

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 5, MORNING
January 9, 2026

On the 9th 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, and Happy Friday. Just a quick update that we will be beginning in roughly ten minutes. We're waiting on some additional folks who are meeting this morning to be ready. So, for a quick update, roughly ten minutes. Thank you. Good morning, everyone. Happy Friday. My name is Kayla Mack. It is my pleasure to bring you all together for the fifth and final day this week of our negotiated rulemaking with the Department and the esteemed AHEAD Committee. We're going to begin with our roll call. 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: Thank you. And our alternate?

MS. HOWELL: Julie Howell.

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

MR. KAFAFIAN: David Kafafian.

MS. MACK: Thank you. And our
alternate?

MR. CARIELLO: Dennis Cariello.

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

MS. HOFFMAN: Tamar Hoffman.

MS. MACK: Thank you. And our
alternate?

MS. KEMMERLING: Zoe Kemmerling.

MS. MACK: Thank you, Zoe. For public
institutions, our primary?

MS. HULTQUIST: Kristin Hultquist.

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

MS. WILLIAMS: Tonjua Williams.

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

MR. LACEY: Aaron Lacey.

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

MS. ROUSH: Joanna Roush.

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

MR. ARTHUR: Jeff Arthur.

MS. MACK: Thank you. And our

alternate?

MR. CLAYBAUGH: Ryan Claybaugh.

MS. MACK: Thank you, Ryan. And for state workforce agencies?

MS. STEPHENS PARKER: Rachael Stephens Parker.

MS. MACK: Thank you. We have our primary present, and our alternate will not be in attendance today. For state grant agencies, our primary?

MR. MORROW: Ritchie Morrow.

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

MS. MCCLOUD: Elizabeth McCloud.

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

MR. STAMPER: Randy Stamper.

MS. MACK: And our alternate?

MS. DELANGE: Heather DeLange.

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

MR. MCCOMIS: Michale McComis.

MS. MACK: And our alternate. Joining later?

MR. MCCOMIS: Gary will not be joining us today.

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

MR. COOPER: Preston Cooper.

MS. MACK: And our alternate?

MR. POLLACK: Ethan Pollack.

MS. MACK: Thank you very much.
Committee. And on behalf of the Department, we have our
Federal negotiator.

MR. MUSSER: Dave Musser.

MS. MACK: Thank you, Dave. And from
the Office of General Counsel?

MR. LALLO: Jake Lallo.

MS. MACK: Thank you, Jake. And last
but not least, our Deputy Assistant Secretary.

MR. ANDRADE: Jeff Andrade, hopefully
optimistic.

MS. MACK: I love optimism. And with
that, Dave, I will turn it over to you.

MR. MUSSER: All right. Welcome back,
everyone. Thanks for some additional work last night, I
heard that there were -- there was work amongst the
negotiators to try to get us closer to consensus. So we
appreciate that. The Department also has done some work
overnight. We have some new language and some changes
that we'd like to show you guys based on requests over

the course of the week that we'd like to go through, and then we'll open it up for some discussion on those changes. And then after that, this is just to give people a sense of the run of show for today, we'd like to talk about the remaining issues, any other language that negotiators would like to propose and, and work through that. But for now, let's start with the changes that the Department has already proposed to make. Okay. So here, this is the first change, and can we scroll up just a little bit here to give the context for where we are? Okay. So we're in 668.43 institutional and programmatic information. As you guys recall, this is the information that the Secretary is required to provide on its program information website. So let's scroll down here. Per a request from our legal aid representatives, we are adding back the information on the program web pages and requiring institutions to provide a prominent link to the Department's program information website. We added back all of the language with one exception. We struck the academic, the word academic. In the Department's view that, that is just too broad. We've heard from schools that that ends up causing them to have to place this nearly everywhere on their websites in order to fully comply with this requirement. But we understand the idea that it's important to have this information anywhere

that cost, financial aid, or admissions is described. So we have proposed to replace this language as it's currently written, except for that one word. And I'll pause after each of these changes for some discussion since they're all a little bit different.

MS. MACK: Thank you, Dave. Aaron?

MR. LACEY: Yeah, I mean, I again, I think the only concern here from the institutional standpoint is operational. You know, the information is going to be out there. The website's out there. The Department's website. I don't think any of that's a problem. You know, academic is very helpful. I would suggest striking or institution. You know, I think part of the challenge for institutions is when you start talking about where you have cost, financial aid, or admissions information about the institution anywhere on its website, that's hard to figure out when you've got a website with, again, potentially thousands of different pages to it, particularly for large, complex institutions. But, you know, program, usually it is a much more discreet and easier idea for an institution to say, do we have specific websites about this program? And I think that would be a reasonable halfway point.

MS. MACK: Thank you, Aaron. Any response?

MR. MUSSER: I hear you, Aaron. I think in this case, I'm not sure that I can agree with, with striking institution. And I guess either we'd strike, we'd strike most of this or we strike just what we have here. I think the issue is a lot of institutions provide cost, financial aid, or admissions information at the institution level, and that's the primary place that a student might go look for that. I just don't think we could strike that and still make this useful enough to retain.

MS. MACK: Please.

MR. LACEY: In an effort to achieve consensus, I concede.

MR. MUSSER: Very much appreciated. Thank you, Aaron.

MS. MACK: Let's keep that spirit going. Dave, back to you.

MR. MUSSER: And we can continue on through the changes here. And just to be clear, as we're going through this, we just emailed these changes to you guys, so you should have them to be able to go through as well. And we did color-code them. And just to be clear, again, the changes that are -- that we're making today are in gray. Here we are making a technical change, something that we just missed. For state -- this is

relating to the US territories and freely associated states, primarily. And remember that when we say state, the definition of state refers to all of the states of the Union, as well as the US territories and freely associated states in the Department's regulations. So, for states where the Census Bureau data necessary to perform the earnings premium metric are not available, there will be no earnings threshold. So we just moved some language around per some concerns expressed by negotiators. This is the first of several changes to effect what we think is the right approach here. But this is essentially saying that in the cases where we don't have census data available at the state level, there will be no earnings threshold at the state level. There will still be a national threshold that applies to institutions in these -- at these locations. And if the test for the use of national data is met, we would still calculate the earnings premium for those institutions. But this is saying that the state level threshold does not exist in cases where we don't have the state level Census Bureau data.

MS. MACK: Thank you, Dave. Preston?

MR. COOPER: Thank you. I think this has answered. I just want to make sure I'm understanding. So this is just a technical change. But the policy is

that if you're a school domiciled in Puerto Rico, but you enroll more than 50% of your students out of Puerto Rico, you're still subject to the national earnings threshold.

MR. MUSSER: That's correct. And to be clear, Puerto Rico, in particular, has state-level data.

MR. COOPER: In American Samoa then.

MR. MUSSER: Yeah, yeah. That's it. Yeah. In American Samoa, if you had more than 50% out of -- that were not from Samoa, that would -- we would use the national threshold if they -- if we had 50% or more that were in -- that were from Samoa, we would not calculate the earnings premium.

MR. COOPER: Gotcha. Thank you.

MS. MACK: Thank you, Preston. Back to you, Dave.

