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ACCOUNTABILITY IN HIGHER EDUCATION AND ACCESS
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SESSION 2, DAY 3, AFTERNOON
January 7, 2026

On the 7th day of January, 2026, the following meeting was held in-person, from 1:00 p.m. to 4:00 p.m..

P R O C E E D I N G S

MS. MACK: Welcome back from lunch, everyone. I have a very brief announcement. The Department has requested a bit more time before we resume. So we're going to come back together at 1:30. All right? Thank you, everyone. Welcome back, everyone. I hope you all enjoyed lunch. I'm going to take us back to before our technical break and pick up with the conversation. David, we were actually with you in an exchange between you and the Department, if you can recall that, that's where we'll pick up.

MR. KAFAFIAN: I did just spend the last 30 seconds dutifully trying to remember what the heck was going on. I think where we left off, Jake, you were saying that the reason for the appeal being put into statute was to protect due process. My point was that the appeal, and correct me if any of this recollection is incorrect, but my view is that the appeal is purely perfunctory if it's just an arithmetic. And that Congress -- you would clearly, under all other forms of administrative law, have the capacity to set up an appeal process absent Congress writing it in. So I don't even know why they would spill the ink onto the page to write that you were going to do this when you could do it anyway, if you were going to do it in this very narrow

sense. I don't know that we're achieving any due process goal if appeal is truly left to arithmetic. And so I do go back to Aaron's point generally, which is that there is an opening for us to use a very narrow sense within the rest of the statutory framework, an appeal process to achieve a goal around this rural and metro issue. So, yeah.

MS. MACK: Jake, go ahead.

MR. LALLO: Yeah. Two things with that. I think -- I do think even though it may be a narrow appeal, there still is a purpose of it. So there's a whole concept within law that if a statute specifically says that you have to exhaust an appeals process before you go to court, or provide an appeals process, you have to exhaust your administrative remedies before you go to court. I think because there is, you know, still stuff to be challenged, we talked about there's inputs that could be there, there's the ability to review for clear error. You know, schools could see that we just did something wrong and tell us. It preserved judicial economy. It basically requires the schools to work with us to appeal something and actually call us on something if they think it's wrong, rather than immediately going to court. It also, you know, I think it's a check on us, right? We want schools to call us when there's something wrong. So

I don't think it is purely perfunctory. I think it does serve a very clear purpose, but I also think it like -- it recognizes that, like, this is something that is a charged issue. Schools are not going to like when they lose eligibility. They should have a way to, you know, review for clear error. But also, we don't want them flooding court systems or challenging unnecessarily.

MS. MACK: Jeff, did you also want to speak to that before I give David back the floor?

MR. ANDRADE: Yeah. And you know, I think when I started off this week, I talked about sort of my experience on the default initiative, right, and the -- the introduction of cohort default rates as a metric. And there's an -- and that's one -- that's a process where you would think, oh, it's just math, right. It's just arithmetic. And there were some very robust reasons in that case for -- for the appeals process. And it was, you know, who, you know, who are the people that are going in and confirming it's the right people and checking servicing records. And even in this case, you know, I think making sure, even though there's a -- there is a step for approval of completers, I think, you know, that is a potential source of error in the calculations. I think, you know, is also, you know, how many, how many people did not get matched in the -- for income tax

records. And so I think there are things that go into the calculation that would be potentially appealable and would be grounds without changing the underlying framework. So again, I think that's probably more the intent. And this is sort of a standard process whenever there's a determination, you always sort of give, you -- Congress generally requires an agency to give some reconsideration. And not, again, not challenging sort of the underlying basis for the decision, but the actual facts that were used in coming up with the determination.

MS. MACK: Thank you. Jeff. Back to you, David.

MR. KAFAFIAN: Yeah. Completely understood. I think you all collectively, week one in December, week two now, have been thoughtful and aggregate, and as it relates to trying to read the statute. I think it would be helpful to hear. Does the Department believe that there is a substantive issue, even if there's not a statutory capacity to remedy it? Does the Department believe that there's an issue as it relates to the fact that we have rural programs failing at almost twice the rate of non-rural?

MR. MUSSER: Yeah. So to be frank, we understand that point. And I think we had some discussion about that over the extended lunch break. We are

sensitive to that, and we recognize that there are differences there. We -- we're thinking through, you know, what we -- what might be a potential remedy. We haven't landed on anything at this stage. But looking at the numbers it is clear that in some states, especially states where there is a particularly wide variation in wages and cost of living between rural areas and cities, for example, Texas has some of the some of the widest variance, that it might, you know, the -- a person who comes out of a program with somewhat lower wages might be doing significantly better in their particular area given the differences in cost of living. So the Department is looking at that right now to see if there is anything that, that might be a remedy there. We haven't come up with anything at this point, but we're going to continue to look at it over the next -- over the evening and come back to see, to see if there's anything that we think that might be reasonable there.

MR. KAFAFIAN: I do really appreciate that. And I'm sure there are many constituencies across the table and around the country that do feel that way. And even if that remedy is Congress hearing that, as they look back at this, I think I very much appreciate it. There's a meaningful statistical difference, and we have limitations around this table. But that's very helpful.

Thank you.

MS. MACK: Thank you, David. Jeff?

MR. ANDRADE: Yeah. And just to piggyback on what Dave said, I think what we're looking at is in terms of the reference, you know, the benchmark end of it, and whether or not that that is accurate to the areas where people are working.

MS. MACK: Thank you. Jeff, please.

MR. ARTHUR: Sure. When we, when we look at the language, the statute on addressing appeals, it references median earnings determination, and it doesn't say median earnings calculation. And I think there's a pretty significant difference in those terms that may command a little bit different approach. But that said, I want to bring up one scenario where it kind of -- maybe fits in that area. And I really appreciate your, your considering the regional aspects more. We were thinking if, what if you -- what if -- I think the states have wage information for high school grads, and if your state, and Aaron referenced, you get states with longitudinal data systems. I see slightly higher wages in that platform than, than what I get from other sources, the scorecard and other databases and it was helpful in an appeals for one culinary program many years ago. But they also, you know, if you look at the -- if you have

high school wage data in your state and perhaps even at the region level is a possible appeal process, I think I would have a lot more trust. And I think you would consider wages that, that your state determines would be more accurate than a survey. And I also think it also kind of fits with the spirit of having states take on more of the responsibility in administering higher education policy.

MS. MACK: Jeff, please.

MR. ANDRADE: I think those points are taken, and there are, I think, very granular sources of data on that. Unfortunately, the statute limits us on the benchmark data to the census. And so we're trying to stay within the realms of what we can do with the census data, which is mostly American Community Survey.

MR. MUSSER: And I would also say, yeah, sticking with exactly what Jeff said, you know, looking at the rural area issue, the kinds of things that we're considering for remedies are all based on census data. So we're -- we feel that that's an important piece.

MR. ARTHUR: Yeah. And no interest in differentiating for certificate programs as an appeal, possibly using state -- states data.

MR. ANDRADE: Again, I don't think we have the leeway. In fact, you know, Rachel and I, over

the break, had a discussion on, you know, what's available at the state. And I do think it would be if we were not constrained by the census data reference in the statute, I think, you know, we'd have some leeway there. But I think we, you know, we've got to work with what we got.

MS. MACK: Thank you, Jeff and Jeff. Zoe, over to you.

MS. KEMMERLING: Thank you. I have a follow-up question. In the event an institution loses an appeal, are they eligible, I mean, are they required to repay the funds disbursed during the pendency of the appeal? And does the answer to that question depend on the statute?

MR. MUSSER: No. They would be required to repay any funds that they disbursed during the appeal time frame if they lose the appeal. Yep.

MS. KEMMERLING: Would the Department be open to some sort of proposal suggesting an institution is required to offer something like a letter of credit during the pendency of an appeal?

MR. MUSSER: I don't think we can go that far. Because there's two -- there are many consequences to letters of credit. We don't -- we can't anticipate all of the different circumstances where, if

we do that. Because, you know, what we're talking about here is this might be just one program at the institution. And if we ask for a letter of credit for the entire institution at that point and they can't give it, and then we have to put them on heightened cash monitoring or take other significant steps, that is vastly beyond what we were planning. And it also -- it discourages the schools from even doing the appeal in the first place if they have to take that kind of a step. And we -- assuming that we are staying with and we are right now that staying with a data-based appeal process, we don't want to discourage them from doing that. If there's an error, we ought to try to catch it. So for all those reasons, I don't think that the letter of credit is the way that we would deal with that particular situation.

