private loans reported at the end of -- no, debt reported at the individual level, you have -- the Department has regularly for -- since -- for about the last 15 years been reporting data at the institutional level in the Scorecard. And that hasn't been updated since June. Will that be updated on a regular basis? Because I think that's part of this transparency that STATS is getting at. I don't necessarily see in reg, but I am asking, will we have regular institutional data on that?

MR. MUSSER: The Department's plan is to regularly update the program information website. We -- I don't -- we don't have a final decision that that's necessarily the Scorecard. There could be another one. It is entirely possible that it would be the Scorecard. But the bottom line is, yes, the Department does plan to regularly update that website with information that we're obtaining.

MS. HULTQUIST: Excellent. And then the last thing is that in asking for this information, I'm kind of a broken record on this. But if we could have the format be open, interoperable, for instance, I think the language is solid, but something other than so we can manipulate it in the public and use it for analysis.

MR. MUSSER: Well, so let me think for

a second. We -- I think that there is some openness at the Department to providing the data broadly so that it could be used by states -- other organizations who are interested in outcomes at postsecondary institutions. So we can take that back and, and think about how we can potentially put something into the, to the preamble to express, you know, what we would do there if that's helpful.

MS. HULTQUIST: It is. It is.

MR. MUSSER: Okay.

MS. HULTQUIST: Thank you.

MS. MACK: Thank you, Kristin. Thank you, Dave. Preston, please.

MR. COOPER: Thank you very much. Good morning, everyone. I wanted to ask about the two data points in number two romanette three and four that you're eliminating because my understanding is you believe these are already reported through NSLDS. So this is the students' attendance dates and attendance, attendance status enrolled, withdrawn or completed, and then the students' enrollment intensity, full-time, half-time, etc. So I very much understand that you guys you know, think this is already an NSLDS. So this is redundant, but I just did want to ask how you feel about, like, the quality of the data that's in NSLDS and whether it would

be easily mergeable to these data because I'm looking at, you know, some of the other data points here: tuition and fees, cost of attendance, that -- those data points are a lot less useful if we don't know, for instance, the enrollment intensity, because if you're paying \$10,000 a year in tuition and you're half-time, that means something different than if you're paying \$10,000 a year and you're full-time. So I'm wondering if you could just speak to, you know, whether you believe those data can be easily merged and the quality of the data and NSLDS.

MR. MUSSER: So yes, I do think that the quality of the data in NSLDS is sufficient for this purpose. Schools are required to report and update their reports to NSLDS at no less than every 90 days. The enrollment reporting process, you know, there are issues with it, as there are with any data reporting process. But schools do have long-standing and sophisticated ways of working, either through the servicer, a third party to do that reporting, or doing it directly through the NSLDS system. We did look at this to ensure that we felt comfortable that those items were available. One of the, the items that was -- that were being reported by the institution is a snapshot. And that is very simple for the Department to take from NSLDS. We just have to look at what the initial report of enrollment is for the

student. Additionally, when you're talking about how to make the data useful, for example, is, and we talked a little bit about this earlier this week, is the student primarily part-time or primarily full-time? We have ways of going in and looking at the changes in the enrollment over time. And that can actually only be accomplished through the regular enrollment reporting process. So yes, the answer is we do feel confident that that data can be used. It will take some significant technical steps to get there. But we do believe that it is both sufficient, reliable, and we have the ability to use it for the purpose that we hope to.

MR. COOPER: Thank you, I appreciate that.

MS. MACK: Thank you, Preston. Michale, over to you.

MR. MCCOMIS: I just wanted to mention that a coalition of taxpayers, veterans, and legal aid and accreditation met last evening to present some language on the licensure, programs that lead to licensure or prepare for, so we sent that over last evening.

MS. MACK: Thank you, Michale. Aaron, please.

MR. LACEY: You sort of started

talking a little bit about implementation timelines and I think that's -- I know we've still got parts of the rule to get to, but it seems like a good time to maybe think a little bit about that. Understanding that the statutory elements take effect July 1, they're already reporting obligations in place under the existing rule, a bulk of this that's subject to the master calendar would become effective July 1, '27, it would seem reasonable that the Department might be putting out a first round of official rates in 2028 maybe with a second round in 2029. I'm wondering if the Department thinks it might have the ability to put out some sort of draft rate, maybe even as early as the fall of '27? Not necessarily that would be binding, but for informational purposes, so that institutions might have a little more runway to see which programs under a fully thought-out model are going to be a problem and start trying to work with students constructively. But it'd be helpful to know how you guys are thinking about this.

MR. MUSSER: So yeah, that's a great question. And, Aaron, we actually have a presentation. We're bringing Cody back, so everybody get ready. We're all excited to see his presentation. Even I am. So he's going to walk through the Department's proposal for a timeline. I also wanted to mention, I misspoke a little

bit when I was talking about the reporting piece of this. The Department isn't going to be able to make all of the changes for reporting by this cycle. So the -- this upcoming fall cycle will be the existing reporting requirements. And they won't be changing at that point. The following fall is when the rule will take effect with respect to the reporting requirements. That -- those, those components really cannot be early implemented in the way that other components can.

MR. LACEY: But this is breaking news just to make sure institutions understand. Fall of '26, expect to comply with the existing reporting requirements.

MR. MUSSER: That is correct.

MR. LACEY: Thank you.

MS. MACK: Thank you for the breaking news, Aaron. Thank you, Dave. Jeff, over to you.

MR. ARTHUR: Just a quick comment to expand on Preston's comments. I think we're learning that program probably matters as much or probably more than the institution. And there's a lot of institutional-level information that's being collected by the Department. And I would just suggest, and don't throw things at me, institutions, but I would suggest anywhere you can to modify those processes. And I don't know about IPEDS,

but, you know, credit attainment, that kind of stuff to just look at. How can we really help, help improve our outcomes analysis?

MS. MACK: Jeff, please.

MR. ANDRADE: Yeah. Just to that point, to the extent that we can get some feedback in this process, when we went through the FVT, for example, rather than tweak existing proposals because we thought that that would be as burdensome because the institutions were already set up, we either took them out whole cloth or kept them there. We tried to avoid situations that would require institutions to do something differently than they're currently doing. So am I hearing you correctly that that's not a problem to tweak it or?

MR. ARTHUR: I'm speaking more about the direction we should be headed. And I'm absolutely -- you know, I was a CIO for an organization for 30 years and I can tell you the technologies that are emerging, reporting information is getting a lot easier. And I would, you know, for certain challenges on burdens and all, I would say let's discuss that.

MS. MACK: Thank you both. Michale, did you have something additional? Okay. Thank you, everyone for those comments on topic four. Dave, I'll turn it over to you. Where do we go next?

MR. MUSSER: Sure. Thanks, Kayla. So just one quick update before we move into our presentation. We are still working on data requests for - - from a number of you. And we do now expect to fulfill many of them. We expect to have that available by this afternoon. And Cody will explain -- go through the requests, explain which ones we could fulfill, which ones we couldn't, where you can access it, all of those kinds of things. And again, that will be later this afternoon. So with that, I will turn it over to Cody to come up to the podium to talk through the timeline for how we expect to implement these provisions and how it will -- how the process will play out once it's implemented.

MR. CHRISTENSEN: Good morning, everyone, and thank you, Aaron, for the wonderful setup on the timeline. A lot of the questions you were posing, I think we're about to address here and be able to talk about in clear detail. The purpose of this presentation is simply to inform the audience, the negotiators, of what our proposed rule is in regarding to the timeline for which we expect to implement the earnings test. Oftentimes, words on a page are sometimes complicated to understand, and some simple charts help clarify things more so, which is the purpose of this presentation. So, can we please go on to the next slide. There's two

objectives for this presentation. The first is to describe the timeline for computing and implementing the earnings test, and then secondly, to dig specifically into the completer cohorts that are used for each earnings test calculation. Next slide, please. This is our standard disclaimer language. I just wanted to flag for the vets group that we have. This is true for the presentations we gave yesterday. It's also true for the slides we're uploading to the website. We did update the disclaimer language to state that unless otherwise noted, the Department's analysis on postsecondary students is limited to Title IV aid recipients. And that's for the purposes of what you raised with veterans groups might be confused if this is applying to them or not.

MR. KAFAFIAN: Yeah, thank you very much for that. I really appreciate that.

MR. CHRISTENSEN: Thank you. Next slide, please. So, the timing for the first earnings test, this is the current -- how the Department understands we will currently implement the timing for the earnings test. So in what we've proposed, the first earnings test would be calculated early in 2027, and colleges would be notified of the results at that time. July 1, 2027, is the first year that programs could fail the earnings test. Remember, you have to fail two out of

three years, so July 1, 2027, would be the first strike. Note that colleges are notified of the result, though, several months in advance. So we've said early 2027, we don't want to pencil in a specific date, but between November, December, January, that's when the Department will be working with the IRS to compute the act and to calculate the actual earnings and we're trading data back and forth. When we have the final results in early 2027, at the end of that process, that's when we would have the results of the earnings test, and we'd be able to notify colleges of their failing programs at that time. Fast forward a year. The second earnings test would be calculated in early 2028. It's the exact same thing. So between November 2027, December 2027, January 2028. We're calculating the metric. We have it in early 2028, and we're able to notify colleges of that time. July 1, 2028, is the first date that programs could lose access to Federal student loans under the proposed rule, and that would occur if they failed the first year in July 1, 2027, and then also the second year, July 1, 2028. So you'd have to fail both of those to be -- to fail two out of three years. Next slide, please. So the second objective of this PowerPoint is to discuss the cohorts that are used, the completer cohorts that are used to compute the earnings test. So what this timeline is

trying to illustrate is that in early 2027, we'll be using completers from the 2021 award year. So if it's early 2027, it's folks who completed during the 2021 award year. You might wonder, why is that the case? Next slide, please. So those completers who completed in the 2021 award year, that's 2020-2021, by the way, we're talking about the -- at the award year for the year that it ends in. So 2020-2021, completers graduate between July 1, 2020, and June 30, 2021. By December of 2025, all graduates from that award year have been out of college for at least four-years. So let's say you finished in May of 2021, so you have the rest of 2021, then you have 2022, 2023, 2024, 2025. That's over four-years for all completers from that award year have been out of college for four-years. In early 2027, this is when we're computing the metrics or at the end of 2026, that November, December, January time frame, the tax information that we're pulling is the most recent tax data that's available. Since taxes are filed in April, the most recent tax data that's on file is from April of 2026. So in early 2027, we're pulling the tax data that was submitted in 2026. And that covers the 2025 year. The taxes you file in April 2026 are the taxes covered from January 1st to December 31st of 2025. So that corresponds to the four-year earnings metric exactly. That's