MR. MUSSER: Okay. We can continue on through the changes. Here was just a technical fix we missed, adding the four-digit CIP code language as we added in other areas in the earnings threshold definition. Here, we're just saying this is for the foreign institutions. And I believe David pointed out that we needed to add this here, too. Continue scrolling down. Right now we're into Subpart Q. Okay. Scrolling up just a bit here. Oh. This is the second change that affects the policy that we were just describing, related

to territories and freely associated states where no state level census data exists. So, here for programs which do not have an earnings threshold for the state, no earnings premium measure will be calculated if 50% or more of the students enrolled in the institution during the award year, the calculations are made, are from the state. In this circumstance, the Department will make earnings data for these programs publicly available. The intent here is to essentially revert in large part to the Department's existing policy, where, although in the existing policy, all of the freely associated states and territories are exempt. We were still making their -- we were still planning to make the median earnings for these programs publicly available. Here, in all cases where we don't have sufficient census data to calculate an earnings premium metric, we will still make the earnings -- median earnings data available to the public. Okay. We can scroll down from here. Okay. So here we're referring -- this is the reporting section, just so everybody is situated. This is the section where we're describing all of the reporting requirements for institutions. And we just got a request that we make this provision where we're requiring institutions to report to us whether the program meets licensure requirements in all the states, that they're aware that it meets requirements. We just

made a cross-reference to say that this is consistent with the requirements for public disclosure in 668.43(a)(5). Okay. And we can -- I think we can continue scrolling down. Okay. So here in the restoring eligibility section. So this is -- these are the changes that the Department has made following discussion of the negotiator proposal for an orderly program closure option for institutions. So I'm just going to walk through the language and pause to describe the Department's changes in each section, and we'll pause again at the end of my -- of the description of all the changes for a discussion on this one. So, for retaining eligibility during orderly program closure. So first Romanette one, notwithstanding the first paragraph, which describes the loss of eligibility for a low-earnings outcome program. If the Secretary determines that a program has failed to satisfy the requirements of 668.402. So this is again at the point that the program first fails the metric and determines that it is in the best interest of students, the Secretary may allow such program. So this is a clarification and a change from what we described our position as yesterday. Yesterday we expressed that this would be, be available in every single case. We heard from our colleagues in the legal aid group that that was a challenge for them. So we've changed this to, to

indicate that the Secretary has to determine that it is in the best interest of students in order to grant this option. And if we do grant the option, the program shall continue participation in the Direct Loan program for a period not to exceed the lesser of three years or the full-time normal duration of the program. We had some conflicting recommendations about how to proceed here. On one hand, some -- our understanding is that some institutions wanted this to extend for the entire full-time duration of the program. On the other hand, our colleagues representing legal aid were concerned about that and wanted to limit this much more strictly based on the exact amount of time that students had left in their program. We believe that full-time -- the entire period of the program is a little too long. But on the other hand, we think that trying to narrow this to the exact amount of time by student that they have remaining in the program is so challenging as to make it unworkable. So we've tried our best to arrive at a compromise language here, where we say for a period not to exceed the lesser of three years, being the absolute maximum or the full-time duration of the program, whatever that may be.

Scroll down a little bit more. I think we have a couple more changes here. Actually, let's go back up. It looks like we've got a couple of cards on that change, so let's

just pause before we go to the other ones and discuss these.

MS. MACK: Thank you, Dave. Ritchie, let's start with you.

MR. MORROW: So best interest of the students. So does that mean the institution will have to write a justification or?

MR. MUSSER: Not necessarily. The intent here is that if the Secretary is aware of conditions that might make this not in the best interest of students, this gives the Secretary the discretion to say that this opportunity is not afforded to the school, and in that case, the school might have to try to dispute that and work with the Secretary to explain why it is in the best interest of students. But it's not an automatic requirement for the school to always have to justify this. If the Secretary has no reason to believe that there are concerns there, we would afford this opportunity to the school.

MR. MORROW: Okay, thanks.

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

MR. KAFAFIAN: Appreciate the Department's collaboration on this one. I think this overall does work and achieves a lot of goals. I might

suggest some just grammatical tweak because the, the going from the program if within like, I don't know, probably start a new sentence, provided that. Something in there, it becomes this massive run on that you're not really sure what's modifying what by the end of there.

MR. MUSSER: We will take that back.

MS. MACK: Thank you, David. Aaron?

MR. LACEY: Yeah. Two comments. The first is, you know, the concern, I think, typically, when you introduce a concept like discretion for the Secretary here, that can be good. It also can open up the door for politicization of the decision-making process. Right? But I will say I understand the desire for discretion on the part of the Secretary here. I think it is very analogous to the reason that many of us have been talking about discretion for the Secretary and the administrative capability context. And I would suggest that if we're going to get comfortable, that the Secretary has discretion here, we should also get comfortable with the idea that the Secretary should have discretion in the context of that discussion as well. I'm just going to make that connection right now. For years, three years. Are we talking about three award years? Is the idea that if we lose eligibility as of July 1, for the next three award years, there would continue to be eligibility?

Because calendar year seems -- I just, you know, that would be a different idea, especially if you're talking about like --

MR. MUSSER: So I think the Secretary wanted to keep this a little bit broad. If you guys think that academic years is a better criterion, I think we're open to that. But, you know, the award year concept is a little odd because not all schools operate in award years, but, but academic years might be more appropriate, and we'd be fine to add that if that's the way that you guys prefer to word it. But we thought three years was, you know, encompassed a fairly long period of time and would encompass the majority of cases where this was an issue.

MR. LACEY: Okay.

MS. MACK: Thank you, Aaron. Thank you, Dave. Tamar, you have the floor.

MS. HOFFMAN: Thank you. I just wanted to acknowledge, I hear, Aaron. We haven't yet gotten to the discussion about administrative capabilities. I think that when we get there, we can maybe have that discussion. I just don't want to preemptively go somewhere we're not -- that we haven't landed yet. But if that's okay, I'd like to comment later. Yeah.

MS. MACK: Thank you, Tamar. Dave,

back to you.

MR. MUSSER: I would also say the Department's not quite ready to have that part of the discussion. Yeah. Okay. I think we can move through to the other changes that we've made to this section.

MS. MACK: Can we get one more card? I apologize, Dave. Yep, that's okay. Jeff, please.

MR. ARTHUR: A quick comment. I'm just thinking operationally, inserting academic year could get a little funky where students are in module programs to stop out. It could be really tricky to calculate that. And I think the three-year probably -- and you could -- and if you feel, because of the structure of the program, you could deal with that in the agreement.

MR. MUSSER: Yeah. That was also kind of our thinking. Is that the intent that -- the Department's intent here was to try to give clear time frames so that everyone could organize their thoughts around how much time they have left, to remain eligible. So three years seems like a pretty clear amount of time.

MS. MACK: Thank you. Back to you, Dave.

MR. MUSSER: Okay, so scrolling down. The, the remaining changes are additions of additional requirements in order for this option to be made

available to the school. So let's scroll back up just a second, just to remind everyone of what was in there -- what is in there currently. Scroll down a little bit more. Sorry about that, Andrea. So requires the institution to, is the language. First, cease accepting new enrollments on or after the date of the agreement. So then we go down to (B). Engage in an orderly closure of the program in which the institution provides an opportunity for the enrolled individuals to complete their program, regardless of their academic progress at the time of closure. Again, the point of this is that they are giving students the opportunity to complete this program, but we are also providing other requirements that give -- that have the school give the student more information about other options that they could choose to take if they prefer. So now we're scrolling down to (C). We heard from several negotiators, including Michale that this might make sense to also require the school to inform its state authorizing agency and accrediting agency of the use of this authority and to meet any program, discontinuation or closure requirements of those agencies. So, they have to comply with those agencies' requirements. (D), acknowledge that the program has been voluntarily discontinued and subject to the requirements of 668.603(c)(2), meaning that there's limitation on

adding a program that's in the same four-digit CIP code family for two years following the last student's enrollment in this program. (E), they would have to maintain the program under a warning status and continue to provide the warning notice to students in accordance with those requirements. Scrolling down. (F), provides the students the academic and financial options to continue their education in another program to which the student's academic credit would transfer that either has not that -- and that -- and that has not failed to satisfy the requirements of 668.402, the earnings premium, either at the same institution or a different institution. So this is essentially saying the school needs to seek out another program, either at their institution or at another that is not failing the earnings premium metric. And they need to provide that option. They need to explain to the student that this is also an option and provide enough information for the student to make a reasoned decision there. Then we go down to (G), agree not to restart the same program or to start a substantially similar program as described in 668.604 for at least two award years following the completion of the orderly closure described in paragraph (B). And then, finally, this is a separate romanette (ii). An institution may not add the addendum provided in

668.603 (c) (4) (i), the one we just described. In cases where the program or the institution, based on the program's compliance, is subject to a probation or equivalent action by a recognized accrediting agency or a state regulatory agency, including licensing boards, or where the institution is subject to 668.162(c). That regulation is the regulation for what we call reimbursement, which includes the two payment methods that, that fall under that, which is sometimes called HCM2, Heightened Cash Monitoring 2, or reimbursement. Those are serious sanctions that the Department applies in cases where we have significant concerns about the institution and, and its administration of the Title IV programs. So if that applies, this option would not be available to the school.

MS. MACK: We have a few cards. Is this a good time? Perfect. Randy, would you like to get us started?