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

MR. ANDRADE: And I think if you look at it in the context of our financial responsibility regs, which essentially are weighted towards having a degree of liquidity within the institution. And if they don't have that level of liquidity generally, they would have to already post a letter of credit. You know, we're dealing with such a short period of time, at least that's our assumption, for the amount of funds that could go

under the appeal. That ought to be -- I don't foresee that there's additional risk to the Department of not being able to recover the funds under that scenario. If they were, and this is, you know, where something that goes on for years, and I think you'd have a point, but I think if they're already over 1.5 on their composite score, I have reasonable assurance that that institution could pay back those funds.

MS. MACK: Thank you, Jeff. Zoe?

MS. KEMMERLING: Thank you. I think, to clarify, I was suggesting a letter of credit, as you said, Jeff, to cover the relevant funds that might be disbursed for the program, not the entire institution. But I appreciate the details of your response. Yeah.

MR. ANDRADE: I think my point is that they, that they should be liquid enough to be able to cover that if they had to pay it back.

MR. LALLO: I also want to point out, I think there's a degree of trade-off there, right? If they have to refund, you know, funds disbursed in that time, that's a -- it dissuades them from filing, you spurious appeals that -- it's a little bit of like a risk for them. I think Jeff's right. You know, this -- we're talking about a narrow situation. You know, in a lot of cases, these schools have multiple programs. Only one of

them is losing eligibility. I grant you, and in some cases, that it might be the entire school has programs or a single program, but I think that, you know, the trade-off there is like, they have to give the money back. But we're also trusting that, you know, if they don't already have a letter of credit on the books, we're not going to make them put up more because that balancing of equities starts to get a little unfair if we push it too far the other way.

MS. MACK: Thank you, Jake.

MR. MUSSER: And the last thing, yeah, is that, you know, certainly if the Department were to look at the situation and think, well, the potential loss of eligibility for this GE program could cause the school to be in real financial trouble, we might ask for a letter of credit anyway. So there are going to be occasions, likely, where that happens. It's because we're concerned about their financial status. So I don't want to suggest that we wouldn't do a letter of credit, as just as a rule, we absolutely would if we had other concerns -- broader concerns about the school's financial situation. Yeah.

MS. MACK: Thank you, Dave. Jeff, did you have something else? Perfect. Zoe, back to you.

MS. KEMMERLING: Thanks for your

perspective on that. That was helpful. And the last thing I wanted to mention on the topic of appeals is as I know you saw we submitted another proposal last night that and I don't need to go over it because we explain our rationale in there, but advocating for the existing, existing appeals mechanisms in the statute -- in the regulations currently and why we think that they do already provide due process and in addition, that they offer probably a more expedient avenue for the prompt resolution of appeals than everybody going through the subpart G process.

MR. MUSSER: And we're looking at that one.

MS. KEMMERLING: Thank you.

MS. MACK: Thank you, Zoe. Aaron?

MR. LACEY: Just two comments. I mean, one's a comment, one's a question. The comment is just, I think this point was sort of made, but it's worth reiterating that appeals are not efficient. I mean, they're not economical, right? The point of an appeal is not to be the most efficient process. Not having an appeal would be more efficient. The point is to create process and opportunity to make sure that you double-check the work and get the right answer. And Congress thought it was important enough in this case that we get

the right answer, that it mandated an appeal. And so I think at the root of this question is the appeal concept that's been proposed, really giving institutions an opportunity to demonstrate that the answer may not be right. I'll just leave it at that. Here's my question, and I'm going to be a little out over my skis here. But it's my understanding that when the IRS releases publicly available data sets, it inserts statistical noise into those data sets, right? I had originally assumed that when a completers list went over to the earnings agency, IRS, that that practice would not exist. But then I got to thinking, you know, there is the possibility these are going to be publicly available data sets. In which case, it raises the question in my mind, do you think or can the Department confirm that there will be no statistical noise included in these data sets, or do you know? And if there is, which means it could actually move those results slightly, understand there's sort of deviations here, but you know, it makes me think there could be additional value in looking at a state data set that may not include that type of statistical noise, and which could actually provide a more accurate representation of student earnings.

MS. MACK: Dave?

MR. MUSSER: Well, I'll give a short

answer, and I'll just say a short and much more ignorant answer than Cody could probably give on this topic. But just to say that the statistical noise makes a very small difference, such that I don't think that countering it with looking at other data would be meaningful in the very vast majority of cases. And actually putting that aside, just to -- just want -- the first point is publicly released data definitely will be noise adjusted. The, you know, the Department is working with our partners to determine exactly how the process might work behind the scenes. So, if -- I don't know if Cody wants to say anything further on it, especially with respect to the effects of the noise, but I certainly would be happy to hear from him if he's got any other thoughts.

MS. MACK: Welcome back, Cody.

MR. CHRISTENSEN: Hello, everyone.

Yes, this is an issue. It's a question that's -- well, we thank you for your question, Aaron. The first thing we want to say about this is the statistical noise topic is a topic that the Department has been thinking about for months on many, many months now, at least five months. We've been engaged in deliberations with OMB, and we've started discussions with Treasury to figure out exactly how this noise process works and how the current process works, and how the process could work going forward. So

this is a topic where there's been significant thought put into it. As Dave suggested, there is a process currently at the IRS through the Treasury protocols, where statistical noise is added into the earnings data for the completers list that we send to the IRS, such that it perturbs the data just a little bit for privacy suppression. This -- they -- the IRS tells us that this process is required by both policy and statutes to protect individual tax records. They tell us that without the statistical noise, when you release a median earnings value, that median technically is somebody's tax return, that median -- and they are barred from releasing any individual's tax return. Unlike an average, where the number you land on wouldn't technically be somebody's real number, a median is somebody's tax return. So this is an issue that is particularly important to understand. The way that the Department is currently understanding this is that we would run, and these conversations are still ongoing, but we would ask the IRS to give us, to essentially, calculate the values and tell us, and run the test without the noise introduced. So they would tell us what is the real earnings versus the actual benchmark. So we would have a number based on -- without any statistical noise introduced. However, when they would then transmit the data back to us, statistical noise

would be added into that process. So the data we receive back could differ from the binary pass fail that they tell us. Let's say that without the statistical noise, a program that's right on the margin fails. But when they add this statistical noise process, it actually bumps it to the pass side. It would look incongruent. So we are -- but we know that the test was run without the noise added in and that the true sort of binary pass fail is the more correct number. It's just the deviation is because of the statistical noise. So there are different processes that we could do to address this. One idea is that we could readjust the value that they sent us to be \$1 above or below if the IRS tells us the program failed, but it looks like they passed based on the earnings value, we could actually readjust that earnings value to be \$1 below what the threshold is. But this issue is largely something that -- the statistical noise issue is largely something that is out of the Department's control because we are relying on another Federal agency with earnings data. That said, we are continuing to talk to our partners over there to figure out what flexibility or if there is any other process to address this. But this is the current understanding of this. This is our current, our current understanding of how the process would work. And our understanding is that the statistical noise on

average nets out to zero. And for most cases, it moves the program earnings only a little bit. But of course, there will be the program that would otherwise look like it passes or fails, which is why we want to assure the colleges and the folks representing them, that our objective is to be able to run the earnings test without the noise. So it's based on a true number. It's just that the publicly disclosed data would then include the noise. And that, again, is by the statute and policy of the other Federal agency.

MS. MACK: Thank you, Cody. Any follow-up, Aaron? Good? Jeff, did you have a question?

MR. ARTHUR: Yeah. Just a quick question. So, we are going to use the real median? The only reason I bring that up, I think I've seen that one of the processes in the IRS noise is to remove -- often remove very high numbers, and that then you may be getting somebody's actual tax return number, but it may not be the median, if you've removed people from the, the count.

MR. CHRISTENSEN: That is something that we'll have to take back to look at. I don't have a specific answer to that off the top of my head.

MS. MACK: Thank you, Cody. Dave, I believe we are ready for our next section.