essentially what this final bullet is saying. In early 2027, the most recent tax data available is covering the 2025 calendar year, which is four years after completers from the 2021 award year have finished college. Next slide, please. So here's a summary table that sort of explains on a year-by-year process, starting about the -- starting with the calendar year for when colleges would be notified, when the earnings test would take effect, and the completer cohorts used. So as just explained, if the calendar year is 2027, colleges get notified in early 2027. That's the earliest we'll be able to calculate the metric. That would take effect July 1, 2027. That was using completers from the 2021 award year, and the earnings period measured was January 1, 2025, to December 31, 2025. Now, if aggregation is needed, I've also included a column -- because the program is small and you have to start rolling up that 14-step aggregation process that we've talked about, the four award years that we would look back are '17, '18, '19 and '20 for that first year. So those would be the aggregation -- that would be the aggregation window that would be considered for the 2027 calendar year. And then you can see each iterative row in the table is just bumping all the numbers up one. I'll just go through one more example. In the calendar year 2028, colleges are notified at the start of that

year that would take effect July 1, 2028. Completers are from the 2022 award year. And you can see the relevant earnings period in aggregation window. If -- I just want to flag, and Aaron submitted a recommendation or proposal I think a few days ago, about the regulation language that we've proposed, we are proposing to do a parallel frame if we are doing an aggregation process. So if we are rolling back to prior years, we're not measuring the earnings for the most recent tax year for all of the aggregated cohorts. If we went back four years but had the same, the same year for everybody in taxes, some people would have six years, seven years, eight years later. We're doing a four-year frame in each case. This parallels the language that we agreed to in the Workforce Pell provisions that reach consensus language. So we're already doing this process. This isn't any additional burden to send the data this way to the IRS. Essentially, they'll be able to calculate the earnings data in a parallel way from what we're, what, what we're requiring them to do for the calculations of the Workforce Pell provisions. And we think this is statutorily defensible. The law says it's a four-year earnings test. If we were to do an aggregation point, you would by definition start to have a five-year test, six-year test, seven-year test. We don't think that's permitted in the statute, which is

why we're doing this parallel frame. It has a lot of benefits. So while we appreciate the comment from Aaron, this is the -- sort of the direction that the Department imagines going forward. So this is the summary of the timeline. The final thing, I'll just notice, we haven't talked about the appeals process yet, but you might be thinking, well, how does the appeals fit into this timeline? Colleges will be notified at the start of the year, and then they will have about five-months before the actual stick takes effect, before they could risk losing aid if they fail two out of three years. So there is a five-month process for an appeals, appeals system to work through where if colleges dispute the earnings measures that we've said, hey, this program passes or fails, it's not like that takes effect instantly and they're instantly cut off. Instead, there's this five-month process where we're alerting colleges up front, giving them a five-month period to appeal. That process will resolve, and then the result of that appeal will move forward for the July 1 timeline. So that is how the appeals process timeline also fits into this. I believe that's the end of the presentation. Next slide, please. Yes, that's the end. Thank you. I can answer questions.

MS. MACK: There are a number of cards, so please stay put, Cody. Thank you for the

presentation. Jeff. I'll get started with you.

MR. ARTHUR: Yeah, just a little confused. I need some clarification on aggregation. Are you saying the first tax year that will be used even when multiple years are aggregated will be '25, effectively delaying the smaller programs? Or are you saying you're going back to tax years prior to '25?

MR. CHRISTENSEN: So in the example I used, the calendar year is 2027. And we're using earnings for -- the main earnings would be measured for the 2025 tax year for the cohort of completers in 2022. If we had to roll back the cohort to 2021, we would also roll back the tax year, so it would go back from 2025 to 2024. Yeah, so each group, as we aggregate back the award year cohort, we also equally bump back the tax year that's covered. So it is always -- I'm calling it a parallel frame. It is always a four-year gap for -- even for aggregated cohorts (inaudible).

MR. ARTHUR: All right. So one observation I would make is that we're rolling back into some pandemic-era wage situations. And we're starting with a cohort of completers that graduated into some pretty tough times as far as trying to get jobs, and that certainly slowed down their salary trajectory, getting started a career, so I just point that out so everybody

understands that, you know, we could see some unusual information in the first measurements.

MS. MACK: Thank you, Jeff. Preston?

MR. COOPER: Thank you very much.

Super helpful presentation. Two questions. So for the benchmark earnings, do you have any guidance on which years of the American Community Survey are going to be used for the comparison points?

MR. CHRISTENSEN: Yes, it would be the most recent five. The Department is contemplating that still, but we would imagine it would be the most recent five-year ACS estimate that's available as of the start of each year when the earnings benchmarks are available. So if it is January 2027, it would be the most recently available five-year ACS that's available at that time. And of course, we would be sure to inflation-adjust all dollars to be constant dollars.

MR. COOPER: Gotcha. Appreciate it. And my other question is, so after 2028, you know some programs are going to lose access to Federal loans. But under the Department's, you know, current definition, a lot of those programs will still have access to Pell Grants. So theoretically, you could still calculate the earnings measures for programs which have lost access to Federal loans. Do you know if it's the plan to do that or

not?

MR. CHRISTENSEN: We are still contemplating, but I believe that is something strongly that we're considering, yes.

MR. COOPER: Excellent. Thank you very much.

MS. MACK: Thank you, Preston. Zoe, please.

MS. KEMMERLING: Thank you. I was wondering if the Department has an estimate of the timeline for appeals and how that factors into the larger timeline for losing eligibility.

MR. CHRISTENSEN: I'll defer to Dave to take, and then I can also answer.

MR. MUSSER: Sure. So the notion that we have is if you saw that the calculation would occur in the winter and would apply for the following award year, starting in the summer, so July 1st. So our notion is the -- at the point that we provide the notice to the school that the program has -- we have calculated a failure. The school would then have the opportunity to evaluate the data that the Department had that used to calculate that and could appeal based on an error in that data, whether it be -- whether it is, for example, you know, inaccurate cohort that the that the institution had in its NSLDS

data or if they identify a calculation error that -- by the Department, they would have an opportunity to correct that during that six-month period when the program remains eligible before the, the failure takes effect in the following award year. If the institution either does not pursue that option or they wait -- or they do, and the Department declines to accept the institution's assertion that there was an error, then at the point in July, when the program loses eligibility, the institution would have the ability to formally appeal under subpart G. That process, the time for that varies. It could be just a few weeks if the institution exhausts its administrative remedies and decides not to pursue it, or if they decide to pursue it all the way to an administrative law judge, it could be several months before the matter is fully resolved. We do think that that timeline is somewhat limited, because under this proposal, the Department is only planning to consider data-related appeals. So that limits the scope of what the school might be challenging, and the complexity of it. However, it could still take some time, given, given the resources of the administrative law judges that we have. So at the point that that -- those remedies have been exhausted, the program would then lose eligibility and there would be no further action unless the

institution decided to pursue the matter in court.

MS. MACK: Thank you, Dave. Any follow-up, Zoe?

MS. KEMMERLING: Yeah, briefly. So an initial request for reconsideration, you project that the Department would be able to decide that within six months?

MR. MUSSER: Yes. Again, because we're talking about data-related reconsideration requests. The -- we would -- our plan is to, is to have a process where the school has to identify very specifically what part of the calculation there was an error in, and the Department can then look in its system to determine whether that indeed was the case, yeah.

MS. KEMMERLING: Thank you. And in the event that it does go all the way to the Office of Hearings and Appeals and this goes before an ALJ, do you have -- that -- at that point, the timeline would be out of the Department's control, correct?

MR. MUSSER: Yeah. Obviously, it's difficult for us to estimate exactly how that plays out in every case. But yes, that -- at that point we have -- the Department and the institution have to pull together all of the necessary information and documents for the administrative law judge and go through that process. And

yes, it does take some time for that to -- for them to analyze it, etc., and probably, like I said, a few months.

MS. KEMMERLING: Thank you.

MS. MACK: Thank you, Dave. Thank you, Zoe. David, over to you.

MR. KAFAFIAN: Thank you very much for this. Appreciate it. Very thoughtful. I think -- I just want to clarify, when we say early in 2027 or early in any year, what we really mean is May at the earliest, right, if people are filing in April?

MR. CHRISTENSEN: No, we mean January, February, March, earlier than May. We're using the tax records that are available from April of -- if the year's -- if the calendar year is early 2027, we're using tax records that were submitted in April 2026. Those are sitting there available to be used. So there's no -- we're not having to wait for the most recent tax data in April. That's not the case.

MR. KAFAFIAN: Got it. Got it, okay. Understood. Thank you for clarifying. To Jeff's point on the tough times, I do hear that. I also want to note that the benchmark is also subject to tough times. And frankly, I think that's another good example for why the DE metric is flawed and why this one is meaningfully

better. And then the last one, and I'm just honestly yelling into a void, every time I see things like this, I don't know how else you could do it better. There's no way to do this better as best I can tell, but this data is so old. And the idea that Congress has authorized that we must use this data set when, frankly, the largest financial firms in the world are making decisions on much fresher data that is not collected by the government, feels insane to me. And so I know nobody in that room can fix it -- in this room can fix that, but I just hope that that's on the record.

MR. CHRISTENSEN: I would just say, while I agree with the sentiment, I would just say a four-year earnings test necessitates that at least four-years go by. So the earliest the data could be is four-years old. That's specifically what Congress intended. They intended us to use four-year-old data. And then just by the timing of when the tax years and what's available to us, it pushes us just a little bit further. So it is old data, but I do think it's as recent as we can possibly have it.

MS. MACK: Thank you, Cody. Thank you, David. Randy, I was coming to you next. You're good? Aaron, I'll come to you.

MR. LACEY: Yeah. A couple of

questions, I guess. I mean, first I just wanted to clarify because this is just a little different, I think, than the way it's been thought about in the past. So you all are talking about just using your first interval here, but it looks like this is the idea in a go-forward basis. You're actually crunching the numbers prior to the award year to which the calculations are being attributed, sort of on the regulatory text, right? There's this idea that there's an award year during which, or at least the calculations are attributed to award year, but you guys are trying to get out ahead of that, actually run the numbers, provide them to schools before the beginning of the award year to which those calculations are being attributed. Is that fair?

MR. CHRISTENSEN: Yes.

MR. LACEY: Okay. I just want to make sure. The other thing I want to make sure I understand is, the Department is planning to calculate, run the numbers, calculate performance and provide institutions with the result of that performance before this regulation becomes effective.

MR. CHRISTENSEN: So in the first row which said 2026 calendar year on the summary table, you see it's all blank. We are setting up the process with the IRS or with the Federal agency with earnings data,

which we anticipate being the IRS currently. And so we will not be able to run any numbers this -- we cannot run any numbers right now, for example. We don't have the data. The earliest we would have the data is later this year, at which point we could run --

MR. LACEY: Let me clarify. It's my understanding that aside from the things that are mandated to take effect July 1st in the Big Beautiful Bill Act, which, for the record, is very little, to be candid, all of the other regulatory infrastructure here takes effect July 1, 2027. But you're going to be running the numbers and producing calculations under this regulation prior to that date, and even notifying schools of the results of that determination before the regulation has become effective.