MR. STAMPER: Yeah. This may be betraying my ignorance because I'm not a transfer guy, but is the implication on transfer of academic credit some amount of credit, or is the expectation that the total credit would transfer?

MR. MUSSER: It's an informational disclosure. But the idea there is that the credit would

transfer.

MR. STAMPER: All accumulated credit?

MR. MUSSER: Yeah. We can scroll back up. No, no. Sorry. Go back down. We're looking at -- keep going. (F) here. Provide the student -- so this is saying that they have -- the school has to provide those options. And we recognize that there might not be an option. I think we have to acknowledge that that might be the case. If there are no options the school, obviously, this doesn't apply, but this is saying the school needs to conduct its due diligence to determine whether those options exist. And if not, then this wouldn't apply. If so, it does apply, obviously.

MS. MACK: Thank you, Dave. Any follow-up, Randy? Okay. Michale, did you have something?

MR. MCCOMIS: Acknowledging that it may not apply. One of the options we had suggested was, when available, in one of the drafts. So you know, when available, provide to students, or I think originally we had said, you know, it was -- they could either stay at the institution or, when available, provide information with regard to transfer options to other institutions. Or I think it was, and when available, it was both.

MR. MUSSER: Well, let's hear from the schools as well. But yeah, we -- I think we're open to

that. Because I think that is generally the Department's intent here.

MS. MACK: Thank you, Dave. Preston, you are next.

MR. COOPER: Thank you very much. Yeah. I just appreciate all of these additions here. You know, I think this goes a long way towards addressing my concerns about this particular provision. I just want to thank the Department and my fellow negotiators for being so willing to compromise and work together on this issue. I do have one question that's just clarifying. I think for all of us, the understanding was that this option would only be available if you failed one year, right? If you failed two years, you can't take this. Could you just explain how, in the reg text, that is that policy is implemented here?

MR. MUSSER: Sure. Let's scroll up a little bit. I think that's near the beginning here. Okay. Hold up. Here we go. So this is the section that describes the -- when this is available, and I can see your point, Preston, that this is describing a failure under 668.402 when the program fails the metric. I think we talked yesterday a little bit about having some additional language that describes in the -- that this was the first -- that once in the most recently -- the

three most recently completed award years to avoid cases where this is the second time that it applies and therefore the program loses eligibility or if it loses eligibility in any two out of three consecutive award years. I think the other thing that we could do is to say that it is not a low-earnings program, which is to say that it has failed twice. Would that suffice?

MR. COOPER: Yeah. So I think in 402 that's describing whether it fails the earnings premium measure, one generally 1 or 2 years. I would defer on just to the Department on the best way to make this clear. I do think it does require some additional clarity here. So if you want to say it's not a low-earning program, I think that could work.

MR. MUSSER: We'll take it back, and we'll make sure. It is our intent that this is only available the first time that it fails, and not on an -- in an occasion where it would lose Direct Loan eligibility.

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

MR. LACEY: I just want to echo Preston's comments. I think these conditions appear to me to be very reasonable and consistent with the conversations. I think it creates the off-ramp for

institutions that we were hoping to create. I mean, like I said, we'll reserve the comment around the Secretary's discretion here, and we can talk about that later. But all the lettered criterion later, I think, look completely reasonable. And again, just appreciate everybody's efforts to create a framework here.

MS. MACK: Thank you, Aaron. I'm going to go to Jeff and then to you, David.

MR. ARTHUR: Yeah. The transparency information. That's great. And I think a lot of the requirements here are pretty consistent with a typical teach-out process. And I think that's what you were going for and asking for a slightly or a higher bar because you're it's an optional thing that's reasonable too. Can you just help me understand? I'm trying to wrap my head around the timing of reinstatement under, if you choose that option, versus if you let it go to the second year of fail and be able to reinstate. I'm not clear if that's effectively the same timeline, same -- is that we're trying to make that -- we're trying to impose the current requirements without that option and end up with the same timeline.

MR. MUSSER: That's exactly right. So the idea is that the same reinstatement requirements apply here, such that when the last student in the

program ceases eligibility, and the program is at that point discontinued, the two-year time frame begins, during which that program and any other program at the same -- under the same four-digit CIP code cannot be added to the institution's ECAR for eligibility purposes. And after that, the program -- if the program has not continuing to fail in two out of three consecutive award years, which is the other provision that's now in there, then the program could then -- could be reinstated.

MR. ARTHUR: Okay. Might be an interesting thing to include in the commentary in the preamble. So because institutions are going to try to figure that out, it's like, what am I losing something? What's my incentive to do this? And I think if you knew -- if you know that this is something you can do to assist students without compromising your ability, your other processes, that would probably help us want to serve students better.

MR. MUSSER: Yeah, we certainly, we certainly take your point that it would be helpful to explain in more -- clearly the timelines involved, because it's not, you know, it's not immediately clear when you read the regulatory text alone. I definitely agree.

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

Dave. David?

MR. KAFAFIAN: Yeah, I'll just reiterate that I'm really encouraged by this entire provision. Zooming back out to Monday. Tuesday, I think the concept of a teach-out in the best interest of students, was something that it was not clear we'd get to. And so I'm appreciative of everybody's collaboration here. I do think, similarly to Preston's comments, some cleanup, if we could just make it something like, this is available contingent upon the timing requirements under X and the PPA revision amendment requirements under Y. And then you've already done the Y in the list here. And then that allows you to clarify the components of, you know, first time in the last three years kind of thing.

MR. MUSSER: Yeah. Thanks, David.

MS. MACK: Thank you. Michale, please.

MR. MCCOMIS: Yeah. I'm sorry. I'm withdrawing my previous comment about the when available. I see now -- I didn't have the copy in front of me. I see now you've included at the same institution or different institution. So that satisfies me. Sorry.

MS. MACK: Thank you, Michale. Eric?

MR. ATCHISON: My comment was going to be about when available, and just that, that may provide institutions with an option to not work towards that. And

I just wanted to make that concern publicly available.
Thank you, Michale.

MS. MACK: Thank you, Eric. Back to you, Dave. We've worked through our cards.

MR. MUSSER: Okay. I think that's all the discussion on this one. So we'll continue on through. We, yeah, we will endeavor to make that change, to make it clear that it's only available at the first failure. So scrolling down. Okay. So let's pause here. This is a change to eliminate the provisions that we had previously included regarding the SOC code. This was a request, I think, of several negotiators. The, you know, I think, I think what we heard from several negotiators is that there's less comfort with this concept in the context of Gainful Employment and sorry, with the concept of the earnings premium calculation as it applies broadly including for Gainful Employment programs and that the SOC concept is -- not as valuable here as it would have been in the Workforce Pell concept where the programs were aimed at areas where, you know, the occupations were high wage and high need. So we proposed to strike the Crosswalk idea here, and in other places where we added it.

MS. MACK: David?

MR. KAFAFIAN: Yeah. I appreciate the

point here. And I've heard the other negotiators' voices on this. I would throw out that this one's not obvious to me. I do hear the point that it is different than Workforce Pell. I spent far more time than I care to share looking through the CIP codes and SOC code, trying to identify type one, type two error of, you know, programs that we were unfairly excluding to a colloquial definition of different fields versus unfairly, including. I couldn't -- I could cut the data, but it's very hard to look through 286 lines and figure out how would we all define this. For whatever little it's worth, Gemini and ChatGPT agree that this would be the words we had here would create less error. But Preston brought up the right points around music. That's a program where you could see gamesmanship. Randy brought up the right points around many healthcare programs. I would propose, and this is not a hill I'm going to die on. I just want to be very clear about this. It's not going to change the way I articulate my wrist at the end of this. But, Preston, Tamar, I believe it was the two of you had problems. Could we go with something that is similar, but just instead of making it an and statement as an or statement? And the reason. Sorry, that's not said correctly, actually. The proposal I'm trying to make, I'm not going to try to do the wording live, would be that previously,

you had to match up two identical SOC codes. Ignore my and or, that is definitely incorrect. You previously had to match up two identical SOC codes. I could propose somewhere that is in the middle, where you say doesn't need to be identical if there's any overlapping SOC codes. And that would be narrower than where we were on Workforce Pell, but broader than where we are here. I'm happy to take it offline as well. And as I said, it's not a deal breaker, but maybe something we can chat through. I think that's an in-between ground that again, tries to just say, you know, Michale said it to us a number of times this week. We're operating on a bell curve. We're making policy. We're going to have errors on both sides as we try to draw a bright line. And I think that may be closer.