MR. MUSSER: I think so. I think we can go ahead and pull up topic five once again. Okay, so at this section 668.604, and remembering that we are in 34 CFR 668 subpart S, the accountability section. This section is on the certification requirements for GE programs. And here we've added and eligible non-GE programs. This harkens back to the topic that we started with and the changes that we made to part 600, where the institution is now going to need to submit all its programs to the Department as part of its reporting to the Partner Connect system. This is the accountability language that also enacts that requirement specifically for programs that are subject to this test, which now include non-GE programs. The first thing here is that we've struck the transitional certification requirements. This, this requirement in the existing regulations did not do a lot that was not already taken care of in the program participation agreement, for example, it required the institution to assert that all of its programs were accredited which were -- which was already required under the PPA and other law and regulation. So we proposed to strike the transitional certification and, assuming that the PPA is taken care of most of those things, and that these requirements would be effective as of their effective date. So let's scroll down here. The second

thing here that we have struck. This is, sorry, this is also related to the transitional certification. So let's keep going down. Okay. So then we get to the next section, which is the program participation agreement certification. This is the, the change that we believe does need to be made. So as a condition of the institution's continued participation in the Title IV programs, they have to certify their agreement with the Secretary that each of its currently eligible GE, and we've added eligible non-GE programs, included on its eligibility and certification approval report. That's the Partner Connect report that is issued once we have received programs that, once the school has reported them to us, that it meets the requirements of paragraph C of this section, which we'll talk about in just a second. So scroll down here. So this is B, expressing that an institution establishes eligibility for Direct Loan funds when they, when they update the list of their Direct Loan eligible programs. So this is another reason we need to be aware of all programs so that we can ensure that we can take ineligibility action when the program has failed two out of three consecutive award years failed the metric. And therefore, we're also saying here that a school is -- a program can't be eligible unless the school submits it through this process. So a school can't

just hold back information about a program, and, you know, avoid the Department's action that would, would result when the program failed. So there's -- this is really just establishing some consequences of not reporting timely. And I just want to mention here that this still doesn't require department approval of programs before disbursement is made. This just says that if you want the program to be eligible, you just have to report it to us within ten days of starting the program. And then you can begin disbursing aid at that time. So then again, by updating the list, the institution affirms that, that the program satisfies the certification requirements in paragraph C, which we'll get to in a second. So let's scroll down a little bit more. And we're just making changes here to -- from Title IV to Direct Loan funds. We can scroll down a little bit further here. Okay. So here is the changes that we've made to when an institution may update its list of Direct Loan eligible programs. So in this section, you will see some language that is similar to what we shared in the Workforce Pell process. An institution may not update its list of Direct Loan eligible programs to include a program, to include a program or a program that is with sharing the same four-digit CIP code as a failing program that the institution voluntarily discontinued or became ineligible, as

described in 668.603(c), at the same credential level that was subject to the two-year loss of eligibility until that period expires. So this is essentially the same limitation with the same amount of time that the two-year time frame that the statute prescribes for the loss of eligibility for the program. So this is, again, the Department's effort to prevent gaming in this area where schools could simply start a new program that is very similar in a similar -- in a different six-digit CIP code, but that is similar enough that they could just continue the program. This prevents them from adding that back if that -- if they voluntarily discontinued the program or if it has lost eligibility. So let's scroll down a little bit more. Direct Loan program eligibility certifications. Just changing again, Direct Loan eligible program. We've added here just to clarify that the institution agrees to comply with the requirements of subparts Q and S of this part. That's a technical change. And then scrolling down a little bit further, that's the end of that section. So if folks want to have -- discuss this one, I'd like to open it up.

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

MR. LACEY: I think it fits here in this conversation. We had a meeting, and I think every

constituency was there. If anybody was excluded, let me know. But I think we were all there to talk about trying to deal with the you know, the potential for, particularly, I think, bachelor's, potentially other graduate programs, etc., where they could run out of eligibility before they could teach out a program, and trying to think for a solution to this. I'm going to try to explain this in two minutes. I'm happy to handle it, however you guys would like to. But here's the idea. And I think I can rationalize it statutorily. We can talk about that separately. But the notion would be if a -- if an institution fails once. So it's gotten a determination from the Department that its program has failed once. Then the institution would have the opportunity voluntarily to enter into an agreement, probably fashioned as an addendum to their PPA. So this is part of their terms of their participation in the Title IV programs for the whole institution, right? And that agreement, per that agreement, they would agree to stop enrolling voluntarily, stop enrolling new students in the program, and to teach out the program. And the idea would be that that would permit -- that the Department would then go ahead, you could calculate that second rate, you could make that publicly available, but there would not be a determination regarding failure. And I have a couple

of ideas around the statutory concept here. So -- but the institution would then agree in the addendum one to teach out the program. When the program finished its teach out, say the last date of instruction, it would still be subject to the two-year ineligibility. It would still be subject to whatever you guys end up with in terms of a substantially similar program. Like all that same stuff, you would agree in the PPA addendum to honor. So if I got a bachelor's degree program in year one, I find out I'm failing. I voluntarily signed this PPA addendum. I don't enroll new students. I start teaching out the program. Three years later, when that thing ends, I then got a two-year period of ineligibility, and that also applies to rolling up or creating substantially similar programs. So it's essentially all the same terms. Like the idea here is not to game the system in some way. In fact, you could have a five year period now where you're basically and, you know, if institutions wanted to roll the dice and said, we think our second year of earnings is going to be fine, they don't have to enter into this thing if they think they can transition the program to work without Title IV, they don't have to enter into it. But the notion is, if an institution sees that we don't think we can run this without Title IV, we've got three years, we're going to need to make this happen, they can enter

into this contractual relationship with the Department, subject to all these conditions, but that would allow them to actually complete the program. It protects students. It incentivizes institutions potentially to stop enrolling and put programs on a trajectory sooner than they otherwise would have if it failed two years in a row, right? They've still failed one year, so these would still be failing programs from the Department's perspective that it could say, you know, per the arrangement failed. We think it creates a lot of positive opportunity to help manage the student situation without creating risk for the Department. It also gives schools a little more time, potentially, oh, the other thing is, the teach out would be managed in accordance with consistent accreditation and Federal requirements related to the management of teach outs, right? So you'd have to do all of that stuff correctly as part of doing it. I'm sure there are other questions and ideas, but I certainly do not speak for anyone, and I know that everyone would have to see a final sort of concept before they would want to sign off on it, but my sense was this was -- there was pretty good momentum around this idea. And we think -- I think it's got a lot of potential and would hope that the Department would consider it pretty seriously.

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

MR. ANDRADE: So just a quick question. And first of all, you know, thank you for all, all of you, you know, for coming together and putting that together for us. I just had a quick question on whether there's, there's notification component in this?

MR. LACEY: Still making the warnings because you failed one year, so you're still making all the warnings to all the students. You know, still collecting the data and calculating the rates. Truly, the intent here is not to get institutions out from under anything that they would otherwise be subject to, but it creates an opportunity to protect the students. And also for student, you know, institutions with a little honor and dignity to say, we're going to do what we think is the honorable thing here. We're going to elect to teach out now and take an avenue that allows us to run this correctly to its course.

MS. MACK: Jake?

MR. LALLO: All right. You've convinced me you have a reasonable policy, so convince me you have some reasonable law behind it.

MR. LACEY: Yeah, I think, I think the idea I was looking at the statutory text and, you know,

if you go up to the -- to C, ineligibility for certain programs, sorry, I'm referencing the statute, but it says notwithstanding 1088 B, an institution of higher education subject to this subsection, shall not use funds under this part for student enrollment in an educational program that's been determined to fail the test. And what I wonder is if the Department could get comfortable with the idea that an institution has effectively agreed as, as a condition of its program participation agreement, not to enroll any new students in this program and interpret that language in a way that would essentially take these programs, you know, you're still calculating the rate, but the idea is you're not -- you're recognizing that the institution is not utilizing funds for enrollment, certainly to drive new enrollment in the program. I mean, I think there's some creative thinking here, but I think that's the one place. I mean, we're also looking at the actual statutory obligation of the Department is to collect and publish the median earnings. And that's really the end of the statutory obligation. So you -- you're still doing that and, and the institution is agreeing, you know, not to enroll any new students. And by the way, not just Title IV, I mean, our thought was no new students. So they're ending this program completely. That's the notion there's not like a -- if

they don't want to end it completely, you got to go to the second rate and hope for the best, you know, and see what you can do.