MR. MUSSER: So I think you're referring to the Gainful Employment components of the regulation, Aaron.

MR. LACEY: Not really. I mean, the only obligation under OB3 is that schools certify by July 1, '26. That's the only statutory obligation. And you guys are running the whole framework before July 1, '27, and --

MR. MUSSER: We interpret the -- in order for the institution to agree to those provisions,

the Department also has to make available the apparatus to do those calculations as well. So we do believe that for all of the programs that are subject to the OB3 methodology, we are obligated to get that process set up even before Master Calendar applies. With respect to Gainful Employment, however, obviously, that does not apply. And the Department is subject to Master Calendar. Our current plan is to make those items eligible for early implementation by institutions, which would mean that institutions have the option of undergoing the new process or being subject to the existing process of debt-to-earnings and the earnings premium as it is currently designed. So at this point, that is the Department's proposal.

MR. LACEY: Can I respond to that?

MS. MACK: Please.

MR. LACEY: Reasonable minds can certainly disagree, and I respect that. My only comment for the Department is, I think one of the real -- a real focus point of this entire rulemaking has been to try to create something that will stick and is likely to withstand judicial challenge. And it really feels like running numbers and producing rates under regulation before that regulation has become effective is creating unnecessary exposure for the Department. I also mentioned

earlier, I think schools, and I would suggest students and everyone would benefit, I would still want to see those rates. I think that would be very positive as informational, so that schools can start working on winding down programs and making appropriate decisions. And this gives a little more runway, particularly when you're talking about four-year bachelor's degree programs where folks may have started the program before they learned that it's going to lose Direct Loan eligibility. So I just think there are a lot of good reasons potentially to make that an informational rate year. And instead to wait to start issuing official rates after the regulation has clearly become effective.

MS. MACK: Dave, do you want to respond before I move to other cards?

MR. MUSSER: Well, I just want to understand the point. So are you suggesting that there be an informational rate before the effects of the regulation would apply?

MR. LACEY: Yeah, I -- if the Department wants to voluntarily crunch numbers and produce a rate in spring of '27, I think that has tremendous merit. I think holding schools accountable for that rate that has been calculated prior to the date that the vast majority of this regulatory infrastructure takes

effect. And arguably, I would say even before OB3 mandates that it take effect. Even for graduate -- it's just creating exposure for institutions. I don't see a tremendous downside for -- or sorry, for the Department, and I don't see a tremendous downside. I actually think that gives schools -- it essentially gives schools three years from the first time they first get a rate. And, you know, with shorter programs, they can essentially teach-out those programs in less than two years. But for bachelor's degree programs and longer programs, you know, schools, when they learn that they've got a failing program, they're going to -- some of them may not be able to graduate all their students before they lose Direct Loans. And if you have informational rates in '27, that would put the first failure year July 1, '29, and that would allow most of those schools to try to get students through those existing programs and teach those programs out before they actually lose Direct Loan eligibility, which I would argue is better for students as well. So, you know, I just think it makes a lot of sense. It reduces exposure for the Department and creates a little bit more of a runway, potentially for schools and students.

MS. MACK: Dave?

MR. MUSSER: So sure, let me first

make sure I understand what you -- what you're getting at. So you're -- you would just push the process back one year with an informational rate the first year that we would calculate and then in the subsequent year the rate would be official, etc?

MR. LACEY: Yes, the first official rate would be the first rate calculated after the regulation takes effect.

MR. MUSSER: We have -- I think we have to look at our statutory authority to do that. But if you'd like to submit a proposal for it, we can take a look at it.

MS. MACK: Thank you, Aaron. Thank you, Dave. David?

MR. KAFAFIAN: One just confirmation. If I'm looking at the last slide, I just want to confirm, what is the ACS survey being used in each of these as well? So I think this is very clear on what the school calculation period is, but I just wanna make sure that I'm clear on that.

MR. CHRISTENSEN: Yeah. And that relates to the question that Preston had raised earlier. We would use the most recently available ACS year and inflation-adjust so that all the dollars are in the same year. So if it's early 2027, I don't know if that's the

2026 ACS or 2025 ACS is available at that point, but we would use the most recently available ACS that's available to us at that time. Dollars would be adjusted the same way on both sides of the ledger. So that is not -- for inflation, so that is not an inconsistency there.

MR. KAFAFIAN: Okay, thank you.

MS. MACK: Thank you, David. Zoe, over to you.

MS. KEMMERLING: Thank you. I want to move briefly back to discussion a little while ago that I think David raised about the -- kind of the look back timeline and how it encompassed, you know, the COVID era. I want to, to comment something that we've mentioned before that the OBBBA did not touch the Gainful Employment regulations. So another option available is to use the GE earnings test, which has a measurement period of three years.

MS. MACK: Thank you, Zoe. Jeff?

MR. ARTHUR: Yeah, I would support that informational rate concept. I mean, it was something that was used in the FVT process. Institutions, you know, this is going to be the first time we've seen some of this data, and from what I know of institutions across all higher ed, I mean, they're competitive and they want to avoid stigmas. They would appreciate a chance to

correct these programs to -- I mean, for most institutions, you get a wide menu of programs and you're going to have -- everybody's going to have one or two that you're going to look and say, even if it doesn't hit the threshold, it might be close, but we're going to be making decisions on what programs to go forward with. And I think it's really fair to give us a chance to adapt that year without the stigma. We certainly -- I think we should be required to make the information public if we need to disclose to students that here's a situation and here's how -- here's our plan going forward. And perhaps we should, you know, publish, here's our plan for this program that you're in, the students are currently enrolled, but gives a chance to help those students either transfer, get to -- into another program, or if they want to continue in that program, to find a way to complete it. I think there's a -- it would give us an initial window to help treat our students better and get them to a better place.

MS. MACK: Thank you, Jeff. Dave?

MR. MUSSER: I appreciate that, Jeff. Yeah. I think if you guys, if it's possible, as always, if you guys are willing to chat, and if others are interested in this idea, I would -- it would be helpful for us if you guys did a group proposal.

MS. MACK: Thank you. Eric?

MR. ATCHISON: Thank you. Just a clarification for Cody. When you mentioned the inflation-adjusted, you mentioned the ACS, of course. But just to clarify, that's five-year estimates, not one year, right?

MR. CHRISTENSEN: That's our current plan.

MR. ATCHISON: So the most recent five-year estimate, which may be different year than the one your estimate that is available?

MR. CHRISTENSEN: Correct.

MR. ATCHISON: Great. And I just want to echo the sentiments of my colleagues here. Aside from the legal ramifications, an informational year may also provide students with the opportunity to reevaluate their own usage of Title IV aid towards those programs which are currently enrolled that may be at risk.

MS. MACK: Thank you, Eric. Preston?

MR. COOPER: Thank you. I would oppose any delay in the implementation of these regulations. I mean, we have informational rates already. We put them out -- the Department put them out last week in the One Big Beautiful data set. So you know, schools can look at that and they can already have a good idea of which programs may be in trouble. And I think, you know,

delaying the consequences of these regulations would be inconsistent with the intent of Congress and would also be harmful to students who might be taking on loans for programs that are, are not leading to good earnings outcomes, harmful to taxpayers as well, who would still be spending money on these programs, which are extremely likely to fail.

MS. MACK: Thank you, Preston. Randy?

MR. STAMPER: Thank you. Yeah. I wanted to go on record from state higher education perspective, that I believe that having this one-year informational opportunity is a good idea. Preston made the point the other day that all of this, when you're talking about earnings, may be a prompt us to have conversations between higher education institutions and the businesses and workforce entities that they serve us as an educational promotion of the need for certain wage levels and conversations about, you know, valuing different occupations and such. So I believe that having that one year gives the colleges not only an opportunity to look at their own programs as Jeff said, but also to have broader conversations among the communities they serve about the impacts of what would then become violations.

MS. MACK: Thank you, Randy. David?

MR. KAFAFIAN: This is far afield from where we started, but now that we're talking about teach-out, I'm just curious, has the Department considered generally what your statutory latitude is when it comes to teach-outs collectively, not over a transition period, just broadly? Because I do think that there's basically nothing worse, nothing worse in higher ed than when a student gets cut off. We do it in the name of, I don't know, something to do with taxpayer savings and/or institutional accountability, and I think there's minimal benefit on either of those fronts. On the other side, there is maximal student impact when we do that. So I'm just curious, what latitude, if any, did the Department explore that or is the view, nope, if you got the warning, your program gets cut off in the middle, you, the student, are cut off from your Federal Aid?

MR. MUSSER: Well, so I'll spend just a -- yeah, just a moment talking through how the teach-out process works under existing regulations and how that applies here. So first, I think we talked a little bit earlier this week about the 34 CFR 668.26 regulations, which have to do with the loss of institutional eligibility. And we, the Department, applies that to the loss of program eligibility as well. So what happens is if the program loses eligibility during a payment period,

the institution has the ability to continue disbursing aid to students in certain circumstances, especially, particularly if the student has otherwise demonstrated eligibility. You know, they've got a valid (inaudible) and/or if they've already originated a loan and they have made a disbursement. So the school can continue to provide aid during that last period. The -- in the instance where it happens before a term begins, the student is no longer eligible in that -- in the in the following term. The school has the ability to do a teach-out prior to that and work with another institution for the student to transfer. This is not an uncommon occurrence. It does take some work for the institution to, to do that. That's part of why the Department has designed this in such a way that the rate is calculated and provided to the institution in the winter, and giving them six months to do the work of seeking another institution who would be willing to teach-out students in that particular program. We recognize that when we implement this, the number of teach-outs is -- are likely to be higher. But the other thing that Congress helped us with and that the, the existing version of the regulations help with there, is that the school also had a year to prepare for that, at least a year, because there was a prior failure on the books before the program

actually lost eligibility. You have to have two out of three consecutive years where the program fails before you lose eligibility for the program. So we believe that this gives enough time for institutions to, to conduct orderly teach-out procedures. We also recognize, and I think it's an important point that everybody should keep in mind, that there are going to be circumstances where that's not possible, and there are disruptions for students. It is just part of the nature of a loss of eligibility. But we've done everything that we can to mitigate that possibility and to make it possible for students to find other programs to work through at that point.

MS. MACK: Thank you, Dave. Any follow-up, David?

MR. KAFAFIAN: Yeah. I think I would just love to discuss with some of our colleagues, I do worry -- I hear all the points on a statutory basis. I -- on the equities, the school, like all of the vernacular used, right, the school had the opportunity. The school had the opportunity. The student is the one impacted maximally in that instance. And I don't want to be advocating for a broad appeals process, but I can especially think of in rural areas in small cohort programs. I just, I do really want to think about what we

can do there to make sure that we are not disrupting a student on this basis, on this basis alone, for something that happened from cohorts prior. Because let's be clear, there's -- as just a general taxpayer, the student who doesn't complete is 50% likely to default on their Federal loans. So that's like a net bad outcome for society, for taxpayers, for everybody. The school is actually the least harmed of all the parties in that instance. And so I think we're maybe misplacing the direction of the arrow. But I also understand the limitations we're under.