MS. MACK: Thank you, David.

MR. MUSSER: Didn't mean to have my, my light on. I wanted other negotiators to have a chance to respond.

MS. MACK: A couple of cards have one up. Does anyone want to speak directly to that? Preston, please. And then I'll get to you, Randy.

MR. COOPER: Yeah. David, thank you very much for, for your willingness to work on this proposal. And I would -- I'd be happy maybe we could chat

at the break about how exactly this would work. I think what you laid out, I want to make sure I understand it, but it seems like there could be an opening there.

MS. MACK: Thank you, Preston. Randy, and then I'll be over to you, Aaron.

MR. STAMPER: Yeah, I'd like to join that conversation as well, because I mean, I think logical people can probably agree that audiology is not substantially similar to nuclear medicine. And I think we need to figure out a way to have language that would acknowledge that, while also providing the kind of protections that music is a good example of, because there's got to be a middle ground there somewhere.

MS. MACK: Thank you, Randy. Aaron?

MR. LACEY: Yeah, I mean, I -- the concern -- one of the things we talk about when you negotiate is, right, don't just take positions like what's the underlying concern. And the concern I think has been well stated, that the four-digit CIP code in some circumstances is too broad. In some circumstances, it's not too broad, but in some cases it is. And I'm very supportive of Dave's thought, we had talked a little bit about this earlier, this idea that, you know, instead of this -- instead of it being disqualifying, if all the SOC codes are identical, it would, in essence, the idea would

be if there are any overlapping SOC codes. So, in other words, if you had no overlapping SOC codes whatsoever, notwithstanding the four-digit CIP, it would still be allowed to be introduced, so there would be no occupational overlap. I would be supportive of that if you guys end up talking about it. I think that's a very good idea. It's a way to maybe draw a tighter box that would get people comfortable, but also, you know, prevent some expansion notwithstanding the four-digit CIP. So I think that's a really good concept.

MS. MACK: Thank you, Aaron. David?

MR. KAFAFIAN: Full disclosure, it was Aaron's idea, so he should like it. Secondly, I just -- I do want to pulse check the Department's perspective. The other idea that I had would be that you would define, frankly, at the two-digit CIP code level, which one's got this rule as is and which one's got the four-digit one flat. So you'd say like everything in CIP code 52, 51, sorry, which is all of healthcare. Got the CIP SOC walk as we had originally drafted. And it might not just be 51, but I'm using an example. Does the Department have a preference between how we approach it, or so long as we can kind of reach an alignment?

MR. MUSSER: I think in this case, and I'll look to Jeff as well. We were comfortable with the

four-digit CIP code option. And we also understood the negotiator's idea of the SOC code, the identical SOC code concept. And we're also open to a compromise in between if negotiators can get there. I think, you know, I see the -- we understand the issue from the school's perspective and obviously from our perspective, what we have right this second is the safest option for students although it may be in some cases, a little overbroad. So we are open to, if you guys can reach an agreement on this, either of those options.

MS. MACK: Any final comments on that? David, did you have follow up? You're good. Dave, back to you.

MR. MUSSER: All right. We can continue to scroll down here. Getting close to the end. Okay, so here we have added back language going down to (b). This is under student warnings. The subsequent warning concept, and we've simply not added back language relating to the debt-to-earnings rates or GE programs. This is -- this would apply to all programs. If a student or prospective student receives a warning under this section, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student unless the program has passed the earnings

premium measure for the two most recent consecutive award years in which the metric was calculated for the program. Okay, so we can scroll down here. No other questions there. Okay. So here we have added a provision that was suggested by our student representatives that another component to be added to the warning for a student who is eligible for Pell Grant funds, a description of the student's remaining lifetime eligibility for Pell Grant funds, and an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility. So this was a recognition that the program will remain eligible for Direct Loan funds, even if the program ultimately loses Direct Loan eligibility as a result of the earnings premium metric. The other piece, and I hear -- seeing Eric kind of respond to this. The other request was for this to be provided every single time for every -- at the point that every Pell Grant disbursement is made, that language is also present a little bit -- in a little bit. So let's actually scroll down. I think that's the next thing that we have. Yeah. So we've added -- we broke this up into paragraphs, and the third paragraph here expresses that the warning regarding the students remaining Pell Grant eligibility under 605(c)(4) must be provided to that -- to an enrolled student at the time

that the institution makes a disbursement of Pell Grant funds to that student.

MS. MACK: We've got a couple of cards. Eric, I'll come to you first.

MR. ATCHISON: Thank you, Dave. I think it was -- you saw my reaction just because I think you misspoke. You said the student would still be eligible for Direct Loan funds. I think you mean Pell Grant funds.

MR. MUSSER: Pell grant funds. That's correct. Sorry about that.

MS. MACK: Thank you, Eric. Thank you, Dave. Back to you, Jeff.

MR. ARTHUR: Yeah. I'm thinking about how this might impact the administrative burden on institutions. Can you remind me, does the -- does each ICER include that specific information such that you could access it as a field of information, or do you know of where other -- or do we have to log in to NSLDS and pull it, and, you know, I'm just hoping there's some way that we would have that information in our database that we could access a field and be able to operationalize this.

MR. MUSSER: So I know this data is available in the Common Origination and Disbursement

System. I'm going to do a phone-a-friend to my FSA colleagues about whether this appears in the ISIR. I believe that it does. But I want to get a confirmation on that. I can't see around the column if they may be waving at me. We wanted to confirm that information about the student's lifetime eligibility for Pell Grant funds appears in the ISIR that the student -- that the institution receives. Okay, we'll loop back with you.

MR. ARTHUR: Yeah. And my point there is this -- and to think that, okay, if we get the percentage at a point in time, it seems reasonable that we could self-calculate at the time of a disbursement. Well, we made a prior disbursement. We can make that calculation and be relatively hopefully accurate, but not be like auditable finding -- because we got to make this thing happen. Yeah, and it has a potential to be very complicated unless that information is readily available to us in our student information systems.

MR. MUSSER: Yeah, that's a good point, Jeff, and we appreciate that. You know, if it looks like this is not going to be readily available, I think that the Department is willing to put resources into making it available to ensure that this happens.

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

MR. LACEY: No objection. Just in thinking about the administrative logistics. So this is a separate warning from the warning that is provided to folks about the failure of the program under the earnings metric, right?

MR. MUSSER: So, yes. We -- it's a little -- it was a little bit funky in the language, and I can see that, but we felt it was still most appropriate to provide it there. This only applies to students who qualify for Pell Grant funds. So, you know, it wouldn't make sense for you to tell a student who's not, you know, receiving those funds. But yes, it applies on a student-by-student basis based on that eligibility.

MR. LACEY: For sure. No criticism, and understand also that folks are working rapidly here. I -- my concern is just that the following two sections that talk about delivery to prospective students. I could see institutions being confused as to whether or not those delivery obligations and the timing associated with them apply to what is here, a separate warning. So I don't think we have to do it in real time here. But my only suggestion is, I think, because this is a separate warning with a separate timing and delivery obligation, and I just think it would be helpful wherever the Department lands. Conceptually, I have no objection to

this just because I could see schools saying, well, wait a minute, does delivery to (inaudible) students know that applies to the -- I just think there could be a little confusion. So I just think it should be, however you guys decide to ultimately structure this, it would be good if it were very clear that this is an independent warning and that it has an independent delivery obligation, because we got a lot of mechanics around the required timing and delivery of the other warning, you know, does that make sense? So that's the concern is just trying to make clear to institutions that these are two separate concepts.

MR. MUSSER: I mean, we would commit to including some preamble language on that. I think, and, you know, if you have -- I would say if you are willing to just send us, you know, the series of things that you think would be most valuable to schools that -- in that guidance I think that would be helpful to us so that we can explain the difference in the timing of providing the warning generally to prospective and enrolled students and providing this specific warning to Pell Grant -- to Pell eligible students.

