

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
PRISON EDUCATION PROGRAMS SUBCOMMITTEE
SESSION 1, DAY 1, MORNING
October 18, 2021

On the 18th day of October, 2021, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. WASHINGTON: To all of you joining us today, and to the subcommittee members seated around our virtual conference table. My name is Aaron Washington and it is my pleasure to welcome you all to the prison education program subcommittee. First, I want to express our appreciation for the communities that have worked hard for this change, and that are now at the table helping to write these rules. We want to hear their voices representing impacted students, and we want to ensure the community hears their voices. Language developed and recommended by the subcommittee will inform the work of the affordability, ability, and student loans main table, and I'd like to welcome everyone around the subcommittee virtual table representing various constituencies, who have been nominated by their peers and selected by the Department to discuss important issues concerning the Federal Student Aid programs, authorized under Title IV of the Higher Education Act of 1965, as amended. You may recall, we kicked off our negotiated rulemaking process through our public hearings and solicitation of comments back in June, when we heard from the public on various topics concerning affordability and accountability, and federal student aid programs. We appreciated all of those who engaged with us

in that process, shared your concerns, and provided suggestions. Based on your feedback, we have formed this subcommittee to focus on recommending language to the main committee on regulations regarding prison education programs. We have a robust agenda for the subcommittee and have distributed an issue paper and amendatory language. To the subcommittee members, there are several issues that we would like to discuss with you and specific questions that we'll have to generate some ideas and potential solutions. Without further ado, it is my pleasure to introduce our Undersecretary James Kvaal, who will provide welcoming remarks. Undersecretary Kvaal was formerly president of The Institute for College Access and Success, TICAS for short. He served in the Obama administration as the Deputy Domestic Policy Advisor at the White House and Deputy Undersecretary at the US Department of Education. He served in senior roles in the US House of Representatives and the US Senate and taught at the University of Michigan's Ford School of Public Policy. So please join me in welcoming Undersecretary Kvaal.

MS. WILSON: Aaron, he needs to unmute and put on his camera please.

MR. WASHINGTON: Amy, would you be able to administratively unmute his microphone?

JAMES KVAAL: Sorry. I was not given permission. I felt like my voice had been taken from me. But, here we go. Thanks, everybody. I wanted to say good morning and on behalf of Secretary Cardona and the staff of the Department of Education, welcome to the first meeting of the Subcommittee on prison education programs. I want to say thank you to all of the communities that have been working so hard to expand opportunities for incarcerated students and reinstating eligibility for Pell Grants, it's such an important step. And thank you to all of you who are here now at the table to help us write these rules. We want to hear your voices because we need the voices of impacted students in order to write the best possible rules. In May, Secretary Cardona invited students who had attended college and prison programs to share their experiences. Their stories were very moving, I am told, and all of the students who attended the virtual roundtable told the Secretary that they truly realize their potential while participating in education in prison. Thanks in large part to the efforts of the educational institutions that offered them that second chance. Since 2015, the experimental program, The Second Chance Pell Pilot Site, has helped more than 22,000 students earn more than 7,000 postsecondary credentials, helping them build new skills, and improving

their odds of success. This summer we expanded that experiment up to 200 institutions. Doing so will ensure that we learn from schools across country and help us prepare for full reinstatement. We're deeply committed to this work. The new rules governing prison education programs will extend Federal Financial Aid to more students who are incarcerated and to more postsecondary education programs. By one estimate, 300 college programs currently operate in prisons, enrolling more than 25,000 students, and many more could join in the future. Secretary Cardona and the rest of the Biden administration hope we can reach as many of those students as possible. Students who are incarcerated cannot necessarily vote with their feet, it is far more difficult to simply choose a different program if the one in their local facility is not high quality than it is for other students. That means getting these rules right for students is critical because we have a heightened need here recognized by Congress to ensure that all these programs are high quality programs. Throughout this process, we hope to ensure that the implementation of Pell reinstatement for incarcerated students is done in a way that provides meaningful quality opportunities in students' best interests. For those of you who haven't followed past rulemaking processes, you will learn that

proposals will evolve as the process moves on. I want to emphasize that we enter these sessions with an open mind and the issue papers are a point of departure in conversation. We look forward to refining them based upon your expertise. I want to say thank you to the team here at the Department who have worked so hard to make today's session possible including, Jen Maturi (phonetic), Aaron Washington, Dave Musser, Ron Sann, Shawn Hadi (phonetic), Kerri Moseley-Hobbs, Elias Romanos, Emily Lamont, and Claire McCann. And to the members of this subcommittee, thank you again, for taking the time to serve. We take this process very seriously, and believe it helps us produce the best possible regulations. And we know it would not be possible without your hard work. The topics that the subcommittee will discuss illustrate the importance of postsecondary education and working toward equity and upward mobility. I appreciate all of the work that you are contributing and wish you the best of luck in your deliberations. Thanks.