MS. MACK: Thank you, David. Eric?

MR. ATCHISON: Thank you, Kayla. Just back to Preston's comment. I also don't want to delay any kind of development of a meaningful metric that determines earnings premiums and that sort of thing. But the limitations of the Department's data set here is at the four-digit CIP level, and we know institutions usually create and develop programs around certain disciplines themselves, like colleges and departments. So many institutions have multiple programs within a four-digit CIP. And so using this informational data set that was provided to us, that does not go down to the six-digit level, I don't think it should be used as an informational item to assess our own programs, because

we're going to see very different outcomes, possibly at the program level, six-digit level. I would recommend the Department, if they can provide that information to institutions ahead of time, that would be very helpful if they cannot do an informational year disclosure.

MS. MACK: Thank you, Eric. Jeff?

MR. ARTHUR: Yeah, Eric's right. And when you're looking at -- we're -- from like -- in my instance, every program is going to probably stop at the stage one, and it's going to be the 2025 salary, the four-digit CIP code, the year that was that income was calculated. I have -- I don't think it helps me much, I don't think it helps many institutions much on making final decisions on how they should react by program. There'll be some that are dramatically obvious and there'll be some -- but we're talking about a lot of programs that are, that are out there that are on that borderline or perhaps below it a little bit. But I mean, there's going to be a lot of -- that is not reliable data for you to make operational decisions on in many situations. In some, it may be.

MS. MACK: Thank you, Jeff. We've got a couple more cards and then I'll move us to our next agenda item. Aaron?

MR. LACEY: I just wanted to affirm

the two points that were made. The first being that I don't think institutions can make decisions based on the four-digit CIP data that's been put out right now. And, you know, I think the real concern here is bachelor's degree programs. You know, I agree with two years runway schools with certificate programs largely should be able to figure out their plan and teach those out in an orderly fashion. But with two years, folks who've got, you know, freshmen and sophomores and bachelor's degree programs that are already there, and Dave made the critical point here, which is there is a significant taxpayer cost involved with withdrawals, right? And that's what's going to happen if students are halfway through their program or two-thirds of the way through, lose Direct Loan access, many of them are not going to have alternative financing and be able to complete their programs. And so we as taxpayers, lose our investment. And those -- you know, you can argue, well, should they even be in the program? But at this point, they're three years in and it's definitely a loss if -- and they're more likely to default on their loans. I mean, I think that's -- Dave really made the most important point there.

MS. MACK: Thank you, Aaron. Matthew?

MR. FEEHAN: Yeah, I just want to, I

guess, now third Aaron's point, second to David's point. From the student veterans constituency, we've seen this in practice where eligibility for institutions lost and for layman's terms, the veterans are left holding the bag, which is really unfortunate. One, taxpayer burden there, obviously, borrower defense claims liability, again. But I just want to state for the record that we're talking about Title IV. So for my constituency, we've got basically three different regulatory pockets here in this discussion. It's more of a general comment to the Department, but just to closely coordinate with the Department of Veteran Affairs and Department of Defense - - War, excuse me, because when they lose Title IV eligibility, I've seen it multiple times, and it does actually affect student veterans for the VA -- for their VA GI Bill benefits as well, for a question of that regulatory interpretation. Again, Department of Education can't regulate the VA's regulations and eligibility, but I guess just a general comment for the room and for the record, that lost eligibility for Title IV 100% affects eligibility for the VA regulation and tuition assistance. So I just want to keep the student veteran constituency in mind and stress that David's point is very much accurate.

MS. MACK: Thank you, Matthew.

Preston?

MR. COOPER: Yeah, I just want to point to some research by Kristin Blagg at the Urban Institute, which shows that 87% of four-digit CIP codes contain only one six-digit CIP code. So the four-digit CIP codes for the vast majority of programs actually will be fairly reliable guides to the, to the eventual outcomes of the six-digit CIP code level. Even for, you know four-digit CIP codes that do contain multiple six-digit CIP codes, if that four-digit CIP code is not showing great outcomes, I mean, that is still a red flag that you should look at, you know, the two individual six-digit CIP code programs and, and try to understand what, what that would mean for the transition period. I would also say that even with the presence of an informational rate year, I mean, these data can change from year to year. And it is possible that if you're passing in 2027, you might be failing in 2028. So there's always going to be this element of uncertainty out there. And so I think that, you know, we're never going to completely eliminate that risk that there is some uncertainty that this data -- these data could change, that we won't know entirely in advance who's going to pass and who's going to fail. And I don't think that can become a reason to delay the implementation of these

regulations, because, you know, students and taxpayers are counting on us to make sure that Federal Student loan dollars are not flowing to programs that are not producing good earnings outcomes.

MS. MACK: Thank you, Preston. Zoe?

MS. KEMMERLING: Thank you. I just have a few comments to counter the concern that students losing Title IV eligibility midway through a failing program may -- is primarily detrimental to the student. I think, again, we're talking about very low-performing programs. So, for one thing, the value to the student of completing that program might very well be minimal. They also may be using up Pell Grant eligibility that they will not subsequently have. And also, we are talking about program closure, largely not institution closure. So another option could be for the student to transfer to a higher value program within the same institution. Or there are mechanisms for you know, borrowers to apply for loan discharges. And a situation like the one we're contemplating might be an appropriate time for that.

MS. MACK: Thank you, Zoe. Jeff, please.

MR. ANDRADE: Zoe, I agree with a lot of what you said. The one exception is, I don't necessarily think we should label these all as low-value

programs in terms of completion. They may be low-wage programs that result in low-wage. And, you know, maybe doing what they're designed, but -- and just to throw this out as not making any commitments to the Department, but if there were a teach-out option for that year as opposed to the delay, would that get at some of the concerns that people have raised? So if it was a multi-year program, if the student were allowed to complete that program, no new students could start a program. If the student was allowed to complete that program for the remainder of that year, would that get at some of the concerns that you guys have?

MS. MACK: Would anyone like to speak directly to that? Matthew?

MR. FEEHAN: Yeah, I can. I think that would be an excellent proposal from the Department. I'll work with whoever constituency group wants to get to that language. And to my colleague's point, I'd reiterate what Aaron's already addressed on the record that this -- it's not -- like if you have it with a lens of just looking at this at short-term certificate programs, and yeah, that language should make perfect sense and that line of reasoning would make perfect sense. However, we're also talking about degree programs here and for student veterans and service members that are in these four

degree -- four-year, excuse me, four-year degree programs, it is way more complicated than that. So yeah, teach-out provision would 100% address that.

MS. MACK: Thank you, Matthew.

MR. ANDRADE: And again, no commitments there. We still have to huddle and go back. But I'm just -- I had to call an audible at that point just to sort of understand a little bit of the concerns and throw that out as a possibility. And again, I think the thought there, like on the degree programs is it's -- if someone just has that one last year to finish out, I think would probably -- you know, there's a case that, you know, maybe we let them finish that out.

MS. MACK: Okay, a number of additional cards going up. Aaron, I'll go to you next.

MR. LACEY: Yeah. First, I want to reiterate the point that these are not low-value programs. I mean, let's just be really clear about these programs. We're talking about social work, music, fine arts, studio arts. My guess is the students in those programs aren't even that concerned, or have a pretty good idea of what the earnings prospects are for them on the other side of graduation, and that they are not in those programs so that they can make a lot of money. If Congress has decided that they don't want to provide

Direct Loans to students and programs who, when they graduate four-years later, are not making enough money, or a certain amount of money, that's the prerogative of Congress. But that does not mean that these programs have no social value, or that they're bad programs, or that they don't have great outcomes. And it's really important to keep this in mind. Also, candidly, I doubt many students in a Bachelor's of Music program are going to be excited about transferring into an accounting program because somebody tells them it makes more money. I don't think that's why they're in the program in the first place. If you want to provide a teach-out mechanism, I think that that makes a lot of sense. I think it would need to be voluntary. There may be some schools who think in year two they're going to pass the test. So I don't think -- I think it'd be problematic if you were forcing schools to enter into a teach-out as of year one, and I don't think that's the way the whole construct works. Right? The idea is supposed to be measured after two years, but I think if you went to schools and said, if you see that you have a failing program and you are willing to do whatever you have to do vis a vis the Department to lock in that you're going to teach-out this program, then then the students who are in the program and you stop enrolling and the students are in the

program at that point in time, can continue to get Direct Loans until they complete the program, 100% I think that's a great idea. And I think it largely addresses this. I mean, if schools want to roll the dice, that's on them, but I think most institutions would be responsible and do the right thing by their students and take advantage of that so they can do an orderly teach-out of the program. So I think that's a great idea.

MS. MACK: Thank you, Aaron. Randy, please.

MR. STAMPER: Thank you. What he said about program quality. I think, I think language matters, and I will restate what I said yesterday. Yes, there are bad actors. Yes, there are predatory loans. But the vast majority of higher education institutions are dedicated to higher education for their students. And a number on a pay stub is not a reflection of quality of education. And I think that that needs to be front and center. I would also say, and I think Tamar, late yesterday did a really good job of kind of sucking my head out of a rabbit hole and getting us back up to an overall view of, you know, the, the benchmarks are not unattainable, the benchmarks are not ridiculous, but also to the same idea of kind of zooming out here, you know, one year of preparation, one year of having conversations, one year of being able to -

- you know, thousands of institutions to get their head around, how are we going to manage this? How are we going to manage our programs? How are we going to manage our relationships with businesses and others, is one year. And, you know, the Undersecretary has stated we're really trying to create something that is going to last here. So, I wouldn't get tied up in 365 days because this is an unprecedented level of accountability in higher education, and we should take the time to get it right because it's an expansion that is reasonable, is needed. But it can -- you know, it is our responsibility around this table to do our best to get it right in implementation. And I don't think that taking a year to make sure everybody is on the same page is going to cause major damage if what we're trying to do is create something that is going to last for many years.

MS. MACK: Thank you, Randy. Preston?

MR. COOPER: Thank you very much. Just really quickly, from the taxpayer perspective, I think a teach-out option in which a school is not allowed to enroll any new students in a failing program, but can ensure that those -- the currently enrolled students can finish out their programs would be a much preferable solution to delaying the implementation of the regulations.

MS. MACK: Thank you, Preston. Zoe?

MS. KEMMERLING: Yeah, two points. I agree that preventing institutions from enrolling new students is, is positive. I'm not sure that there is statutory authority to continue offering Direct Loans in teach-out programs if the program has been deemed to have failed the metrics. The second point is, I don't think I ever used the phrase low value field. If I did, I certainly misspoke. I'm not suggesting that social work or art are not valuable fields. I'm talking about programs specifically that do not add value for their students. And you know, in, in my practice and other legal aid attorneys, I know their practices, the vast majority of borrowers we are concerned about are ones that are enrolling in trade schools, specifically based on promises that they will increase their earnings. And I think that that -- you know, those are really the bottom feeders that we are trying to target with this regulation. And one more comment, in my practice, I have seen predatory art and design schools that promise students that they will get into a high-paying design job with prestigious companies, and do not deliver.