MR. LACEY: And it might just be as simple as in the regulatory text. I mean, right now it's just all called the warning. I mean, I know it says

regarding students, but, you know, it could just be as easy as saying, you know, an institution must provide the warning specified at (inaudible) as required.

MR. MUSSER: Well, so we're referring here to (c)(4), which is the new paragraph relating only to this provision. So that reference is not to the rest of the warning. That's the reference to the Pell Grant component of the warning.

MR. LACEY: No, I'm sorry. I mean, like in the subsequent paragraph delivered to prospective students. So it says an institution must provide the warning. And so there, it might be worth just specifying the warning we're talking about with the regulatory site, so that it is clear to people you're not talking about the warning in (c)(3) or whatever (3) is above, you're talking about the warning regarding the failure of the earnings test. I'm sorry. We don't have to do that. I just -- my only comment here is I just want to, I just want to make sure it's -- because I get these calls, so I'm just trying to make sure that, you know, it's clear to students or to schools what has to be delivered when. That's the only comment.

MR. MUSSER: We can do -- we can talk a little offline about, yeah, if you -- if we can find a way to help with that.

MS. MACK: Back to you, Dave.

MR. MUSSER: Well, that's the last set of changes. I want to open it up to see if, yeah, if anyone else has comments or questions or anything else they'd like to discuss on these points.

MS. MACK: Perfect. Thank you for that setup. Tamar, let's get started with you.

MS. HOFFMAN: Thanks so much. I really appreciate the Department considering all these changes, and, you know, walking us through what you've implemented. Not to sound like a broken record, but I just wanted to ask about our data requests one more time since we're on the last day. We had asked for earnings data on the six-digit CIP. Do we have any updates on where that stands?

MR. MUSSER: I'm going to look to my colleagues about, about that issue. Do we have our --?

MR. ANDRADE: We'll get it.

MR. MUSSER: So go ahead, Jeff.

MR. ANDRADE: We'll give you an update in about five minutes, okay?

MS. HOFFMAN: Thank you. Much appreciated.

MR. MUSSER: And actually, to that end, is there anything else you'd like to discuss? We

were going to call for a short break and then come back.

MS. HOFFMAN: I'm all for a short break. We do have questions about some of the ideas that we had floated with several negotiators in the Department about Pell grants, but I would love to do that after the break.

MS. MACK: Before we go to break. Jeff, I want to get to your card.

MR. ARTHUR: Well, mine -- I was just going to ask about the, the reference that you've made to considering ways you might approach regional variations, and just is that something you're still working on or?

MR. MUSSER: Yeah, I think we'd like to come back to some of those things after the short break.

MS. MACK: Let's take a ten-minute break, everyone. We'll be back soon. Thank you. Welcome back from break, everyone. Jeff, I'm going to turn it over to you to get us started.

MR. ANDRADE: I just wanted to respond back to Tamar's request on the data. Just an update. So I checked with our folks. So on the first request, which you had -- which was one that had originated back at Workforce Pell, that request is in the final stage of the data validation process that we have to go through at the

Department. I don't have an ETA on that. But that's the last step in the process before it can go out. So that's close. The other one, I believe that we can get that to you by the end of the day, which was the one on earnings.

MS. MACK: Please, Tamar.

MS. HOFFMAN: Thanks so much. And also I'm wearing sunglasses just because of the light and migraine. Not to like avoid eye contact with you. Thank you.

MS. MACK: I just thought you were super cool.

MR. ANDRADE: Yeah. I was going to say I just thought that that was a sign of your bright future.

MS. MACK: It's part of the strategy going into the final day. Dave, back over to you.

MR. MUSSER: This is a kind of poker match. I get it. Well, thank you all for that discussion. I really appreciate all the feedback. I think there's some tweaks that we need to make, and the Department is certainly open to that. We've got some notes we may need to chat with some of you as individuals over the next few hours to try to get to the -- get to a good place. But at this time, we would like to call a caucus with all negotiators, and no offense to those we aren't calling,

all negotiators except for our state workforce colleagues and our accrediting agency colleagues.

MS. MACK: Okay. We're going to have that in here. So we'll ask the majority of folks to leave. And about how much time should we estimate, Dave?

MR. MUSSER: We may go over this, but

--

MS. MACK: We usually do.

MR. MUSSER: -- as we have in the past, but I think at least 30 minutes.

MS. MACK: Perfect. We're going to plan for 30 minutes, and we'll keep everyone updated. If you are not participating in the caucus, we'd ask that you exit the auditorium at this time. Thank you. Welcome back, everyone. Thank you for your patience during that caucus. Dave, I'd like to turn it over to you so that we can do a quick report out before we move on with our agenda.

MR. MUSSER: Yeah. Thank you, Kayla. So we had an extremely productive conversation over the, the past 45 minutes with all of our negotiator colleagues about a compromise that would involve the use of what we call the administrative capability standard to subject some institutions to a loss of Title IV eligibility for four failing programs under certain circumstances. We

heard broad support for the proposal, at least in general. We're going to -- we -- the Department has prepared some text and is going to just share that now at the table for greater discussion. But we heard good support around the table for the compromise position. And we are hopeful that that can carry us forward to a final vote this afternoon.

MS. MACK: Thank you, Dave. Shall we walk through that now?

MR. MUSSER: Yes. So we are prepared now to share the specific regulatory text that emerged from, from this compromise. So we are actually looking at a new section that we have not looked at before. This section, 34 CFR 668.16 are the standards of administrative capability. This section are -- describes the basic conditions that the Secretary expects an institution to meet in order to participate in the Title IV programs. Elsewhere in these regulations, we have things like the requirements to maintain a skilled, skilled and experienced staff, adequate systems of internal control, those sorts of things. So this is -- these are sort of the expectations that the Department has for an institution to operate capably. So here we are making two sets of changes. First, we're making a change to this provision. And what the language says here is at

least half of the institution's recipients of Title IV HEA funds, and half of the institutions -- and half of the institutions' total Title IV HEA funds are not from low-earning outcome programs. So I want to pause here to explain what this really means. This means that in order to be considered administratively capable, the institution has to demonstrate that both of these conditions are true, that half of their Title IV funds and half of their Title IV recipients are not enrolled in low-earning outcome programs. And so if either of those conditions are not met, so that's an or, if either of those conditions are not met, the school would not -- the school would not be considered administratively capable. And we talked about this in the caucus. We can -- I personally was also a little confused. So I understand the confusion here, too. But it has to be and here, because this is establishing what it means to be administratively capable, and you have to meet both of these conditions in order to be -- to meet that requirement. Okay. So this is the first stage of the series of things that we agreed to in the compromise. If these conditions are not met, the institution is not considered administratively capable. And but -- and there are some significant consequences to that. And now I want to talk through the consequences before we talk -- before

we take comments, because all of these things are sort of linked together. So now let's scroll up, in fact, not, not down, but up. Because this actually takes us to a different part of the regulations. These regulations are for the institution's program participation agreement. This is the agreement that the institution signs in order to participate in the Title IV programs. And this, this section also details what happens when an institution is placed on what we call provisional certification status. That status applies in cases where the Department has serious concerns about some aspect of the institution's administration of the Title IV programs or its financial responsibility. And there are a number of consequences that emerge from provisional certification. Generally, it means that the Department would require approval of all the institution's programs before it offers Title IV funds. We actually talked a little bit about this in the Workforce Pell context long ago. And the -- and it also carries a number of other consequences. It generally means that there's a shorter time frame between the establishment of the provisional Program Participation Agreement and its expiration. So the Department checks up on the school more frequently, etc. Here we have added a new paragraph (h) to the Program Participation Agreement regulations, and I'll just walk through that here. In

addition to any other conditions that the Secretary may deem appropriate, if an institution does not comply with the provisions of 34 CFR 668.16(t) in two out of any three consecutive award years, the institution will be placed on provisional status, and the institution's low-earning outcome programs shall not qualify for Title IV HEA funds. So what that means is if that provision that we just described is tripped in two out of three consecutive award years the, -- all of the low-earning outcome programs at the institution will no longer qualify for any Title IV HEA funds. Not just Direct Loan funds. That includes Pell Grant funds and the campus-based programs. They would lose -- all of those low-earning outcome programs would lose eligibility for Title IV funds. The second paragraph here establishes that the institution shall have the opportunity to appeal the Secretary's determination that the institution failed to meet the conditions in the new 668.16(t) in two out of any three consecutive award years under Subpart G. And I would just say here the Department's intent is that the same appeal conditions apply here as they do in two cases where a program fails the earnings premium metric in two out of three consecutive award years. Here, the program -- the institution can only appeal on the basis of a data error, not any other basis. So what this does overall is,