MS. MACK: Thank you, Aaron. Any more Department follow up on that before I move to other cards?

MR. MUSSER: Just like Jeff, I'd like to just express my appreciation for the thoughtfulness that went in -- that went into this, and for working together to come up with something that folks could agree to. Thank you, guys. We really appreciate it. We'll take a look once you guys have the written proposal to us. I guess I would, you're not going to get out of that, sorry. So this is just an opportunity, I think, for me to remind folks that we are sticking to our deadline for new proposals of 7:30 a.m. tomorrow. So I know that means tight time frame for this. But again, we really appreciate the thought and we certainly will consider this one.

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

MR. COOPER: Thank you very much. So on regaining eligibility, I point to the statute of the One Big Beautiful Bill Act that allows the Secretary to, actually requires the Secretary to establish a process by

which an institution of higher education that has an educational program that loses eligibility can regain eligibility, subject to the requirements established by the Secretary that further the purpose of this subsection. So to that end, we've submitted a proposal legal aid, veterans, and students are on this one, that would somewhat strengthen the process by which the Secretary would determine whether the program can regain eligibility. Specifically, per Cody's presentation earlier, Cody indicated that even after a program loses eligibility for Direct Loans, the Department will still calculate the earnings premium measure for that program if there are students who are, you know, still have Title IV and are still in the cohort. So, you know, if you lose eligibility in 2027, you can still calculate the earnings premium measure for all the students who got Direct Loans before 2027. Obviously, if Pell grants are still going to the program, you can still calculate the earnings premium measure based on the earnings of students with Pell grants. And so what this proposal basically would say is that if, based on that earnings premium measure, the institution would have failed the earnings premium measure in either of the two previous award years, the institution -- that program would not be able to regain eligibility until either it's passing for both of the two

previous award years or if there's insufficient data to make a determination one way or the other. And this would basically ensure that if the Department continues to have data showing that the program is failing year after year after year, it can't get back into the Direct Loan program simply because that two-year period of ineligibility has expired. If the Department has data showing that this program is going to fail the earnings premium measure, I believe that we should use this statutory authority to ensure that that program does not get back into the Direct Loan program. So I would submit that for your consideration.

MS. MACK: Thank you. Did you want to respond, Dave?

MR. MUSSER: Just, just we have -- we did see and appreciate that suggestion. That's one that we're looking at pretty seriously. We do think that there's statutory authority for it. We're just trying to make sure that there's no unintended consequences with the language, etc. So we're certainly looking at that one.

MR. COOPER: Thank you very much.

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

MR. KAFAFIAN: Narrow but probably

unsurprising request. On page 55, we talk about the same four-digit CIP code to prevent gaming. We discussed this at length in the Workforce Pell context. I was hoping that we could use the same language around identical four-digit CIP and identical SOC code mappings?

MR. MUSSER: And the Department -- we're open to that. We have to again, we have to think about it in this context. It's slightly different. But if you'd like to submit that one, we'll certainly take a look. Yeah.

MR. KAFAFIAN: Thank you.

MS. MACK: Thank you, David. Kristin, please.

MS. HULTQUIST: Thank you. I'm going to try to mimic Aaron's enthusiasm for that prior proposal. A couple of things, you know, we all, in this beautiful, harmonized framework, you're introducing predictability and simplicity for us at the institutional level, and we think at the state levels, too. I'm a veteran of NCLB implementation, and so I am speaking on behalf of public colleges who value predictability and simplicity, but also as that veteran, hold tight on this appeals process for mathematical corrections only. I think that promotes sustainability. And also, I appreciate you're willing to consider something around

the world. I think that will also promote sustainability. A couple of things about this proposal that Aaron et al and others gather around before here. Program closing and redesign is accelerating for various reasons around the country. This, this proposal would force realism starting at the trustees, but President and Provost, it will protect students. It protects our institutional brand. It will help us rebuild some public trust. It will limit disruption of employees and students in congressional districts, and that will contribute to sustainability of our harmonized framework.

MS. MACK: Thank you, Kristin.

Michale?

MR. MCCOMIS: Thank you. I know we're kind of getting close to the end, and you've got a little more to go through. I just wanted to put down a marker that, as we're getting close to maybe taking a break at some point, we're going to call -- our constituency would call for a caucus with institutional representatives and employers and the Department to kind of just flesh out a few more of the items that were discussed in yesterday's caucus.

MS. MACK: Thank you. Let's continue going through the sections, and then we'll return to that. Yes, Jeff.

MR. ARTHUR: Yeah. Just a quick comment on the reestablishing eligibility, and with a pattern of ineligibility in the history for a program. I mean, I'm not sure how this may -- might manifest itself, but I'm -- there are ebbs and flows to workforce demands. There's changes in what's needed that salaries change. You might find there's a tremendous shortage in something that's had a pattern of lower wages, and all of a sudden now has higher wages. I just point out that there -- that may not be a perfect solution.

MS. MACK: Back to you, Dave.

MR. MUSSER: All right. Thank you. I appreciate the discussion there, too. We will return to our discussion draft and go through the remaining section here, the student sections. Student warnings is the next section. So this is 668.605. Events -- so we start with what causes a warning to be required. And we've talked a lot about warnings all the way up until this point. This is the actual language that mandates the warning. So again, we are not specifying a start date. This will apply when the, when the regulation becomes effective. The institution must provide a warning with respect to a GE program, and we're adding or eligible non-GE program to students. And when we say students, we mean currently enrolled students and prospective students for any year

in which the institution, the Secretary, notifies an institution that the program could become ineligible for the Direct Loan program under the subpart based on its earnings premium measure for the next award year for which it is calculated for the program. So again, most of the changes here are just to align this with our current approach of focusing on Direct Loan eligibility and not including the debt-to-earnings rates. Scrolling down. We did delete the B, which was a subsequent warning. Feeling that this was a little bit onerous for institutions. We recognize -- we received a proposal to put this language back. We're thinking about the consequences of doing that. But we do understand the proposal. So we're still looking at that. Scrolling down a little bit further. This is where we describe in what is now paragraph B the content of the warning. So in the warning, the institution must provide a warning, as we specify in the Federal Register. And we do, we do intend to continue to specify that in the Federal Register, it wouldn't necessarily be annually, but it would -- that would be the guiding document for institutions about how to do this. That one, the program has not passed standards established by the Department based on the reported earnings of program graduates. So here we have struck the concept of borrowing, just because that's not applicable

if it were only focusing on the earnings premium. So scroll down. And the program could lose access to Direct Loan funds based on the next calculated program metrics. The relevant information to access the program information website, as we mentioned earlier in this discussion. So they have to give that information to the student so that they can go and see for themselves what the metric resulted in, and more information about the program and the institution. And then a statement that the student must acknowledge, having viewed the warning before the institution may disperse any Title IV funds to the student. That acknowledgment is to the institution the -- not the Department, as the other acknowledgment process would have been. So here, 4, we have struck the description of the academic and financial options available to students to continue their education elsewhere. Interestingly, you know, we thought this was a bit burdensome for institutions, and we believed that in many cases they would do this anyway for their students as an -- in an effort to teach them out. Not necessarily the case, but we believe in many cases. The teach out discussion that we just had, I think, helps a little bit in this area, that many -- that will -- where schools will potentially voluntarily engage in that process. But we've also struck that language here. So let's scroll

down a little bit further to 5. We've also struck an indication of whether, in the event that the program loses eligibility for Title IV funds, the institution will continue to provide instruction to allow students to complete the program, refund tuition fees, etc., and the last one here, an explanation of whether, if the program loses eligibility for Title IV funds, the students could transfer credits earned in the program to another institution. We also struck the requirement to offer this in alternative languages. We don't believe that that's necessary in every case. Schools will do that if they feel it's appropriate. A lot of the changes here are intended to align with the more limited requirements in the law for student warnings and to again scale back on the amount of burden associated with these warnings. We and I would note that we have received proposals to add some of these things back that we are considering to see if they if, you know, that is something that we could live with despite the burden that it imposes on institutions. Scrolling down a little bit further here. This section, we didn't change. Delivery to enrolled students, but this is just a reminder about what's required here. The institution must provide the warning in writing by hand, delivery mail, or electronic means to each student enrolled in the program no later than 30