MR. WASHINGTON: Thank you, Undersecretary Kvaal. We're going to move into introductions now. So I will start. My name is Aaron Washington, as many of you have seen me at the main committee and now at the subcommittee, so I will be leading the subcommittee through the amendatory language.

And I will be engaging in discussions with you all in regard to language changes that you'd like to recommend or recommendations or proposals that you would like to provide to the Department. I'm going to turn it over to my colleague in the Office of General Counsel, Ron Sann, to introduce himself.

RON SANN: Good morning, everyone. My name is Ron Sann. I'm an attorney in the postsecondary education division of the General Counsel's Office. And during the course of our meetings, I will be joined by my colleague, Steve Finley and Sorren Lagaard to provide legal support to the Subcommittee on the variety of topics that we will be discussing. And I look forward to working with you all, and all the best. Thanks.

MR. WASHINGTON: Thank you, Ron. Now, I would like my colleague, David Musser from the Office of Federal Student Aid, to introduce himself.

MR. MUSSER: Sure, thanks, Aaron. My name is David Musser. I'm with the Office of Federal Student Aid, and I'm the director of the policy innovation and dissemination group. Our two roles are to publish the federal student aid handbook and we also manage the experimental sites initiative, of which the second chance Pell experiment is one. I'll be here as a technical adviser to help answer your questions about

specific rules and regulations or processes that FSA carries out with respect to incarcerated students.

MR. WASHINGTON: Thank you, David. My colleague Brian Schelling, will be facilitating for today on October 18th. And also he will be calling on the subcommittee members when their hands are raised and providing them with a timeframe during which they could speak. We're going to set it at three minutes today. And then, so my colleague Sophia McArdle will join us on Tuesday and Wednesday, but I'd like to turn it over to Brian Schelling to introduce himself as well.

MR. SCHELLING: Thanks, Aaron. I think you said pretty much everything already. I'm in the policy development group with Aaron and with Vanessa and I will be calling on people to speak and as he said, we'll have a three minute time limit as we did in the main committee meetings. And I will give you a 30 second warning when there are 30 seconds left. I'm looking forward to the discussion today. Thank you.

MR. WASHINGTON: Thank you, Brian. My colleague, Vanessa Gomez, I'd like to turn it to her to introduce herself. Well, I'm not sure if Vanessa can hear you guys.

VANESSA GOMEZ: Can you hear me now? It's okay. Sorry. So good morning, everyone. My name is

Vanessa. As Brian said, I work with him and Aaron in the policy development group. And for the purpose of this meeting, I will be the one sharing my screen and making the red line edits you all tell me to make. So thank you.

MR. WASHINGTON: And finally, Elizabeth Daggett, from the accreditation group will be joining us on Wednesday to field questions on outstanding issues that come up regarding the Department's proposals relating to accreditation. She can't be with us today but I wanted to make sure that the subcommittee and public were aware that we will be having an additional member from the Department of Education join us on Wednesday to talk about accreditation issues. Alright, now we're going to go into the introductions of the subcommittee members. And so I would like each of the subcommittee members to take two minutes to state your name, how you would like to be addressed during the subcommittee meetings, your state, your constituency, and also I'd like you to state what your hope is for your constituency during these meetings. So the first subcommittee member I would like to start us off is Belinda Wheeler.

MS. WHEELER: Good morning. Good morning, everyone. My name is Belinda Wheeler. I am a representative of consumer advocacy groups. I'm also a Senior Program Associate at Vera Institute of Justice. I

think a big part for me is I want to make sure that as many voices are heard as possible. And with that in mind, you know, I wanted to thank constituents who have met with me and continue to do so through this process. As your consumer advocacy member here I just really want to make sure that we are continuing to do this important work as Vera and other entities before Vera have been in this space, and as other organizations have entered this space. It's so important we cannot get this wrong and we need to make sure that people who are currently incarcerated get, you know, quality access to really wonderful programming that provides them with the support that they in their communities need. Thank you.

MR. WASHINGTON: Thank you. We're going to move to Kim Cary.