and I'll just describe as best I can, the sequence that this, that this would play out in, once the Department implements this regulation, if we were to reach consensus and establish these requirements. So, in the very first year that we implement these regulations and calculate metrics, individual programs would fail the earnings premium metric, causing warnings to be required for students in those programs that they could ultimately lose Title IV eligibility, among numerous other things. In the second year that the Department calculates the earnings premium metric, programs are subject potentially to loss of Direct Loan eligibility. Those programs that lose Direct Loan eligibility are referred to as low-earning programs, low-earning outcome programs. In the second year, when programs actually lose Direct Loan eligibility and become low-earning outcome programs, the Department would run the test that we described a moment ago at the institution level to determine whether 50% of the institution's students or 50% of the institution's Title IV revenue are in programs that are low-earning outcome programs that have lost eligibility for Direct Loan funds. If that is the case, the school is then on notice that if that happens in one more year, in three consecutive award years, all of its low-earning outcome programs would lose Title IV eligibility generally. And

the Department would continue to conduct that test at the institution level ever after to determine if the institution meets that condition. So I'll pause here. I've said a lot, and I want to see whether folks have questions and if I can explain anything further about the proposal.

MS. MACK: Thank you very much, Dave. Tamar, we'll get started with you.

MS. HOFFMAN: Thank you. Thank you for going through this text. I really appreciate it. I have a few questions as we go through, in recognition that this was a big compromise position on loss of Pell eligibility. It's definitely more than halfway from where we started. But we're trying to be agreeable here. So the first is about the appeal. You've sort of verbally explained the intention here. I'm hoping that, at the very least, the Department can explain that in the preamble as well to avoid any kind of confusion.

MR. MUSSER: We will commit to explaining that as well in the preamble.

MS. HOFFMAN: Great. Thanks. And the other issue that I'd like to make sure that's clear here is in the references to 668.16(t), I'd like to make sure that it's clear that that's as of the date of the enactment of this regulation. Just because otherwise

there's the potential that, through other processes, this could change, and it would affect the durability of the regulations that we're trying to establish during this accountability table.

MR. MUSSER: So, yeah, we can, we can talk maybe a little bit offline about exactly what you're interested in. I believe I understand that that's a sort of commitment on the Department's part in the preamble. If I, if again, if I understood correctly, but we are open to that as well.

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

MR. FEEHAN: Well, I just want to start off by saying a huge thanks to my fellow colleagues here and to the Department. I think we got it right here. And the language looks good. No issue with it. And what I would like to add, and I've been pretty consistent with this throughout negotiated rule making that for my constituency, we have multiple funding sources. So again, just for the record, this strictly applies to Title IV funds. What I could see happening here, both theoretically looking at the language and then theoretically or not even theoretically, just looking at the history of my constituency that schools will supplement their revenue streams through GI Bill funds

and through tuition assistance. And it's not captured here. Which the Department can't do because it's not Title IV funds. So again, just for the record, I think this is a great opportunity for the Departments of VA, Education, and the Department of Defense to increase their coordination over the coming years. If the Department would allow it, I'd love to submit some data that we do have from the VA addressing many of the concerns that have been raised through neg reg. However, it doesn't really -- it's not a proposal. It's not going to hold up consensus on my end or anything like that. I just would like the American public to take a look at some of the governmental reports already written by the VA that overlaps with much of the data that we have here.

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

MR. ANDRADE: Yeah, we would welcome anything. Obviously, I think we're on the same page that we want to make sure that the benefits that veterans earn for their time and service are, are well spent. And that we would be more than welcome to look at anything that you provide us. So we appreciate that offer.

MR. FEEHAN: Thank you very much, Department. And I also want to add too, for the purposes of longevity. I think shifting out of the subsection for

eligibility for Pell Grants and moving this into where we have it now for a different subsection will stand the test of time. I think it's been put on the record before. I'm going to reiterate it here. I strongly feel that our constituency has been the victim of this whiplash, regulatory whiplash over the multiple administrations we get. I call it in closed doors, Mom and Dad fighting. But it's -- this is going to be really helpful for our community. So it stands the test of time, and we don't fall into this whiplash of changing regulatory provisions for student veterans service members and their dependents. So the Department did a wonderful job here, and so did the committee, and I just want to share my heartfelt thank you to all of my professional colleagues here.

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

MR. LACEY: Yeah. Similarly, I just want to comment. You know, I think this does represent a reasonable compromise. I mean, you know, for the record, we, you know, we understand. And for the folks who are going to who are watching or thinking about this, you know that for small institutions with 2 to 4 programs, this is a different, this is a different proposition than it is for large institutions with 100 or 200 programs.

And we recognize that, but at the end of the day, you know, to veteran's point here, we've got a framework here that we think is pretty strong, and we see the value in the compromise. And we also acknowledge that in most cases, you know, maybe aside from those very small program samples, you know, this represents a magnitude of order type test. And we think that makes a lot of sense. So appreciate all the folks who, you know, engaged in creative thinking to think about how to sort of allocate this risk and navigate a compromise. And to the Department and everyone else for taking the time to come up with this text.

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

MR. COOPER: Thank you very much. I just want to reiterate the sentiments that a lot of people have said around this table that I think this is a very strong compromise. I'm very thrilled with it. And I think this is going to protect a lot of students. Obviously, you know, we've been arguing for tying Pell eligibility to these accountability rules. And while this doesn't do exactly that, this still gets us a big part of the way there, you know, by some of our calculations here, you know, this would protect around 2% of students and close to \$1 billion a year in Pell Grant funds. And

that is a very significant way in which we are protecting students and taxpayers with this amendment. So I just want to thank everybody around the table. I want to thank Rachael, especially because she was the one who kind of originated this idea in our caucus yesterday. And I want to make sure she gets a, you know, the credit she was due. And I'm glad that we have, you know, arrived at this compromise, which it sounds like a lot of people can live with.

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

MR. KAFAFIAN: Yeah. Broken record. But a really appreciative of everybody leaning in. Tamar, especially you, frankly, I think it's very easy to lean out in moments like this, and it's a lot harder to lean in and collaborate. And I'm grateful to everybody around me for that. I zoomed out yesterday in one of our caucuses and thought about where this started 15 years ago, which is that President Obama himself wanted harmony and wanted to hold all institutions accountable for all programs, and the political tides change over time, certainly, over the last 5 or 6 years, there's been strong calls for that on other sides of the aisle. So I think if we can all zoom out with a broader lens, we can see that this is a design that is all encompassing and that

simplicity as a design goal is really key to the durability. From when I think about just the employer standard, I think this will cause employers to take some signal out of this and understand that it's your responsibility to think about how you are going to train and fund the training of your future workforce in a way that is sustainable. And so while this will move where funding comes from, a Federal source in various pockets of the economy, I think the idea is that my constituency employers will have to be proactive in thinking about what their role in filling those gaps are. There's one just clarifying question I did have. And I do believe we had agreed that it is in here. I just want to make sure I understand where it is. Where is the language here that confirms that the programs that are subject to the teach-outs are not picked up in this?

MR. MUSSER: So those programs are not low-earning outcome programs. By definition, you can only become a low-earning outcome program if you lose eligibility as a result of the test. So those programs are essentially if the school makes the decision within that 120-day period to pull itself out of eligibility and didn't start to teach out the program, that program does not get included in this calculation.

MR. KAFAFIAN: Perfect. Very helpful.

And thank you for the explanation of two ands not equaling an or. Reminded me of studying for the LSAT.