days after the Secretary's notice of determination, and they have to maintain documentation of their efforts to provide the warning. The warning must be the only substantive content in those written communications, and that's to avoid schools masking the real effect of the warning with other texts. So scrolling down here. This is -- this section is on delivery to prospective students. I won't spend too much time on this. Not many changes here, but this section is about how the institution provides the information to prospective students, and we can scroll down a little bit here, by one, hand delivering the warning as a separate document, individually, or as part of a group presentation. These are the options for providing it to prospective students. Two, sending the warning to the primary email address used by the institution for communicating with the prospective student, provided that the warning is the only substantive content in the email and that the warning is sent by a different method if they can't deliver the email. And then three, providing the warning orally. So let's keep scrolling down here. Important note here, an institution may not enroll, register, or enter into a financial commitment with a prospective student any earlier than three business days after the institution delivers the warning. And then finally, that the

acknowledgment prior to enrollment and disbursement, the institution -- an institution may not allow a prospective student seeking Title IV aid to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse Title IV funds to the student until the student completes the acknowledgment described in (b)(3) of this section. Can we scroll down a little bit further? Finally, here we have discharge claims. We just made a few changes here, but this section essentially indicates that providing the warning does not mitigate the responsibility to provide accurate information, and it could still -- providing inaccurate information could still result in a loan discharge under the Borrower Defense provisions. So scrolling down here, the last section severability, has not, has not changed. We are looking at the severability language per the request by Preston. So we may make some changes to this section later in the week.

MS. MACK: Thank you, Dave. Matthew, please.

MR. FEEHAN: So I just want to say, as a general note, I cannot thank the Department enough, the Department leadership staff, for pushing forward to having these warnings applied to a greater number of institutions. This is something our group has been

advocating for a long time, so it's really exciting to see it come into regulation. Some of my colleagues have some proposals related to this, so I'm not going to get into that. Veterans support their proposals for some of the content for the warnings. But again, I just want to thank the Department. This also, is and again, I'm not rushing the Department here on the data request. But again, just more on a general maybe preamble or just a general discussion point for the record that this is one of those opportunities, which is a great opportunity for collaboration with other departments. So, in this particular case, for my constituency would be the Department of Veteran Affairs and the Department of War, or the Department of Defense. And so with regard to warnings, there have been times in the past where, again, we're only talking about Title IV here, so just being clear for the record but it would behoove the Department of Veteran Affairs and Department of War to be involved in this process early, because it has happened to our constituency that some get warnings and some don't, especially if it's through G.I. Bill. And then student veterans and student service members are a little bit behind when we start getting notices. So again, just want to close with we thank the Department for applying this equally and equitably, and it's a wonderful change.

MS. MACK: Thank you, Matthew. Jeff, did you want to speak on that point?

MR. ARTHUR: Yeah. It's also been my experience at the Department when they've sent notices like this that are significant, as this, that they copy every approving agency on your ECAR. And maybe you can confirm that, but that includes accreditors, the Department of Veterans Affairs, any agency that you've -- that you are approved by.

MS. MACK: Thank you, Jeff. Go ahead, Dave.

MR. MUSSER: Yeah. So this particular process doesn't necessarily result in the loss of eligibility. So the failure alone wouldn't necessarily necessitate that communication. So I take, I take the point. We'll think about how that would work internally. And we can -- if we decide that there is a process that we could use to do that. You know, we will also be publishing this broadly, and we might be able to do -- to notify folks of the availability of that information. So we can consider that too as potentially one of the things we can commit to in the preamble, if we reach consensus.

MS. MACK: Thank you, Dave. Preston?

MR. COOPER: Thank you very much. Two things, just wanted to say, for the record, that we've

submitted a couple of proposals around severability. I know you mentioned that, but I also just wanted to say it myself, too. So thank you for considering those. The other thing I want to say, just on the warnings, I know that there are some proposals out there to modify what's going on here, and I'll let others who have taken the lead on those speak to those. But I do think that it is important for students when they are in a situation where their program is on the cusp of losing, losing Direct Loan eligibility, to have a real full accounting of their options. Thinking from the perspective of my constituency group, which is taxpayers. We've spent over \$2 billion in the last ten years on closed school discharges. And I know this is just programs, not schools, but there are some schools which are at which 1 or 2 programs are a big proportion of them. And if we can give students their options up front, give them more time to think about, you know, what are my options with regard to transfer, you know, re-enrollment, you know, what are the articulation agreements, and so forth. I do think it will help cut down on some of those taxpayer expenses, and quite frankly, a lot of the heartache for students when they end up in a situation where the path forward for them is closed, often for good reasons, but they need to figure out what the other -- what the next pathway is. So I

would just encourage maybe leaving some of these disclosure requirements in.

MS. MACK: Thank you, Preston.

Michale?

MR. MCCOMIS: Yeah. I want to reiterate and thank you, Preston, for that introduction, I agree. So as an agency that issues its own warnings and has similar kinds of requirements upon notification, you know, oftentimes this becomes a so what now what moment for students. And it might be for some intuitive that warnings and probations are not good things, but that's not always the case. And so providing, we just talked about providing an off-ramp for institutions, I think it's important also to provide an off-ramp for students. And so maybe not a full accounting. And I get that some of the language here isn't a great fit for that, but at least putting the onus on the institution to say this could happen, and here's a range of options that you should be considering. You can look to transfer to other -- you don't have to say that your credits are going to transfer, but there are, there are other programs that you can look at to potentially transfer your credit that the institution may teach this program. I mean, there should be just some plan that the institution has with its students to say, should this happen, here's what

we're thinking, or here's what we think will happen next. So I would encourage the Department to consider that again as that potential off-ramp for students.

MS. MACK: Thank you, Michale. Zoe, you have the floor.

MS. KEMMERLING: Thank you. I absolutely second what Michale said about providing an off-ramp for students. And thank you for considering our proposals. I just had two brief comments on the subject of balancing regulatory burden with efficacy. One is the subsequent warning. You know, we do believe that getting the warning to the student at or near the time of decision-making is key. And to my understanding, this is just a reissuance of a warning that would already exist. And to the bit about offering a warning in alternate languages, I think it could be adapted to, say, alternative languages if the program is taught in a language other than English. Thank you.

MS. MACK: Thank you, Zoe. David?

MR. KAFAFIAN: Appreciate all of my colleagues' comments here. I would say that what I said earlier today, I meant there's really nothing worse than a student stop out, specifically a preventable one. And so, in the spirit of consistency, I would also agree with the colleagues and some of the proposals being made

around continuing this. It is redundant in many instances. Frankly, under reg Z, every single student loan that's issued in America as a private student loan has a three part truth in lending disclosure. And that redundancy is intentional. And obviously, that is a different body of statute and regulation. But I think it's important. And so in that vein, I would say -- I would be supportive of those proposals as well.

MS. MACK: Thank you.

MR. MUSSER: Yeah. No, the Department appreciates that -- hearing that from a number of folks around the table. So we will take that back and consider it as well.

MS. MACK: I think that concludes topic five. We're through all of our comments and questions. I wonder if now is a good time to hold the caucus that was requested.