MS. MACK: Thank you, Zoe. Dave, I'll go to you.

MR. MUSSER: So I appreciate the

discussion on this point. I think if there is interest in this notion of a teach-out period where students who are already enrolled at the time that the failure is adjudicated at the Department can continue to be eligible for a period of time, not indefinitely, after the failure goes into effect, if you guys are interested in that idea, I would encourage, as always, that you get together and submit a joint proposal that more than one negotiator can, can weigh in on. And we -- I do take Zoe's point. You know, the Department has limited authority to extend eligibility to students once we have a -- the end of an eligibility for their program. So we will go back and look at our statutory authority to do that, but we can certainly entertain the proposal.

MR. LALLO: And also, I asked on behalf of OGC because we have to read through this, if you do have a proposal related to teach-outs, please include some statutory authority to substantiate your idea, as you raised. I think the connection to the statute is a little hard to make here. As Jeff alluded to, we don't know that we can do this. So make the argument to us and show us how you think that this fits in.

MS. MACK: Thank you, Dave. Thank you, Jacob. I'm going to continue working through the cards. I

want to make sure that we're adding new ideas and new thoughts as we continue to move through these. David, you are next.

MR. KAFAFIAN: Can I actually put myself back at the end of the line?

MS. MACK: Say it again.

MR. KAFAFIAN: Can I put myself at the end of the line, please? Thank you.

MS. MACK: I will move you down. Thank you. Kristin.

MS. HULTQUIST: Thank you. Have you laid out, and we've missed it here in the public sector, what would reinstatement look like?

MR. MUSSER: We're going to talk about that in topic five.

MS. HULTQUIST: Thank you.

MS. MACK: Thank you, Kristin. Thank you, Dave. Matthew?

MR. FEEHAN: So just a general comment for the record. And just kind of a reminder to my professional colleagues here with regards to decorum, I wouldn't -- because trade schools have a very high percentage of student veterans and service members enrollees, I would just be very cautious to label them as bottom feeders. I've -- I have a significant number of

folks in my network who rely on great trade schools that do great work. And yeah, that's my point one. Two, to the Department's point, I will happily grab that statutory language. I do think the Department here has the ability to reach a teach-out provision. And I'll work with anyone at the table here to pull that language and get a proposal in.

MS. MACK: Thank you, Matthew.

Preston?

MR. COOPER: Yeah, just a -- just quick point of fact, for the record, that social work, I've heard noted a number of times, it does not appear anywhere on this list of programs that are most likely to fail. For music and fine arts at the bachelor's degree level, music, only 11% of those programs are failing. Fine arts, only 8.5% of those programs are failing. If 90% of those programs are passing, I would say the ones that are failing can probably be doing something different to improve their students' outcomes and pass the test.

MS. MACK: David, we are back to you.

MR. KAFAFIAN: I punted myself to the end because I am trying to think about this one, and I would second everything Matthew said. And I would love to work on that. Zoe, I hear your points. I operate from a

general perspective, which is there is nothing worse than a student being forced out of a program because there's nothing worse than a student starting a program and not finishing. And some of the points you made are persuasive. And at the end of the day, tie goes to consumer choice in my mindset. But I can hear other arguments of, you know, should the student be continued to allow to draw from their Pell eligibility? I just think it's something we each should think about. Preston, to your point, it is not lost on me that the vast majority of programs, based on the data the Department has shared, that are going to fail this test are going to be undergrad certs. The, highest density of those, 93% of cosmetology, and -- well, I don't want to pick out any. Well, I guess I am picking out any in one industry, so I won't say that. At the end of the day, a lot of the challenges in that industry are that state licensing requires minimum number of hours. And so I do think that cuts in the vein of, you know, to get those programs to change requires state-by-state labor market change around what the duration of those programs need to be. And so this does take time. So I know I'm talking about directions. I'm just trying to put points out because I don't want to pretend that this is obvious. I think it's a fair compromise, Jeff, that you've offered up, and

heard that we need to find the statutory authority for it, but just some additional thoughts to consider.

MS. MACK: Thank you, David. Cody, thank you for your presentation and for your patience up here. Dave, I'm going to turn it back to you.

MR. MUSSER: Yeah. Thank you for that discussion. That was great. I think it's a good time for a break. And then we'll come back and work our way through topic five.

MS. MACK: Sounds great. We're going to take ten minutes. Andrea, did you have something before we did?

MS. DESANTIS: Just when we come back from the break, we'll switch out.

MS. MACK: I will note that on the record. Thank you. Welcome back from break, everyone. I would like to note that for state workforce agencies, we now have our primary. So welcome back, Rachael. There are a couple of cards that I would like to call on before I turn it over to you, Dave, to take us into the next agenda item. Michale, please.

MR. MCCOMIS: Thank you. I want to commend my colleagues for a very thoughtful discussion, and it took me a couple extra minutes to kind of organize some thoughts. But I would just like to offer an

observation. Not advocacy, but just some experience that I've had through teach-outs and programs and program approvals and things of that nature through the accreditation process. And I think David brings up a very -- brought up a very important point as well about how programs may need to morph and change because for better or for worse, the way that our system has evolved over time is that many program design and development decisions are made based upon a funding source and the opportunity for that funding source, and potentially even to maximize that funding source. And so institutions change program lengths and they change time frames and they change opportunities based upon what's available through not just one, but a variety of funding opportunities. When we talk about what I hear and what I've read in the documents, is that a -- the -- a program's failure is not a death knell to the institution. It is for a program to lose eligibility and potentially even to lose eligibility temporarily, meaning that it can come in and out of the approval matrix if it, you know, is able to demonstrate ongoing outcomes. So institutions will still have an opportunity to potentially demonstrate through either an appeal or through some other process to bring that program back into the fold. And so I guess the point is, not every

single program necessarily will have to enter into teach-out and that institutions may find ways to fund students through, they enroll those students. Maybe there's an expectation that if it loses loan eligible -- not Pell right now, it only loses loan eligibility. So maybe institutions will take the burden upon themselves to figure out other institutional funding mechanisms for those institutions, since they enrolled them to begin with. Students will have opportunities to transfer. If it's an art program, a baccalaureate degree in music, and they lose their eligibility year one, there's still, there's still an opportunity for that program to regain its eligibility later on down the line. So just again, some observations about how programs and institutions -- programs may change and institution behavior may change based upon how that regulation and how those -- that kind of funding system unfolds in that regard.

MS. MACK: Thank you, Michale. Jeff, did you want to speak to that?

MR. ANDRADE: Sure. Michale, I am shocked at that revelation that program design follows the money. No, I appreciate your insights. The one clarifying question I had for you was, based on your remarks is, do you think a teach-out is not necessary because of these options, or that we should just consider

the broader context when we're looking at trying to address the problem?

MR. MCCOMIS: Certainly, in some instances it may be. I think program length will have a lot to do with it. It's certainly shorter-term programs and the size of the institution and the type. So I think it still has to be a menu item and a process that has an allowance there. I don't want to conflate things, but there are other, you know, when an institution voluntarily closes, there's opportunities for teach-outs. And I think even an opportunity for the funding to continue through that teach-out period. Is that -- I think that's right, or something along those lines. Here we have a loss of eligibility. And is there some room for that eligibility to continue for some at least through the next payment period? But I just wanted to, you know, highlight that not every program will have to close if it loses or doesn't meet the metric one time. And so again, I do think the teach-out is going to be a necessary component of that for -- in some instances and in some instances it won't. And there'll be a number of factors, institutional financial, and larger student impact.

MS. MACK: Thank you, Michale. Thank you, Jeff. Jeff, over to you.

MR. ARTHUR: Yeah, just a quick

request. At some point today, could we get an update on data requests, possibly in the order they received it?

MR. MUSSER: So, sure, Jeff, I mentioned earlier that we plan to have that update this afternoon.

MS. MACK: Thank you, Dave. Thank you, Jeff. Ritchie?

MR. MORROW: Michale, I appreciate your words. And your thoughts on that. And definitely, Jeff, your idea of a teach-out option, I -- I'm going to second some other comments that we would definitely support that. But Michale, one thing that you mentioned, just because a program is being closed doesn't mean an institution is being closed. We've mentioned cosmetology many times, and that might be the only program that they have. And if that program is being closed, that school is being closed and those people are now out of a job.

MR. MCCOMIS: No, I'm totally -- I totally understand. I think David's point on that is, is the right and most salient point, is that there are other structural elements to cosmetology programs and they range -- you know, we have, we have a great decentralized system here. And it just means that 50 different ways of doing the same thing. And so there are some institutions, some states that are -- have already

begun to lower the number of hours and the length of time, or to design it differently or to allow for more of an apprenticeship model in the cosmetology field. And so -- but those behaviors will take time to move through the system. And so yes, that will have a probably a larger institutional effect in a shorter period of time. And there are, there are other single-purpose institutions that will have the same kind of impact as well, Ritchie.

MS. MACK: Thank you, Michale. Any follow-up, Ritchie? Okay, thank you. Aaron?

MR. LACEY: Yeah, I'll, I'll commit to working on this, and I'm happy if anybody else wants to work with me on it. Matt, I know you said you might have some resources. I mean, I was thinking about, you know, in my mind, I don't really know a reason why a program that's less than two years would have an issue. Although, if folks disagree with me, I'm open-eared about that, for sure. You know, I was thinking about there's sort of a mechanism already in OB3, right, for the transition to the two new repayment plans. There's this concept about this interim exception that allows institutions to continue funding students up to three years, for the period of time that would otherwise be required for them to complete their program. I mean, I think that is Congress saying we don't think it's wise to be

disruptive. And if we're going to make transitions like this, we want to provide opportunities so students can complete their programs. You know, and I really think this is largely only an issue for programs that are more than two years in length, which is PhD, bachelor's degree programs, a handful of others that we're just trying to create some sort of ramp for. So I'll -- I -- the statutory authority is interesting. We'll think about that. But I think like the idea has already been blueprinted candidly in OB3, that's a student-specific idea. You know, I think you could make it a little simpler as a program-specific idea. But I'll work on a thing to get to you guys, and I'll try to run it by everyone so they can have input, and maybe we can give you something that's got some -- I was going to say consensus. That's a loaded word. So, input from other people. How about that?

MR. MUSSER: Much appreciated. Yes.

MS. MACK: Those are all the comments. Dave, I'll turn it over to you. Where would we like to go next?