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

MS. HULTQUIST: Thank you. On behalf of the public sector, I want to just commend this effort. You know, HCM Strategist, that I run in my day job, we were behind the scenes in Texas with their funding formula. That's been implemented for a couple of years. Their mantra is we only pay for high-value credentials. And that's both in appropriations and aid. I've seen this Congress administration, this table, nail it with something as similarly transparent and clear in this harmonized framework. I see multiple efforts where the Department has been responsive to our desire as a sector to improve our capacity to oversee, improve, phase out, and plan for programs that have labor market value. That is going to be a process. But you've given us not only a first year off ramp, but this new amendment allows us to see the consequences if this is the predominant number of our programs, which I don't think will be the case in our sector. But nonetheless, I do think this continues to show this is the intent of Congress to only pay for high-value credentials, and then all of your efforts to not only increase transparency, but to limit the burden on

us. In fact, we've asked you a couple of places, will you add back in our burden shows our intent to use these data for good. I appreciate how much you've listened to our case about rural, and the impact on rural. We realize you can't do anything there, but I think that this amendment sufficiently guards against our greatest concerns, that our current middle skills gap in rural areas will only be exacerbated. So thank you so much. Last, I just want to acknowledge the Department for how conscientious you've been about language on behalf of the public colleges and universities. You don't speak about failing institutions. You don't speak about bottom feeders. You don't speak about low-quality programs. In fact, Dave, you just said, again, low-earning programs. Thank you language matters. Implementation will move now to the will and the support of faculty who are independent. And we really think that this will speak to where they need to go without just absolutely demoralizing them. So thank you for realizing language matters and how you've conducted yourself here. It's up to us to now take that message forward.

MS. MACK: Thank you, Kristin.

Rachael, you have the floor.

MS. STEPHENS PARKER: Thank you. My comments here are relatively brief, I think, and many of them echo what my fellow negotiators have shared.

Certainly, gratitude for the process. And I've been so impressed listening and learning alongside you all throughout the week, and also hearing, you know, groups who are willing to hold themselves to rigorous standards and also really fighting to make sure we protect students and really working to find the right balance and doing these things in a way that can withstand the test of time and different political winds in ways that maybe prior rules have not. And acknowledging, again, that kind of zooming out theme and really the fact that this is an area where, and I can speak, you know, certainly thinking about my constituency group and those we work with, you know, we work with everyone around this table. I said this in caucus yesterday, everyone represented around this table back in our states. And fundamentally, we exist for serving our people, our students, our economies, and our businesses. And zooming out on that and the fact that this really is a bipartisan area of interest to be able to do that, to balance accountability and protection with making sure we leave room for innovation and supporting the most vulnerable students. You know, certainly echo some, you know, the caveats that no one rule is perfect. And certainly I would say the same about this one. Some of the rural factors remain concerns. You know, we certainly want to make sure Pell

dollars, among others, are used for quality outcomes for our learners. And so I think that it's also reasonable to acknowledge that while this is a rule in a baseline set at the Federal level, states also have a responsibility to look at this alongside our institutions as well, and an opportunity to do that. And so I wanted to kind of just say that out loud and also just share again that gratitude and that reflection and that if we're kind of moving to a place where everyone around this table from our proprietaries and our other institutions all the way to our employers and our students and our legal aid colleagues are reaching consensus because of how my constituency group moves in this space. I think in that case, we'd be able to support this. And really happy to see us at this point. So thank you all.

MS. MACK: Thank you, Rachael. Randy, I'll come over to you.

MR. STAMPER: Yeah, I will not belabor the love around the room. But this has been quite an experience. We've all spent two weeks together over the last couple of months that were very intense weeks, very late nights. And I think this is a fantastic compromise as well. I believe that, you know, the responsiveness and the creativity of the Department has been just invaluable in getting us to a point where I think many of us

probably didn't think we were headed a couple of days ago. But I will say also moving forward, I think this gives us a tool that we are going to all of us and our compatriots back home and colleagues across the country are going to be responsible for explaining this not just to our institutions, but to our workforce partners, to our businesses, that these are the standards we're going to be held accountable to. And the impacts of those standards are going to influence the decisions that they make. And that's going to be a pretty large educational effort. But at least we have the tool to hang our hat on to make points that low-earning programs are a result of low pay. And I think that will help us. So in the spirit of positivity and wishful thinking, I booked a train for 1:40 today. So, I -- when I got here this morning, and I told Kayla that I saw her face and I changed it to 2:30, but I'm not changing it again.

MS. MACK: Don't put that on me. Thank you, Randy. Richie, please.

MR. MORROW: At this moment, we'd like to switch positions with my alternate, who would like to make a comment. So maybe, if you, while we're doing that, if you want to go to Michale.

MS. MACK: I'll formally recognize her momentarily. I'll move on to Michale. Please.

MR. MCCOMIS: Yeah. I'll just echo some of the sentiments around the work here as a testament to what can happen when a committed group of smart and dedicated folks come together and agree to try to find some common sense, workable, practical and real world, real world solutions to difficult problems. And while it may not be perfect, and there's work to do, it's a great starting point to begin to move that forward, that work forward. So I just want to commend everybody coming to the table with that spirit. All negotiators, certainly, including the Department as well, and the willingness to move different positions. As a member of the triad regulatory partner with the Department, we can appreciate the movement in this regard. Bringing a value metric will help accreditors to identify in an area that heretofore has been elusive for the accreditation community, not having access to the kinds of data that governmental agencies can produce. And so this will be just another tool and resource in our box to be able to work in concert with our triad partners, the states, and other regulatory agencies. So we appreciate the work here and can certainly support the proposal as it is. Thank you.

MS. MACK: Thank you very much, Michale. I would like to recognize, for state grant

agencies, our alternate Elizabeth. Please.

MS. MCCLOUD: Thank you, Kayla. I'll echo everyone's comments here that I appreciate all of the thoughtfulness from all parties and the Department that have gone into this compromise, multiple compromises to get us to this point, and that what we have here meshes well with state's desire to be funding successful programs with positive student outcomes, and certainly Federal aid eligibility has a large impact on institutions. State eligibility as well. Within all of this, part of the value to states is in the orderly closeout of programs that fail to measure in year one and opt into the teach-out process. And I'm just wondering if this morning's edits around retaining eligibility during orderly program closure, page 52 of this morning's PDF, if there's anything there that could be tightened up a little bit to match some of that mathematical precision that's in this latest part around administrative capability? We, we appreciate what you have in there, but it is a little more vague to say that the Secretary may allow for those programs if it's in the best interest of students. And so I gathered what your intention is with that this morning. But I don't know if there's a way to tighten up that wording or elaborate in the preamble for institutions, and if that's something you could speak to

briefly.

MR. MUSSER: Well, so first I want to make sure I understand. Are you asking for the Department to explain, sort of what it would consider when it decides whether it is in the best interest of students for the Department to agree to that approach?

MS. MCCLOUD: I think that would be helpful. And maybe even examples of when a school's request might be declined. Simply because at the state level, we've had, you know, situations where sudden closures occur, and we know the impact that that has on not just the students but on the communities. And, you know, I think that it would be helpful to have a better understanding of how that will be reviewed.

MR. MUSSER: It's extremely reasonable. We appreciate that. And yes, we will commit to including in the preamble a discussion of what the Department will consider when making that determination.

MS. MCCLOUD: I appreciate that. And can you just confirm one more time that it's really expected to be a broad acceptance of these or, you know.

MR. MUSSER: The Department's notion here is that the default is that we would allow an institution to do this. And it's when the Department has concerns that we have identified through -- could be a

variety of means. It could be student complaints, it could be stories in the media after we've investigated. All of this assumes that the Department has conducted its own investigation and has verified any information that we've obtained about issues potentially. And only in those circumstances would the Department decide that this opportunity was not availed to the, to the institution.

MS. MCCLOUD: Okay. That is helpful.

Thank you.

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

MR. LALLO: Yeah, I think Dave explained that very well. I think the preamble text is great because it will explain our thinking. I think it's important to understand why we want the discretionary language there. We also don't like precipitous closures. They're bad for students. They're bad for institutions. They're bad for regulators. When that happens, a lot of times we get put in the place of having to scramble to try to do something to save the schools. Using discretionary language like this, while we do expect it to be broad, still allows us to step in and take the steps that we need, but also to, you know, refuse to step in in the worst cases. We don't want to bind our hands too closely, and we also don't want to put in too many

guidelines there because, you know, every institution is a little different when you're facing closure. That's a big deal. But by the same token, you know, we don't want to accidentally create something that would again, if we put in hard standards, then we get into a due process issue. Again, you might have to build out another appeals process. So we think leaving that discretionary and then, you know, giving the guiding language in the preamble gets us to where we need to be. It can give the assurance that schools need, but also allows us the flexibility to do what we need to do in those circumstances.