MR. MUSSER: If folks don't mind, I have a few changes that we have made from proposals coming up that we wanted to go through. We will email these out to you guys as well. But I wanted to just show you what -- they're relatively minor, they're not likely to affect the, the caucus, but I just wanted to see if I could get through them. Just one second. We will pull those up. All right, here we go. And let's scroll down to

the first of the changes. I believe that's under the definition of the earnings threshold. Here we go. Oh, sorry, not quite yet. So this is in the topic one. This was some language proposed by Michale just to clarify the effects on the Direct Loan agreement and specify the consequences of failing the -- of programs failings. Let's scroll down a little bit here. It's -- he proposed adding some language into paragraph three, which is what we propose to add. So if we scroll back up a tiny bit, sorry to two. So recalling that two is that the school would enter into a written program or participation agreement with the Secretary as a condition of receiving Direct Loan funds. And three, as part of such agreement, the, the program participation agreement, in order to maintain eligibility for GE program or an eligible non-GE program to participate in the Direct Loan program, the school must show that such program meets the tuition -- at student tuition and transparency system requirements under subparts Q and S. So this is really just clarifying language. But we appreciate it, and we think it is a little clearer. All right. So let's scroll down. The second change is in the definition of the earnings threshold. This actually goes back to Aaron's original point that what we had in there regarding the tax information that we would use to perform -- to determine

the threshold was not actually what, what was in the regulations. Still going down to it. Oh, just one second. Track it down. Sorry, wrong -- I had the wrong section. This is where we're determining the earnings threshold in the actual calculation section. Apologies. So here the Secretary obtains from a federal agency with earnings data the, and we had previously said most currently available median annual earnings, which would have taken the earnings from the most recent tax year in all cases. We have amended that to say for the fourth tax year following program completion. Meaning that for all individuals that -- depending on when they graduated, in which, in which year in the cohort we would use their tax information in the fourth tax year following their program completion. And then of course, we would also inflation adjust the older ones to come to a final value. Okay. I think that's the last change. Andrea, is there another one? Yeah, I think that's the last one. The last one -- the other ones that you see are the ones that we made previously. We'll go ahead and continue to scroll down through the remainder just so you can see there's nothing there's -- there aren't any other changes here. You can keep going, Andrea. And this is the last section we just discussed. As she's going through the remaining portion of the document, I did want to just go through

quickly some other things that we do agree to do as a result of the discussions here. We do -- we looked at, Eric, your proposal to add more granular information regarding housing and food to the Department's website. You also asked to add other types of information, such as transportation, and other things like that. We don't have the breakout of the information, such as transportation and other miscellaneous things currently being reported to us, and we don't think that that -- it that -- it's a good idea to ask schools to report that, that granularity of information. So we don't think we can take that. So, but we did think about the housing information. We think that could be valuable. But we wanted to ask, one of the reasons we chose not to include that on the program website in the first place is that presenting information about housing and food is a little challenging if you're presenting it to the same audience. Because the school has multiple different housing and food values in their cost of attendance, depending on whether the student is on campus, off campus, all of those kinds of things. So we wanted to ask, you know, do you have something in mind with that that, that the Department would do? And do you think that's a challenge that we could really overcome without creating confusion?

MS. MACK: Please, Eric.

MR. ATCHISON: Thank you very much for your consideration of this. We find it's very important for students to just have an understanding as to what the total costs are to both survive and thrive in college. And so that's where the housing and food comes in because those are non-negotiables, right? With the consideration of on campus, off campus, or with family, my understanding is that those are already calculated in the institution's cost of attendance. And so that was not going to be a heavy lift for institutions to provide.

MR. MUSSER: That's right. So the schools can provide it. It's more how is the Department conveying the information in a clear and consistent way. Are you suggesting that we would provide the on -- all of the different types, the on campus, off campus with parents all of the different values that the school calculates? Or were you thinking we would provide one average of those? The reason we get in -- I'm getting into this is that we chose not to include it, because we were concerned that the level of granularity that we would have to get into might be challenging to understand, and it would take up a lot of space on the website. If you think it's important enough, we could break all of those out and have this -- report it that way, but I think that would require some additional

reporting on behalf of the institution to tell us what the different -- all of those different values are.

MS. MACK: I invite you to react, Eric, and then I think Jeff wants to talk.

MR. ARTHUR: Yeah. Eric, do you think the cost of attendance components that are like published on College Navigator, for example, where it identifies a standard cost of attendance with parents at home, that kind of stuff. If they multiplied -- if they took that -- the appropriate measure, I think the information might be available. Multiply that by the number of payment periods that were -- that that student attended to come up with that -- an estimate, and you could identify it as an estimate of those indirect educational costs.

MR. ATCHISON: So first, thank you, Kayla. First, to David, I would like to talk to our other colleagues that signed on to that, as well as just to find out more specifics. I do find that it is important to recognize the differences in those costs, because different people come from different backgrounds and different availabilities. Jeff, there are -- there is published cost of attendance data on the College Navigator through the IPEDS survey system. But that is for first-time students, published tuition fees, and those things. And so that may not fit all institutions

applicable. So I want to make sure that we approach this with that lens.

MR. MUSSER: Thanks. And we, yeah, we appreciate the continued conversation. We'd like to hear what they have to say. And we're open to it. Obviously, we have only limited time at this point, but we are -- we will consider adding that into the, the program information website requirements. If we feel like we can do it in a way that's valuable to students and consumers. So the other thing -- there are a couple of things that we couldn't accept. So I just want to go through those just so everyone's on the same page. We couldn't accept a proposal from you, Eric, regarding the -- defining full or part-time enrollment as the initial enrollment. And that's mostly because we want to have the ability to look at enrollment across the program, as we mentioned, and make a determination based on the ongoing enrollment. We think that's a more meaningful way of describing it. Rather than only looking at the initial enrollment, which could change. But go ahead.

MS. MACK: Please, Eric.

MR. ATCHISON: I do appreciate the Department's thoughtful determination of that. That's just something that we use already as a standard. And so I wanted to put it forward for your consideration.

MR. MUSSER: We appreciate it, but thank you. So the other thing I wanted to mention, we got a proposal, David, about using the four-digit CIP code level census data. We looked at that, and we thought that was a very interesting idea. Unfortunately, I'm going to blame Cody this time rather than praise him. He indicated that the Census Bureau just doesn't have that data at the four-digit CIP code level, so we wouldn't be able to use it.

MS. MACK: Please go ahead, David.

MR. KAFAFIAN: I made a brief reference in there because I thought that might be the answer. I would love to just submit a follow-up to that that I think gives an adjustment factor that allows you to base it on census data. And then leverage the Department's own data to basically create adjustments within the four-digit CIP. Because I do think the proposal is extremely, I mean, deeply biased. The proposal is compelling, at least statistically, around the substantial differences you're talking about. Within CIP code 51, \$29,000 for the low-end bachelor's, \$104,000 for the high-end bachelor's. And so if we're talking about why there's such low failure rates, frankly, across bachelor's and master's, it's basically impossible that a pharmacy program could fail because they're being lumped

in with the rest of the four-digit CIPs that are so low. So heard that there's a data challenge. I think there's a way to get there.

MR. MUSSER: We're open to that. Thank you. Yep. And that's the only -- those are the only ones that, that we were able to give a response about at this point. We still obviously have quite a few proposals that we're looking at. There will be a significant number of changes likely that you'll see tomorrow morning as we go through what we've got. So I do encourage folks, I know we don't have that much time left today, the more that you can get to us by the, the 5:00 hour, the better, so that we have some time to go through and try to make changes overnight. I know that, especially with the, the more substantive proposals that we've talked about, that may be challenging, but we'll do our best to get through anything else that we get tomorrow morning as well. Recognizing that the deadline is, is 7:30 a.m. tomorrow.

MS. MACK: Richie, please.

MR. MORROW: I think we all have faith in Aaron.

MS. MACK: Thank you, Richie. Aaron, let's hear from you.

MR. LACEY: I'm just curious, is it helpful to try to do markup of the regulatory text? Do

you want a summary of the proposal? What's most constructive?

MR. MUSSER: You know, in this case, for that issue, I actually -- because the regulatory changes are going to be so complex and may appear in several places, I think as long as we have a summary for the Department and make sure that you provide the rationale as well. But I think that that's what we need, and the Department will work on the language if we can adopt it.

MS. MACK: Thank you. Where would you like to go next, Dave?

MR. MUSSER: So I think we could start with a caucus that Michale mentioned.

MS. MACK: Michale, will you go back on the record for me, really quickly, inviting the constituency groups you'd like to participate and roughly how much time you think we'll need?

MR. MCCOMIS: In addition to our own, institutional representatives and employers, and the Department, sorry, 12 to 15 minutes.

MS. MACK: That's an interesting range. Thank you. Okay. I would like to note where would you like to have this? Can we do it in here? The conference room is not available on the first floor. So

it's either the green room or in this room.

MR. MUSSER: I think we could fit in the room back here, if that's available.

MS. MACK: Okay, we'll try to do that. Thank you. We'll be back after caucus. Welcome back from caucus, everyone. As always, thank you for your patience. Michale, I would like to turn it back over to you just to give a quick report out coming out of that caucus.