MR. MUSSER: Yeah, I appreciate that. I think we'd like to go into our final topic, topic five. All right. So here we are moving now into topic five, earnings accountability and student warnings. This takes

us to subpart S of part 668 which currently is called Gainful Employment. And we are proposing to change the title of this to Earnings Accountability because it would apply to all programs that could potentially lose eligibility under this accountability framework. So I'll start here with 668.601, scope and purpose. And here we are referring generally to the scope of these regulations. The changes here eliminate references that were only pertaining to Gainful Employment and add the concept of eligible non-GE programs, which will now be affected by this framework. Let's scroll down a little bit. We've also made a change to indicate that, as you all know, this would apply to eligibility for Direct Loan program funds and not all Title IV eligibility. That is part of the Department's proposal. The second change here under B was -- B in current regulations is a set of limitations on the applicability of these provisions where it does not apply to the US territories or the freely associated states, meaning that those programs at institutions in those areas cannot lose eligibility under the existing Gainful Employment regulations. We are proposing to strike those -- that limitation, such that programs at those institutions could potentially lose eligibility. As you guys have heard in earlier sections, we are proposing a different framework for assessing

those programs in certain cases. However, they would be subject to the earnings premium metric. And if they fail the metric in two out of three consecutive award years, they would -- the programs would lose eligibility. So scrolling down a little bit more, we also eliminated the exemption here where if the institution over the most recent -- four most recently completed award years, it offered no group of substantially similar programs at the same four-digit CIP code level. We are also striking that provision, given the roll-up procedures that the law requires of us, that we are also applying to GE programs. So I'll scroll down a little bit more here. I think that's the end of that section. Seeing no cards yet, we'll go on to 668.602. So 668.602 are the general earnings accountability criteria. So A, as you can see in A, a GE program or eligible non-GE program provides training that leads to acceptable earnings outcomes if the program, and then we go into the conditions. So we just changed Gainful Employment to Acceptable Earnings Outcomes to, to broaden the scope of this provision to include all programs. First, it satisfies the applicable certification requirements in 668.604. We struck, is not a failing program, under the debt-to-earnings rates. Again, a conforming change for the removal of the debt-to-earning metric. So, scrolling down, is not a failing

program under the earnings premium measure in two out of any three consecutive award years for which the program's earnings premium measure is calculated. So then we come to B. This one says if the Secretary does not calculate or issue debt-to-earnings rates, we -- the program would remain in the same status. Obviously, we don't need that provision if we are eliminating the debt-to-earnings metric. Same with E there. So scrolling down a little bit more, the exact same language appears in the subsequent paragraph. But, but this one pertains to the earnings premium measure. I'll read this one just because I think this is, this is important to understand. If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year. So what does that mean? That means that, let's say that in the first year that we perform this calculation, a program fails the earnings premium measure. But it has a very small program, just barely after we went through the entire roll-up process. It just barely managed to get the statistically reliable number, whatever that may be. And we, and we were able to calculate the metric, and it failed. In the subsequent year for some reason, it does

not have a sufficient cohort size for us to calculate the metric, that program remains in a failure status in the next year. That does not mean that it is failing for two years consecutively. It would not lose eligibility, but it remains in the failure status until we calculate a metric for the next time. This essentially ensures, at least from the Department's perspective, that if we have programs on the margin that they don't simply get a pass if they manage to keep their enrollment down enough to avoid this. And now, of course, they don't -- they're not actively doing that. This is all happening in the past. And we're talking about cohorts that, that we're rolling up in the past as well. But this is designed to ensure that we remain consistent even for those programs that are on the margin here. The other thing that's more common that could happen is that for smaller programs or for programs that train students in areas where there is more -- there are more challenges obtaining tax information, that the -- we would not get a rate because we don't have an adequate number of records from the Federal agency that we obtain the records from. So in that case like I said, which is more common, we would -- the program would remain in the failure status moving -- and moving into the next year. And only once we calculate another metric for them. So I'll try to play this out. So

three years later, we managed to calculate a pass for the program. What that would mean is that in -- when we're talking about the three consecutive award years, they would have a fail and then a pass. And then in the next year, if they failed again, they would lose eligibility. Obviously, if they passed again, they would maintain eligibility. So that's what this means here. We believe this still applies under the new statutory framework. And so we've left that in. However, we did remove what we think is not supported under the statute at the final paragraph E, in determining a program's eligibility, the Secretary disregards any earnings premium that was calculated more than five-years prior. We just don't believe we have the authority to, to ignore those earlier rates under, under this scheme, given what the statute says, it applies in all cases to the programs that are subject to it. And we want to make the, the GE program authority consistent with that. So I'll pause here. Does anyone have any questions or discussion on these points?

MS. MACK: David, please.

MR. KAFAFIAN: Clarification, most likely from ignorance. Keeping them in a failure state but not treating it as a second year of fail, failing, what are the practical implications of that?

MR. MUSSER: I was trying to explain,

and I don't know if I made it clear because it is a little complicated. What it means is that that failure that happened when we were able to calculate the rate essentially will constitute the first of three years whenever we calculate the next rate. That's what it means. So if the next one is a failure, the program would lose eligibility that -- after that cycle. If it was a path, then it would be one fail and one path.

MR. KAFAFIAN: Anything outside of loss of Direct Loans that's tied to this. So the idea is it just basically keeps this --

MR. MUSSER: Correct.

MR. KAFAFIAN: -- time period tolling.

MR. MUSSER: Well, the other outcome is that a warning would be required for that entire period because they are still in a failing status during that period.

MR. KAFAFIAN: Perfect. Very helpful.

MS. MACK: Thank you, Dave. Thank you, David. Rachael?

MS. STEPHENS PARKER: I just want to ensure I'm understanding correctly. Here and in a couple other places, it sounds like the Department will run this test every year for every program, and that's where that data is coming from. Yes, okay, great. Thank you.

MR. MUSSER: Correct.

MS. MACK: Back to you, Dave.

MR. MUSSER: Okay. So we'll scroll down here to 668.603. Here we have low-earning outcome programs. We've replaced the ineligible with low-earning outcome, really just to specify the type of program that is in this status. So A, we -- we've changed again, ineligible to low-earning outcome program. If a GE program or an eligible non-GE program -- again, we're just incorporating the additional set of programs -- is a failing program under the earnings premium measure only in 668.402 in two out of any three consecutive award years, the program is a low-earnings outcome program, and its participation in the Direct Loan program ends upon -- and let me scroll down here. This is this is the change that really enacts our intent to only have subpart G be the mechanism for appeals. It ends upon the completion of a termination action of Direct Loan program eligibility under subpart G of this part. So this, again, is the Department's effort to ensure that all programs have adequate due process and an appeal. We thought it was especially important due to the statutory requirement that schools have the ability to appeal before losing eligibility. Let's scroll down a little bit here. All right. So the basis for appeal. If the Secretary

initiates an action under paragraph A of this section, the institution may initiate an appeal under subpart G. If it believes the Secretary erred in the calculation of the program's earnings premium measure under 668.403, institutions may not dispute a program's Direct Loan program eligibility based upon its earnings premium measure, except as described in this paragraph. And this is where we're asserting that the only basis for an appeal is the numbers. If we got the calculation wrong -- and that does include the cohort, if there was an error in the cohort, even though we are asking schools to get that right, if we if that was indeed incorrect, then this would be a basis potentially for an appeal, but that is the only basis for an appeal. So let's scroll down here. Restrictions. So, one, we have retitled this Direct Loan program ineligibility. So except as provided in 668.26(d), and as I mentioned earlier, that's the provision that allows for a limited period of eligibility even when the program has lost eligibility, an institution may not disperse Direct Loan program funds to students enrolled in a low-earning outcome program. I would just point out that for the folks who are considering the teach-out concept, that this is likely the place that you would want to have that information, because this is where we describe the specific

ineligibility consequences and when it applies. Again, we're just making changes here to refer to Direct Loan program eligibility and low-earning outcome programs. Then we go to two, period of ineligibility. An institution may not seek to reestablish the Direct Loan program eligibility of a failing program that it either discontinued voluntarily, either before or after the earnings premium measure is issued for that program, or reestablish the Direct Loan program eligibility of a program that's ineligible under the earnings premium measure until two years following the earlier of the date that the program loses eligibility, or that the school voluntarily discontinued the program. So this set of provisions is designed to prevent gaming, where an institution that runs its numbers itself determines that the program is going to fail, so it discontinues the program, waits, waits out the year, and then reinstates the program without being subject to the provision. This would apply the period of ineligibility to either of those cases if they voluntarily discontinue the program, or if it loses eligibility. You'll note that we've changed the number of years that the -- this applies to two. And that's, again, a statute based on the statutory change that changes this for the, for to two years. And we also applied that, of course, to all programs. Let's

scroll down. All right. Restoring eligibility. A low-earning or outcome program or a failing program that an institution voluntarily discontinues remains ineligible for Direct Loan program participation until the institution establishes the eligibility of that program under 668.604(b), which we will talk about in just a moment. I see some cards. So if you have a question -- if you have a comment about the period of ineligibility, I would ask that you hold that until we finish the 668.604 discussion. Otherwise, I'm happy to talk through other comments.

MS. MACK: Thank you, Dave. Aaron?

MR. LACEY: I submitted a proposal on appeals this morning. I'd be grateful if folks who are interested in that, would take a look at it. And if you -- if it's something you think you would support, let me know. I'm hearing from the Department it's helpful for them to know when multiple constituencies may support an idea. On appeals, first of all, I recognize the Department is trying to develop something that they can operationalize. And I appreciate that and actually very much support that goal. I also appreciate that they did put an appeal concept here. You know, respectfully, I'm concerned that -- well, two things. First of all, the language in the act is that institutions should have the

opportunity to appeal the median earnings determination. It's not calculation, it's determination. And I feel quite strongly that the intent of Congress there was for institutions to have the opportunity to question the accuracy or, you know, whether that determination is accurate or representative. The opportunity to appeal the calculation respectfully, I don't really understand, and I've detailed this in the proposal, how that is a meaningful appeal opportunity. I mean, the earnings premium calculation is the subtraction of one number from the other. I'm confident the Department will get that right 100% of the time. One of those two. I don't mean that glibly, by the way. I'm just saying it will. And then one of the two numbers is the median earnings of the completer group that's going to be produced by the earnings agency, not by the Department. And I doubt institutions will have the ability to even see the data that was used to calculate that number. And the completer list that was supplied to the Department will already have been evaluated by the institutions. So the only calculation I can even think of that would potentially be up for grabs is whether the Department accurately calculated the location of 50% of the students at the institution for purposes of determining its decision tree.

MR. MUSSER: That and the cohort construction itself.