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

MR. ANDRADE: And obviously, this is an NPRM. So if we need to make finer points there, there's an opportunity to do that, and we would welcome the input from the public.

MS. MACK: Thank you, Jeff. Thank you. Preston, you were next. Please.

MR. COOPER: Thank you. I just want to pass along a request from my alternate, Ethan, that we circulate the reg text before we, before we get a vote. I think he's behind a pillar there, so we might not be able to see the screen. But that's it.

MS. MACK: Thank you very much.

Michale, over to you.

MR. MCCOMIS: The reg text is not up any longer, but if we've moved on to picking nits. I thought that I read the root to say that the institution must, and then it goes on.

MR. MUSSER: And so, which section are you referring to?

MR. MCCOMIS: The very first one that you had.

MR. MUSSER: So go down and --

MR. MCCOMIS: 16, I'm sorry. Yeah. Right. If the institution and then (t) is at least. It should, I think, maybe, demonstrate that I think that's what you said was that they have to show it.

MR. MUSSER: Demonstrate that at least. You're exactly right. Thank you, Michale. Always keeping me honest with language.

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

MR. KAFAFIAN: Similar. Just textual clarification. My understanding is after two years, they lose Direct Loans, after three years they lose Pell. I thought it says after two years, though, that they lose Title IV.

MR. MUSSER: So, the authority that we

have under the PPA is related to all Title IV eligibility. That is the only way that we could -- that we can do this. We, we don't have the authority to say you're eligible for this program, but not this other program if you otherwise meet the conditions to participate in those programs. So that's why it's all Title IV, which includes campus-based programs. As a practical matter, that's the way we have to put it into the rule.

MR. KAFAFIAN: So how does the text achieve the two and three year. Two years, Direct Loan, three years Pell?

MR. MUSSER: So hold on. I'll make sure I understand the question.

MR. KAFAFIAN: I'm also happy to stand down until we see the text. My understanding was, again, after two consecutive years, they lose access to Direct Loans. After three years, they lose access to Pell as well. And I'm trying to see how the text --

MR. MUSSER: Oh, I see. So I, yeah. So I think the -- probably some of this is in the way that we worded this. We -- that was the -- that's the simplest way of explaining it. Because we're assuming -- let's just assume a case where 100% of the institution's programs are failing as of the first year. So as of the

first year, 100% are failing. They're not going to be able to, you know, get out -- reduce the number of programs, unfortunately. In the second year, that's when the programs start becoming low-earning outcome programs, and this test starts being performed. And in the third year, let's say a school was able to get most of its programs out of that condition, then the programs are still not eligible for Direct Loan funds, but they remain eligible for Pell. But if in the following year they're back in that situation, then they are now -- the programs lose eligibility for Pell. So that's what we mean when we say the two out of three consecutive award years. It's essentially the same concept layered on top of the other one.

MR. KAFAFIAN: Super helpful. Yeah, I don't -- none of my questions are to at all dilute that I am very supportive of the substantive compromise, I just want to make sure the text is reflected.

MR. LALLO: The mechanical way that's achieved is the use of the phrase low-earnings outcome program. So that means that this isn't happening until after that other test has been applied. Right? So then they fall into that. So that's how we're getting there.

MR. MUSSER: And that's also why schools -- programs that meet the tests to teach out the

program don't fall into this category.

MR. KAFAFIAN: Wonderful. Thank you very much.

MS. MACK: Thank you, all. Jeff, back to you.

MR. ARTHUR: And I appreciate your comment, Jacob, that the Department doesn't like school closures, precipitous closures, nobody does. And in the spirit of the, you know, what we came up with the teach out pathway and the fact that, you know, the realities are they're going to be a lot of schools closing and not just for, you know, for various reasons. We're going to see some technology changes that are going to challenge some institutions and learning processes. And this might be a really good time to put on your list of to-dos to see what can we do with the regulations to accommodate or incentivize graceful school closures. To whether -- to make it incentives to say, hey, we got a problem, we recognize it now. And to be able to openly communicate with the Department on how can we work together to make this happen without, you know, just lock the doors and walk away or, you know, any number of scenarios. And I think there really is an opportunity to improve that, to be more student-friendly, to have assistance, you know, resources that institutions can work together to find

pathways for institutions to go elsewhere, to maybe complete some programs where they're close to completing, and like extend an eligibility when you've lost your eligibility. And you just need -- if you could buy nine more months to fund students with Federal aid to complete them at your institution somewhere else, just anywhere.

MR. MUSSER: Yeah, I actually want to say thank you for that comment, Jeff. I think it's actually extremely important in this context. And the Department has, has spent a lot of time over many years thinking about how to improve that process. And I think work -- there is work to be done there. And I think you're exactly right that, you know, this rule could cause that work to become of even greater importance and to accelerate that the efforts that we need to make in order to get that process where it needs to get.

MR. ARTHUR: Yeah. About 27 years ago, I was on a Department advisory group on how we could deal with school closures.

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

MR. ANDRADE: Yeah. I also appreciate, Jeff, that you brought up that comment because it is an important issue. You know, we haven't hit the one-year mark with this administration yet. This will be our fourth NPRM. So we still have some time at the pace that

we're going to address a lot of the other issues. But, you know, we're trying to get the statutory stuff out of the way first and keep moving. But that is definitely an important topic.

MS. MACK: I want to thank everyone for this discussion. We've worked our way through all of the comments and questions. We're about ten minutes out from lunch. Dave, I'll turn it back over to you.

MR. MUSSER: Yeah, so here's the plan for the remainder of the day. So we have a few additional changes to make that we've talked about this morning that need some cleanup items. And we all need to have lunch. So I think that's the first step. The Department will go back and make those changes. As soon as we have made those changes, this will be a little bit of a divergence from normal practice, but we're going to complete our changes, send those to you via email, and then we will come back and discuss them. And during that discussion, if there are very, very minor changes to make at that point, we will -- we might -- we would be willing, I think, to make them to talk through them because I know that's, you know, the last opportunity to do that. And I just want to talk through what we plan to update at this point, so you guys know what we're talking about. One of the updates is what we talked about earlier, related to

when the teach-out option is available. And it's only the first time that they fail, and not when they would become a low-earnings outcome program. We will include that. We have a proposal that Michale submitted just, just to add an appropriate as a reference. But we will make that change as well. The only other thing I wanted to ask about we talked briefly about the CIP code SOC issue. I don't know where the negotiators are at the table here. So we weren't sure whether that was something. As I mentioned, the Department is open to the different suggestions that were made. So I wanted to ask which direction that, that this table would like us to go in that case.

MS. MACK: David?

MR. KAFAFIAN: So in the last five, ten minutes, we just submitted something from -- just because it was easy for me to grab them, taxpayers and state community colleges, employers that moves to the any overlapping. Still pending. I have a half-drafted email for Tamar and team showing examples of the way this would work and what falls in and out. So I'm not saying it has full collective consensus by any means, but one was just submitted.

MS. MACK: Thank you, David. Tamar?

MS. HOFFMAN: Yeah, thanks. Yeah. I

wanted to say that I still need an opportunity to take a look at it, if that's okay. But we're trying to work together as quickly as possible.

MR. MUSSER: Yeah, we -- I guess I would just say as soon as you guys can -- if you guys can reach an agreement, just send that to us as soon as possible. And this -- I'll make one exception to put it in a Word document. Just make sure you get it to us as quick as, well, that's great. Quick as you can. And so what we'll do then, as soon as we get that, and as soon as we've made the other changes, we will finalize the document, send it to all of you as negotiators. From whatever point that is, we will give you one full hour to go over it. And that might be into 1:30 after lunch -- after our normal lunch period. And then we will return and resume to do a final discussion, and then we plan to hold a consensus vote. Does that work for everybody? Okay.

MS. MACK: To be crystal clear. Would you like everyone back here at one, or shall we say 1:30?

MR. MUSSER: Let's aim -- I don't think we're going to have it by one since we're already reaching noon. So let's say the plan is right now, 1:30.

MS. MACK: Perfect. Let's resume at 1:30. Enjoy your lunch, everyone. Thank you.