MR. MCCOMIS: Thank you. And thank you for those folks that both met and that -- those that patiently waited for the conversation. The, the caucus group had an opportunity to discuss impact and implications of some of the calculation methods and in some ways, some of the disproportionate consequences of the manner in which that is unfolding. I talked about possible pathways and solutions. The Department was very open and courteous in discussing not only the opportunity for, you know, continued dialog, but also sharing much of what they had already been thinking about up to this point in time, having taken into consideration previous notes and input from the group.

MS. MACK: Thank you, Michale. I appreciate that. Aaron, I see your card. No problem. Dave, I'll turn it back over to you. We have one card. Do you mind? Zoe?

MS. KEMMERLING: Thank you. I know we ended before the caucus with Dave summarizing that there's quite a few proposals still under consideration, and I don't know if this would be a good time to add a comment related to one of those.

MR. MUSSER: Yes. Go ahead.

MS. KEMMERLING: Thanks. So this relates to our proposal to include loss of Pell eligibility along with Direct Loan eligibility. And I'd like to share a comment that came from someone in our constituency, a legal aid attorney in California. We didn't include it with the original proposal because we just got it recently. Given that we just saw the red text a short week ago. So I share this to illustrate kind of the effects that, that these types of failing schools have on the clients that we, that we see every day. So this colleague shared that she has a client who is -- did not complete high school, is currently enrolled in a GED program. However, she used up her Pell Grant eligibility that went to two schools that enrolled her. Despite the fact that she did not have a GED or diploma. And this is a pattern that we've seen many times in our practice students, thus not being able to get the benefit of the job or certification that they're trying to be trained for, because by virtue of not having completed high

school. So these schools, as well, are ones that have default rates of over 35%, as recorded in the NSLDS database. This client is applying for Borrower Defense, but as we know, that could take many years and might only result in a partial return of Pell eligibility. So she is currently in the middle of her GED program. She is relying on public assistance to take care of herself and her children. The lack of accountability has meant that the schools in question have continued to operate for 4 to 5 years with a high default rate throughout. There are likely many more students like this person being enrolled without the ability to get the benefit that they're trying to get from their program. And this client is someone who, after she completes her GED, would be probably really appreciative of using that -- those Pell dollars for something like a workforce training program that we discussed last month, but she no longer has that option.

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

MR. ANDRADE: My question with regard to her being enrolled without having a GED or high school diploma, was she in an eligible career pathway, or was it that they basically fraudulently awarded her aid, and she wasn't -- when she was a high school graduate?

MS. KEMMERLING: So I don't have all the details of this particular client for the sake of anonymity, but yeah, both of those options, you know, are out there.

MR. ANDRADE: Yeah. Because I think, I think in the latter circumstance where she would, you know, didn't have it and was not in one of the -- wasn't in the eligible ability benefit career pathway. And that's clearly a fraud case. And I think she'd have a good claim. And Jake can maybe provide more color on that in terms of restoring her eligibility.

MR. LALLO: Yeah, fraud is really one of the -- really, I believe, the only place where you can get your Pell eligibility back. In terms of, you know, consequences for the school, I think fraud also has many more consequences for them. That's a separate kind of issue than just failing, you know, an earnings metric or something. I mean, there can be criminal liability, there can be fines, there can be a lot more than just, you know, you're out for a couple of years, and you come back in. I understand what you're saying. I think it's very important to point this out, and obviously, you know, this is a very concerning issue, and we definitely tried to address fraud in the past, but I think we see this as a little bit different than, like, the earnings metric.

And you know, while we do recognize the consequence of somebody using their Pell eligibility and losing it, I think, you know, in a case like this where somebody is getting a degree of literally completely dubious value, where the school took advantage of them. There were already protections in place to take care of it. I think the issue that we're addressing with the earnings metric, and you know, Gainful Employment writ large, is a little bit different than the issue that's being described here.

MS. MACK: Thank you, Jeff. Thank you, Jake. Did you want to follow up, Zoe?

MS. KEMMERLING: Yeah. I just say I do realize that, and I'm aware that fraud is a different issue, and it's a very serious issue. But my point in sharing this story is just that the accountability that we're talking about this -- these are the kinds of actors that we are hoping it applies to.

MS. MACK: Thank you, Zoe.

MS. KEMMERLING: And also that the Pell, you know, continuing to offer or spend Pell money on programs that might not offer good value is a real harm.

MR. MUSSER: Understood and appreciate it. Thank you, Zoe. So we have one.

MS. MACK: Question?

MR. COOPER: Yeah, this is on the same topic. Just so on the topic of just whether Pell eligibility would be revoked in terms of if her school -- for programs failing the, the Gainful Employment test. We've -- I've run a few numbers in the One Big Beautiful data set. So 72% of Title IV students in failing GE programs get a Pell Grant, and actually 40% of Title IV students in failing GE programs only get a Pell Grant. They don't borrow at all. And so I think this provides a little bit of context around whether some of these programs would continue to be able to operate if they lost loan eligibility, but not Pell eligibility. And I think this -- these numbers show that quite a few of those programs probably would. They could continue to operate, producing those poor earnings outcomes, only using Pell.

MS. MACK: Thank you, Preston. Zoe, and then I'm going to go to you, Dave.

MS. KEMMERLING: Very briefly. I also wanted to say that with the fall cert application, those can take a long time to process. And it depends on knowing about it and having access, usually to a lawyer to help you.

MS. MACK: Thank you, Preston. Thank you, Zoe. Dave?

MR. MUSSER: All right, so at this time, we would like to bring Cody back up to the podium to give an update on the outstanding data requests that we've received. So, Cody?

MR. CHRISTENSEN: Hello, everyone. Thank you for your patience as you've submitted many data requests and analysis requests. And I can assure you that us and the FSA team are working diligently to respond to as many of them as we can. I am here to provide an update on where things stand. From -- let me just caveat all of this by saying the data requests that I'm about to describe, they should be posted to the website tomorrow morning. So that is the plan. So we're finalizing many of them now. I'm about to discuss the context and details of the specifics. But we're still working on the validity checks and making sure everything is right. So it's going to be till tomorrow morning. Okay, I'm gonna ask for your patience, because I didn't have every person's individual name written down for what specific data request came to. So when you hear yours, just remember this one was from -- remember that you submitted it. So the first one was related to the vets and specifically military science programs. A data request was submitted because those programs were excluded from the original data set, and you requested that they be added back in. After our

analysis, we can add those back in. Of course, the same privacy suppression protocols will be included, but you will see those programs in there, and we include a cover sheet explaining this addition, as well as the data set, plus the accompanying documentation. We had another data request for geographic information about the locations of programs. I believe this came from the groups representing businesses and employers. You requested things such as county-level information on colleges, as well as longitude and latitude. We are happy to say we're going to be able to fulfill this. And this data will be posted to the website tomorrow morning. The real, I think, question that you wanted to have answered, though, is not just what -- we also -- let me back up by saying we're also including information on the CSA, the CBSA, a lot of different geographic cuts are going to be included in there. The congressional district that the college is in, lots of different ways you can cut the data geographically. We also are including publicly available census data on the -- on county-level measures for how rural or urban each county is. So you can have a precise measure for is this county 90% urban or rural. So you can have a very precise measure. And that's again coming from publicly available census data. But we knew that that was the intent of your request. So we wanted to be sure we

could give you as much as we could on that front. Next, the representative representing taxpayers has requested data on program-level delinquency and default rates. We are happy to say we're going to be able to fulfill that data request. It will be for an older cohort, given that default rates and delinquency rates have not been calculated throughout the course of the pandemic. So that will be for the, the group of borrowers who enter repayment in the 2015-'16 award year. But we are happy to share that we will be able to fulfill that data request. We have another data request. I think this one also might have been from the group representing businesses. It was income data using FAFSA income reporting. You wanted to see information on what was the income of individuals reported on the FAFSA for folks in undergraduate certificate programs. We are happy to say we're going to be able to fulfill this request. We are going to align it so that the years of that -- the FAFSA years align primarily with the years of folks when earnings are measured. So it's not going to be the most recent year, but we think this is a better and more advantageous measure because it will allow for a more apples-to-apples comparison. So we expect to have this out tomorrow morning as well. There are a few -- let me jump to a few separate from data requests. There's been a handful of