MR. LACEY: Yeah, the completers list, right. So -- which again, institutions will have evaluated and sounded off on prior to that being sent to the agency. So as a practical matter, I don't think the ability to question the math offers a lot of opportunity to appeal. And I really don't think that's what Congress was about here. I've offered two options for appeal. And I've been very intentional about suggesting things I think can be operationalized by the Department. The first is a local earnings appeal. I'll also note that it appears from the Department's data, the vast majority of failing institutions are in urban areas and large suburban areas. So I don't think this is going to gut the impact of the rule, but I think it would allow an opportunity to cut the ACS data in a way that would permit institutions, particularly in large states like Texas, that are in very small markets, to demonstrate to the Department that they are actually doing what Congress intended them to do. And there's a lot of support and discussion for this idea from, I'll say, both sides of the aisle. I mean, the Trump administration talked about this in 2019. The Urban Institute has a report on this. Wisconsin Star Labs put out a report on this. I mean,

there seems to be a lot of support for the idea that there should be a closer geographic cut. The other is an alternate earnings appeal, and I've been very specific about not proposing -- I see I'm out of time. So I want to say this. I've been very specific about limiting that to state earnings data or a state system and not a survey, because I think that would be easier for the Department to administer for many ways, and that's detailed in the proposal.

MS. MACK: Thank you, Aaron. Jacob, did you want to speak on this?

MR. LALLO: Yeah. Just real quick. You know, I think when we talk about appeals and the idea of the challenge of the calculation, I think part of it is just saying that, like, we're going to show you the equation. That is true. However, I think when we talk about that, what we mean is you also would have the opportunity to, you know, basically check our work and make sure the inputs are right. You know, everything would be laid out. You know, for some reason, the Department used the wrong two-digit CIP code or used the wrong field of study, we assume an institution would be able to see that and appeal that. And we would, you know, in any of these determinations, lay out very clearly what inputs were used so you'll know what the math is. It's

not just basically saying, like, you know, your numbers are wrong. It's the actual inputs that you would have the ability to appeal as well. I'm not sure if that makes you feel much better. But I think that, like, that's a place that people are a little hung up on. And I think it is a little bit more complicated than just, we did our number wrong.

MS. MACK: Dave, did you want to add to that?

MR. MUSSER: Yeah. I would just say, you know, I do agree with Jake about the authority side of this. I'll just restate what we said earlier, that we will not accept a survey-based alternate earnings process. We will -- and we've looked at this a little bit this morning, we will entertain this idea. Like I said, we -- right now, we are still sticking to the notion that we are not opening up the appeals process for a variety of reasons, but we will look at this one and see if there's, if there's any room on this idea as well.

MS. MACK: Thank you, Jacob. Thank you, Dave. Good?

MR. LACEY: Yeah. I mean, I'll just say, I appreciate that there is more math to check. The -- it is still just checking the math and I think the idea here was schools having the opportunity to say, yeah, but

the earnings data is not actually representative. I think that's an important distinction. But thank you.

MS. MACK: Thank you, Aaron. Preston, please.

MR. COOPER: Thank you very much. I'm again thrilled with the appeals language. You know, I think maintaining a, a narrow appeals process that's focused on calculation errors is absolutely the right way to go here. We've seen with cohort default rate, for instance, how the appeals process can get completely out of control and essentially neuter what's supposed to be a strong accountability rule. And I don't think we want that to happen here. We want this to be a real accountability system that is actually going to sanction programs when they are not performing up to the standards that Congress has laid out. And by the way, I think, you know, the standards that Congress laid out in the One Big Beautiful Bill Act are pretty specific about, you know, which students should be included in the earnings cohort and are very specific about the benchmarks that should be compared to. And I don't think that the appeals process can become, you know, an end run around the intent of Congress, which I think is laid out very specifically in the One Big Beautiful Bill Act.

MS. MACK: Thank you, Preston. Jeff?

MR. ARTHUR: You know, I certainly echo Aaron's concerns. But I also -- I guess I'm just confused as to why, why would the Department not reserve some authority to deal with the unknown? You know, pandemic economic shocks, natural disasters, some things that might affect individual institutions and programs and just some generic overall authority to deal with those scenarios.

MS. MACK: Jeff, please.

MR. ANDRADE: Yeah, I think that probably the main reason, and based on some of our discussions, is that those economic shocks affect both the benchmark cohort as well as the student cohort. And so we don't really see a scenario where it's a student cohort only and doesn't affect anybody else within the state.

MR. LALLO: Just to add to that, you know, you have to fail two out of three years. So if a natural disaster -- I mean, I -- granted some are very large, but, you know, short-term economic shocks should be covered. If your economic shock is going much longer, I don't think it's an economic shock. It changed the market conditions entirely.

MR. ARTHUR: Well, I would -- first of all, I would say that when you're dealing with smaller

cohorts and we're going back right now into a pandemic period for some of those students that -- or some of those programs that -- I'll make the case there for the transitional period given that we're not going to consider that situation on appeal. But I'd also say I don't think it does impact -- I mean, I think when-- during this pandemic, I think some of the trades and some of the people with high school degrees may -- I don't know the data, but -- and it could be the case that the people graduating from -- with college degrees got a lot slower start on their careers. And that four-year measure probably was impacted by the pandemic disproportionately to recent college graduates. I absolutely think that's got to be the case.

MS. MACK: Go ahead, Dave.

MR. MUSSER: Yeah. The one thing I would say is, although we do not propose to include an appeal process to deal with that in this rule, the Department still has some limited waiver authority under the law in certain cases for national emergencies that it could use in cases where there's such a significant shock that we believe it's appropriate to make changes. Obviously, you know, I can't speak to when we would exercise that authority, but I would just say we did exercise that authority in a number of areas in higher

education during the pandemic. And that is a precedent for the future, potentially.

MS. MACK: Thank you, Dave. Did you want to add to that, Jeff?

MR. ANDRADE: I actually wanted to follow up with Aaron if nobody's on -- else is on this particular point.

MS. MACK: Please.

MR. ANDRADE: So, Aaron, I appreciate the proposal that you sent over this morning. It's definitely thoughtful. And when people include footnotes like with Preston, I always, you know, add a little bit more credibility to it, so appreciate that. The one thing, you know, we've been trying to get sort of the right, you know data sources and, and income and the way it's -- income is treated and for different professions. And the one reference in your paper was with regard to state data systems and our understanding is that a lot of those state data systems feed off of the W-2. But are -- what, what state systems are you aware of that provide specifically better information for perhaps specific occupations that maybe we haven't discussed yet?

MR. LACEY: I mean, I haven't done a survey of all the state data systems, but I have had anecdotal conversations, including with some of the other

negotiators at the table. I know that there are -- ten years ago when this, this concept first floated in 2014, I think there were very few state systems that actually had data that could be used for this purpose. My understanding, again, anecdotally, I have not done a systematic review, is that states are very interested, just like the Federal government, and have been improving those systems over the last decade and trying to build better systems and better data. And candidly, it may be that this appeal is -- becomes more functional in the future. I mean, I think one of the -- and I mentioned this in the paper -- you know, I think if you include the opportunity, it will actually incentivize institutions to go to states and say, hey, can we be thoughtful about this, particularly for occupations that are being dramatically impacted potentially by the rule, which is not necessarily a bad thing? I don't know if the state data would be different or better, and it might not be. I mean, if an institution goes to the state and pulls the data and it shows a similar or worse earnings number, that just is what it is. But I think where states do have reliable systems and there is the potential that an institution could reach out to that state and the earnings data shows something that is -- they would argue more representative and beyond the threshold, presumably,

that they should have the opportunity to do that. And I do think, again, anecdotally, that there are more of those systems coming online. I won't put them on the spot, but my understanding is one of the negotiators at the table used state data to actually do an alternate earnings appeal a decade ago. And I think it can be done. I don't think it, again, will gut the efficacy of the rule because, you know, the state data system would have to exist. It would have to have different data that shows that the program did, in fact, pass the earnings test. That's a lot to come up with. So my expectation is we're not talking about everyone being able to do this. But I think schools should have that opportunity. Also, I think it puts the Department candidly in a better position of being able to say we created an appeals process that allows folks to meaningfully have an opportunity that -- to show that the earnings that we obtain from our systems may not be representative.

MR. ANDRADE: Yeah. I guess where I'm coming from on that is that if, if there is something like that, you know, I'd rather have good data on the front end as opposed to addressing it in the appeals process. Right? And so if we know that there's something on, you know, on an occupation, I just don't see it, you know. And looking at the research quite candidly on the

tipping, yes, there's underreporting on tipping. But when people have done analysis on it doesn't material effect - - materially affect the outcome. It's not enough to push for the discrepancies. And so, you know, I think, you know, we're dealing with folks that are sort of on the edge of the, of the threshold here. And let's assume that, you know, not everything is captured, but is it materially enough to sort of get them to the next level. So I'm interested in, in what potentially is out there that people think in terms of, of an appeal. Because again, when I look at this, it looks pretty straightforward. And if it's not, like if we're not capturing the right kind of earnings, maybe we should, you know, try to look at that as opposed to try to address it on the, on the back end.

MR. LACEY: Yeah. I guess -- and I have a couple more comments. I'll wait for my card. But just specifically, again, you know, I think one of the interests of a lot of folks at the table, including the Department, is not to propose an appeal that is going to significantly move the needle and change outcomes. I mean, that's the whole idea is that, you know, the Federal data is good data. The test is pretty solid, but there may be circumstances where there are outliers. The school in West Texas that's producing really solid

earnings, given the, you know, sort of median income and cost of living in that community, for example. Or the school that can demonstrate that for whatever reason, the data in the state system, you know, suggests much stronger earnings than what the Federal -- but, you know, trying to be sensitive -- I just want to -- trying to be sensitive to the Department's objectives here. You know, I was very thoughtful about not proposing some sort of appeal concept that's basically going to flip the outcomes for 90% of programs, right? That's not the idea. The idea is to be on the edges and create opportunity for some programs where the earnings may not actually be representative. And I think there are a couple of manageable opportunities for the Department to do that that would be meaningful, particularly around geography. Just there's a lot of inputs out there and data and, you know, various studies that seem to suggest that that could be a legitimate issue for schools in small markets and rural communities.

MS. MACK: Thank you, Aaron. Zoe, you're up next.

MS. KEMMERLING: Thank you. I think Jeff just raised some of the concerns that I was having with potential alternative sources of data. A couple other thoughts, as you were having this exchange. It does

seem like asking the Department to consider state data would put the Department in the position of having to evaluate whether a specific data system is, in fact, more accurate than the IRS. And that sounds quite difficult. With IRS data, we also know that it is going to capture self-employed workers and Federal employees and people who, you know, work across state lines or may work in multiple states. And I also have a few comments about proposals that we submitted. So we -- our constituency submitted two proposals having to do with appeals. The first, which was, I believe, on Monday, suggested that the Department consider removing eligibility for further Title IV funds during the pendency of an appeal. In light of some things the Department said earlier today, we do know that kind of the first request for reconsideration would happen during the, the end of the period in which the school was retaining its eligibility, so that already gives a cushion. We know that if the subpart G appeals process comes into play, then we are looking at potentially unknown times for evaluating by an ALJ. And it seems appropriate to put the burden on schools as opposed to students and taxpayers during that time. And I also wanted to draw attention to some authority that is not binding but may be instructive. This is in guidance issued by the Office of Management and Budget for all

Federal grants in Title II, section 200.343, which says for recipients of Federal awards, cost to the recipient resulting from financial obligations incurred during a suspension or after the termination of a Federal award are not allowable, so.