just analysis requests where folks say, can you cut it this way? Or you just walk up and say, I'd like to see something this way. We're counting those as data requests, too, and we are going to be able to respond to most of those. Because we are running short on time, the way that we're going to handle that is the analysis you've requested. Some of you said, hey, can you give me a chart this way or that way? We're just going to post the requested analysis in a document format on the website as well. So, for example, this includes Preston's data request on aggregate data points, comparing the size of the publicly released data set to the size of the data set before privacy suppression protocols are entered in. Happy to say we're going to be able to do that. We're going to do that on a year-by-year basis for each variable. So you'll have the exact coverage rate comparing the before privacy-suppressed end counts and after privacy-suppressed end counts. Preston had also requested analysis during the presentation for disaggregating the cohort aggregation charts by the credential level. Remember, we showed you how many steps in the aggregation process it would take to get to a statistically reliable cohort size. The negotiators recommended that we disaggregate that by credential level. So you would have a better idea. We presented an

analysis overall, but we're happy to say we can disaggregate that by credential level, and that analysis will be posted tomorrow. Gary had requested revised analysis related to the pass/fail analysis we showed. He recommended that he would like to see the numbers weighted by borrowers, not just Title IV enrollees at each credential levels for certificate associate, bachelor's degrees. That analysis we're going to be able to do, and we'll post that tomorrow morning. We also had a request for analysis on Pell Grant volume disbursements. We just want to clarify that the Pell Grant volume is already included in the data set that was produced, but we're happy to provide some analysis on just some overall aggregate statistics on that. A few final ones. Aaron had requested if we could provide a flag for qualifying graduate programs in the data. The answer to that is no. We cannot fulfill that request. And the reason for that request is qualifying graduate programs are defined at the six-digit CIP level. Those are listed on the Federal Register. The analysis we've presented for you is at the four-digit CIP level. And there are cases where, within the same four-digit CIP, there would be a program that is and is not included. From a practical standpoint, we simply just cannot fulfill that request. Eric had requested a few technical

corrections to the code book and technical appendix. We can say that one of those requests was a typo, which we corrected on the first day. Thank you for bringing that to our attention. The other request was you recommended that we change the source of the data from College Scorecard to IPEDS. The reason that we're not making that change is because the data for the analysis came from the College scorecard, while the College Scorecard data that we're pulling technically did come from IPEDS, since we gathered it from the scorecard data, we didn't want to say, you know, this is from IPEDS, when actually, as the team downloaded and assembled the data, we used the scorecard data. So we feel very confident saying that the College Scorecard is a valid source to cite. That's the actual source of the data that we use, and we don't think that it will cause any additional confusion for students. But I look forward to your question on that front. And then Tamar has a handful of data requests in the hopper. I've started conversations with FAFSA today to investigate those. We are moving the ball forward on that. And at this time, we're figuring out the exact process of where those documents stand. And I hope to provide another update on that specific request as soon as I can. I think that's everything.

MS. MACK: You mind taking a couple of

questions, Cody?

MR. CHRISTENSEN: Yes.

MS. MACK: Perfect. Eric?

MR. ATCHISON: Thank you. Thank you very much, Cody. I appreciate the correction to the technical opinion or the variable name itself. That was something that confused me for quite a while. But to get to the point about the IPEDS versus the College Scorecard. When we see individuals look for data in the public domain, you know, they might go to the College Scorecard by, you know, recommendation of a high school counselor, for example. But in order to fully understand that information, it's oftentimes the best source is the origin. And so IPEDS is where these definitions get, you know, debated, discussed through technical review panels and those sorts of things. And so as, as the Department moves forward with utilizing data from a single product that utilizes data sources from multiple areas, I still recommend that that IPEDS be referenced, because that way it shows the value of that publicly available data set on all 6000 plus higher education institutions in the United States to maintain that kind of a data set for this purpose, as well as any other purpose that a student might have parents in terms of helping their children find college. IPEDS is one of the greatest data products,

I think, that the United States has as far as education, and it just seemed like it was being minimized by not showing up there.

MS. MACK: Do you want to respond, Cody?

MR. CHRISTENSEN: Yeah, I would just say that on the College Scorecard document -- the variables we're talking about are things like state location, HBCU status, variables that are being pulled directly from IPEDS that is not being calculated or, or coming from another source. The College Scorecard documentation does point back to IPEDS as the source. You know, I don't have a huge, I mean, I don't have as strong of feelings as you have. So we can reconsider this if we need to just update this. But I would say for technical precision, we did pull the data from the College Scorecard. And so for that reason, that was why I erred on the side of saying no, this data was from the College Scorecard, which sourced its data from IPEDS.

MR. ATCHISON: Just a quick response there. Thank you for that. I appreciate it. In terms of how the government may evaluate data products in the future, I'd like for them to make sure that they understand the sources of these kinds of things appropriately.

MR. CHRISTENSEN: Thank you.

MS. MACK: Thank you, Eric. Thank you, Cody. Jeff?

MR. ARTHUR: Yeah, there was a data request distributed Friday to capture the data on FAFSA -- the FAFSA income for certificate enrollees to -- related to the poverty line or just the income data, period. I don't know if that's going to be met by what you're providing to the business groups request. If so, I guess it would need to have the number in the family and the family income.

MR. CHRISTENSEN: Could you say that one more time? The what the last part? What was the last? The family income?

MR. ARTHUR: To try to measure the where they stand against the poverty line coming in that we would need the number, I mean, the elements that go into determining what the poverty line is. Number and family, and the family income, of course.

MR. CHRISTENSEN: I'll need to look at the data that we're working on right now before I can answer that specific question. I'll provide a follow-up.

MR. ARTHUR: It related to supporting the concept that our -- what is the starting income level of certificate enrollees versus, you know, where they

wind up. Just to see if, in general, it tends to be much lower than what we're thinking it may be.

MS. MACK: Thank you, Jeff. Aaron?

MR. LACEY: You know, it is my expectation that most programs that would be qualifying graduate programs, even where students are still potential. I mean, first of all, I recognize that we've got an additional year here between graduation and the earnings year. I totally get that. It is my expectation, even if you've got folks who are still in some type of internship or required, you know, clinical concept, they will probably be making more than a high school graduate. But I'm just curious. I mean, does the Department have any data where that has been analyzed?

MR. CHRISTENSEN: Not that I specifically am aware of, but and I don't think others -- I don't think we're aware of that at this time. Yeah.

MS. MACK: Thank you, Aaron. Thank you, Cody. Matthew?

MR. FEEHAN: I just wanted to say on behalf of the constituency, a huge thanks to the Department, you, Cody, and particularly your staff. I understand this is a very heavy lift for the Department, and so we are very thankful for the Department taking a first stab at this. I understand this is an issue almost

of first impression here, trying to capture what is not really the Department's data, it's more of VAs. But the first stab at it is going to help us get to that conversation where VA and the Department can further collaborate on some of this data. And in respect to the military science courses, again, I fully agree with your first comment on this. I don't remember what day it was, but it is going to be a small number for the record. But just having it in there is going to be invaluable for (inaudible) standpoint and then also for our community to gain access to that data. So thank you to your staff and to the Department.

MS. MACK: Thank you, Matthew. Thank you, Cody. Dave, we'll go back to you.

MR. MUSSER: So we're, we're running down on time a little bit, I think today. So the Department would like to call a caucus with our legal assistance colleagues. And we think that the caucus will run the remainder of the, of the day. So we would resume in the morning and give an update about the results of the caucus.

MS. MACK: A couple of friendly reminders. Proposals are due by 7:30 a.m. tomorrow. They've been encouraged this evening. So if that's at all possible, please do that. Also, the Wi-Fi will change in

the morning, as I reminded everybody earlier this week. So please come a little bit early so that we can get you connected. Zoe, please.

MS. KEMMERLING: Yeah. I just want to say, as we're moving towards the end of the process, I want to invite our primary negotiator back to the table starting tomorrow morning.

MS. MACK: We will make note of that in the morning. Aaron?

MR. LACEY: I'm going to try to, like, within the next 90 minutes, run back and draft this thing. And I'm going to circulate it to the negotiators, not the facilitators, for you guys to look at. My goal would be to try to accumulate comments and get something to the Department by like 6:30, because I know folks have dinner plans and things, so just please keep a lookout for that. I just want to let you know I'm going to try to expedite that.

MS. MACK: And we'll watch and forward it on timely as well. Okay, thank you all very much.