MS. MACK: Jeff?

MR. ANDRADE: Thanks. I'll talk to the first one. I'll defer to Dave and, and perhaps Jake on the last point. You know, the -- in terms of the income sources and our -- I mean, the I would just point out there's really two origins of the -- of that data. One is from the employee themselves reporting either to the IRS or someone else. And then the other one is from the -- you know, from the employers. So that's where everything starts. And so I don't, you know, again, when I'm -- when we're looking at this issue of alternative earnings, you gotta say, it coming from someplace that -- other than those two, and I think, you know, to Dave's earlier point, the survey data I think is really just sort of a nonstarter because it was just so bad, the stuff that came in from the methodology to the actual data that was reported. But -- so I appreciate that, but I'll defer to Dave on the other two points.

MR. MUSSER: So, Zoe, we did look at that this morning. And by the way, after we finish this

topic, depending on whether we're going to lunch or coming back, but the next thing we'll tackle are what we've been able to assess in terms of proposals. But we did assess this proposal. And this unfortunately, is one that we can't -- we don't believe we can take. The guidance that you, that you mentioned is specifically referring to cases where a termination occurred. In this case, the law specifically says that we can't terminate the eligibility of the program until they've had the opportunity to go through the appeal. We don't -- we just don't believe that we can stretch our authority that far to allow for discontinuation of eligibility during that appeal process. They are still eligible during the appeal. And that -- and that's also based on very long precedent. It's just -- it's the way that we have dealt with appeals over time. It's intended to give an opportunity for due process such that if there really was an error, the school has the ability to remedy it. And you might argue that the school does have the ability to go back and make those retroactive disbursements. But there's another issue that we briefly mentioned earlier, which is that the Direct Loan authority does not allow schools to make retroactive Direct Loan disbursements if the period of enrollment ends. So there's a practical problem there that we can't overcome because that's a

legal requirement as well. So unfortunately, we can't take that particular one. We are still looking at a number of your other proposals related to these items.

MS. MACK: Go ahead, Jeff.

MR. ANDRADE: Yeah. And I guess my question is, given the presentation that Cody did on the timelines and the fact that a lot of these decisions with regard to the data quality and the appeals of the calculations would be done before the award year, does that give you any comfort with regard to your concerns?

MS. KEMMERLING: I'm certainly, you know, happy to hear that you have a firm timeline in place. I think with the full appeals process, there is still the concern about how long that might take at (inaudible)

MS. MACK: Okay. Thank you, Dave. Thank you, Jeff. Thank you, Zoe. Matthew, I'll go to you next.

MR. FEEHAN: So I hear Preston's concern. I hear the Department's concern for these appeals. What I don't want to see happen from the veterans groups and service members is where the appeal pretty much swallows up the intent of the regulation. So that would obviously be an outcome that we don't want to see. With that being said, I took a look at Aaron's

proposal, and while I don't agree with option two, Aaron, I do strongly agree with option one. In his proposal, we talk about rural and small town communities, which almost inevitably is where my constituents are at. So it's really important that we do factor the local earnings appeal just from my constituency, number one, two, if we turn to the statute for purposes of appeal -- just give me one second here. So for the, for the appeals process under section five, we have an educational program shall not lose eligibility under the subsection unless the institution has had the opportunity to appeal the programmatic median earnings of students working and not enrolled in determination under paragraph two. So -- and then it goes on to say to -- through a process established by the Secretary. But it is abundantly clear from Congress that are -- that the intent here is for institutions to be able to appeal the programmatic median earnings of students. And that's not determined and is separate from the process established by the Secretary. So there's statutory authority to support Aaron's concern that institutions should be able to take a look at the programmatic median earnings of students and then factor local earnings data where student service members are at, you know, rural, or those local areas.

MS. MACK: Jacob, did you want to

respond?

MR. LALLO: I understand every word has meaning, and I want to be very clear about that. You know, we think the use of language very deliberately in statute is very important, but I think reading determination to be somehow different than calculation is spurious. It -- you know, the determination is just the conclusion of the calculation. At least as I read it, I don't read that as anything more than saying you can check our math. I fully agree that it sets forth that there must be an appeals process, but I don't think that that is, you know, something that allows you to challenge the underlying, you know, inputs beyond saying that we use the wrong ones. Otherwise, I'm unclear as to why Congress would have given us specific inputs to use when making the determination.

MS. MACK: Please, Matt.

MR. FEEHAN: Right. Which is an excellent point. And that goes back to my original point for supporting Preston's idea, is that we end up having an exception that swallows up the rule. So then we start pulling in data. And that's specifically why I wouldn't support Aaron's number two proposal. Also, I think there might actually be a Federalism issue there with the states, but I guess what I'm concerned about is why

wouldn't the Department be open to local earnings data in respect to that? Because that's still limiting. So it's not an over-expansive appellate process. We're not bringing in, you know, wide range of different factors here. We're just talking about local earnings data. I guess that's where I'd like to hear the Department's thoughts on.

MS. MACK: Gentleman, who'd like to speak to that? Dave, please.

MR. MUSSER: I mean, the -- I think the basic issue for the Department is -- there's two issues with all of these appeals. The first one is the workability of it. The Department -- you're putting the -- you're always putting the Department in the position of assessing the quality of the alternative data that you're talking about. And when you go down to the local level now you're even further down past the state level, which may have an established process that works throughout the state. The Department is going to have to evaluate whether the -- you know, are these the same people that are in the program? How accurate was that? How accurate is the information that they received? If it was from -- is it from the student or is it from the employer, as Jeff just pointed out? The local level doesn't even really allow the Department to establish agreements, as

we might with states to get this information and to vet their process before we accept it. So there are a lot of reasons that this is a major challenge for the Department. And the second reason is as you related. You know, we just, we don't know that the local level data is better than the IRS data. And that's why we have to do that check in order to ever accept one of these appeals.

MS. MACK: Thank you, Dave. Jeff?

MR. ANDRADE: Yeah, I think -- I mean, when you're sort of bringing this issue into the context of the appeal, you're basically calling the whole calculation structure into question. And it's set up where it does make a distinction between institutions that have primarily in-state students versus institutions that have primarily out-of-state students. And so there is some acknowledgment of that. I -- you know, I don't -- I mean, I understand that there's variations within the state, and I mean, you can go down to very different levels, but, you know, you also -- I mean, institutions also benefit on the other side of that. I mean, some institutions, you know, that are in particular geographic areas, get a bump up in this process. So again, trying to say that this is an appeal really undermines the whole structure of the, of the framework. And I don't think it's necessarily an anomaly as opposed to -- you know,

because some institutions would be using a different -- you know, under that scenario, if you, if you were to have played out, some institutions would be using a different reference point than others. And I'm not sure that, that fair across the board. You know, by addressing an appeal, I think the appeal is whether or not the application of the framework is, is accurate vis a vis everybody else. I think that's what I'm sort of looking at it from.

MS. MACK: Thank you, Dave. Thank you, Jeff. Matthew, any follow-up?

MR. FEEHAN: Just that I appreciate the feedback. Thank you.

MS. MACK: Thank you, Matthew. Appreciate everyone's patience as I continue to work through these cards. David, I'm going to go over to you, and then Rachael, I'll be over to you.

MR. KAFAFIAN: My first point is that I'm embarrassed. I had an internal debate last night before submitting a different proposal about whether to hyperlink something or whether to footnote it, and I chose the wrong one, so I will note for future. I think Aaron did a great job in his proposal of laying out arguments that are textual. I hear your point, Jake, but, you know, the arguments that are textual around why would

Congress even posit that there should be an appeals process if basically it's did we break the arithmetic? I don't think they need to put that into statute for any agency to know we could come up with an appeals process to address basic arithmetic errors. So I think before I, before I -- I do think it is important to note that Aaron's arguments there, I get it, are looking to find words in the text, but I think we should zoom out and just talk about, at least on the first point to Matthew's perspective. I hear everybody on alternative data. I gather that that's really hard, so I'm not going to push for that one. I do think we have data on local and rural from these very same data sets and frankly, from other trusted Federal data sets. We have RUCAs, we have health professional shortage areas, we have commuting zones. There's been good and solid research on it. And Ethan from taxpayers was really helpful in cutting some of this data. I think we also have a data request out that Cody's been looking at. So I just want to really ground us in what we are doing if we don't contemplate rural. Nationally, there's a 13.5% difference between, I'll say metro to micro urban versus rural as far as earnings. If I look across state lines, there is 20 to 27 point swings in either direction as far as rural versus urban earnings. These do go in both directions to be very

clear, depending on the state. Within your own data, CYP4, there's a statistically significant difference in your likelihood to fail the earnings test if you're in rural areas versus not. This is a problem, to be clear, that goes both directions. And I don't know that we have the capacity based on the statutory language to solve the -- both directions. But I'll be honest, I do worry that there are plenty of programs in New York City that are passing because they're being dragged down by the rural earnings in the state of New York. And this is true in many other places. It does go both directions. I gather that throwing it into the appeals process doesn't address both directions. It will only address the rural areas. But I do really worry that if we're trying to tie this to preparedness to workforce, that we're cutting ourselves off and we're cutting off programs in key areas that are mathematically, based on your own data, causing problems. So I would love for the Department to think about how we can find some way through an appeals process to address this, while others lobby the Hill to say that we have data sets within the Federal exactly used data sets to get there. I think we have the capacity based on the arguments Aaron broached to at least deal with it for these rural areas. And then we can come back to how do we hold the urban programs accountable as well. But I'll

pause there.

MS. MACK: Jacob, Jeff?

MR. LALLO: I'll be real quick. Then I'm going to yield to Jeff. I only want to answer a small part of your thing. You asked, you know, why even have the appeal here if it's going to be just checking our math? Two reasons. First, the bill's very explicit that we have to. It says no one should lose eligibility until they've had the opportunity to appeal. Now, that being said, it doesn't say that this should be a broad appeal or a narrow appeal. It's very clear that it's, you know, just talking about you have to have the right to appeal. The reason that's there is actually there are other places in our regs where we offer appeals just for the purposes of checking math. I know off the top of my head in the case of foreign medical schools, they have to meet a specific pass rate for USMLE scores, and they have to have a specific amount of citizenship or US citizens to participate. In both cases, they can challenge loss of eligibility on those grounds. But the only thing they can challenge is the calculation that was used to knock them out. And basically, they're challenging math that they actually provided -- they provided to us in a submission. So it's basically allowing, you know, due process and institutions that lose eligibility to review for clear

air.

MS. MACK: Before anybody responds. I apologize for the interruption, but we have a technical issue. So we do need to take a very quick break, and then we can return to this. Five minutes? Thank you, everyone.

(Due to ongoing tech issues, the committee went to lunch and resumed after.)