KIM CARY: Good morning and thank you. I'm Kim Cary the college director for financial aid at Ozarks Technical Community College in Springfield, Missouri. I'm here today proudly representing our financial aid administrators. I have college financial experience of 21 years and I serve on my college committee as a second chance Pell institution with our first cohort beginning spring of 2022. So pretty exciting. I'm looking forward to conversations today. It's a very important topic. We also know that financial

aid is not an intuitive process. And we need to ensure a smooth process with few barriers for this important process we're going to be going through.

MR. WASHINGTON: Thank you. Just a reminder, please, when you're speaking please turn your camera on so that, thank you. Our next subcommittee member, Stanley Andrisse.

MS. WILSON: We're having a technical issue with Stanley so could you move on and I'm going to work with him.

MR. WASHINGTON: Okay. Terrell Blount.

TERRELL BLOUNT: Good morning. My name is Terrell Blount. I am the director of the Formerly Incarcerated College Graduates Network. You can refer to me as Terrell during the course of the meeting. One thing, oh, and I'm representing groups that represent incarcerated students. And just to note FICGN represents formerly incarcerated graduates and current students and reentry students as well. What I would like to see come out of this is a fair and equitable process and system. Not just for students and having choice and proper advising, but also and arguably more importantly, the process in which college and prison programs go about the reporting that takes place for those programs and ensuring quality.

MR. WASHINGTON: Thank you, Terrell. Our next subcommittee member is Dr. Terrence S. McTier. You have to click on mute, Dr. McTier. Oh, Amy, it looks like Dr. McTier is having some technical issues, can you administratively unmute him?

MS. WILSON: Hold on one second. Oh, he's-

MR. WASHINGTON: Let's move let's move to Marisa Britton-Bostwick, and then we'll come back to Dr. McTier.

MARISA BRITTON-BOSTWICK: Good morning, everyone. My name is Marisa Britton-Bostwick. I am the education director for the Montana Department of Corrections, which oversees three state prisons and then two private prisons within Montana. My hope is to really have more accredited equitable education not just within our Montana facilities, but across the nation, in correctional facilities, and to really take a realistic look at the exciting things that are happening in corrections, but also the challenging things with education, in correctional facilities. In the facilities and then also when they transition into the community. So, thank you, I look forward to working with all of you. Feel free to address me as Marisa and thank you for having me.

MR. WASHINGTON: Thank you. Dr. Angie Paccione from the Colorado Department of Higher Education, representing state higher education executive officers will not be joining us this morning. But she does plan to join us for the afternoon session and the remaining sessions on Tuesday and Wednesday for the full day. Amy, were we able to resolve?

MS. WILSON: I see Dr. McTier. I just see that you have to unmute yourself? You should. I gave him both. You know, I would recommend logging off and logging back on because you and Stanley Andrisse because you both currently have access. So I don't know what's, what's going on. So could you log on, excuse me log off and log back on please.

MR. WASHINGTON: Okay, the next item on our agenda is to move into the protocol. So while they log back in, I'll just go through the protocols and then we can circle back to have Dr. McTier and Dr. Andrisse introduce themselves. So for this subcommittee, members' cameras should remain on during active negotiation at all sessions. So Monday, Tuesday, Wednesday, your camera should remain on and you can turn your cameras during breaks and during brief times of absence. Subcommittee members will remain engaged in the work of the subcommittee and refrain from other activity, including

posting on social media during the time that the subcommittee meetings are in session. I will introduce each new topic and subcommittee members who wish to speak on that topic should virtually raise their hand. Brian today, or Sophia on Tuesday and Wednesday, we'll determine speaking order and call upon subcommittee members when it is their turn to speak. Subcommittee members must wait their turn and follow the Department staff instructions. Department staff intends to do the same unless asked a specific targeted question during the subcommittee. So I don't want to, if there is a really great flow of conversation going on between subcommittee members, I don't want to interrupt that, so I will be sure to raise my hand as well unless you ask me a direct question. If you say Aaron, I need to know something where if you ask David Musser or Ronald Sann a direct question, then that's when we will chime in. But, but unless that happens, I will also respect that and raise my hand as well. Only one subcommittee member may speak at a time and all other subcommittee members' microphones are to remain muted. For today, we will limit comments to three minutes to ensure that we are moving at a pace to get through our agenda on time and ensure we're hearing from everyone who wants to speak. Brian will let you know when you reach two minute and 30 seconds, and also when

you reach three minutes. If you would like to speak again on a topic, please just raise your hand. Please note that the subcommittee does not vote. The subcommittee is structured more like a working group. It was constituted and approved under the main committee protocols as announced in the Federal Register Notice requesting nominations. The Department was purposeful in distinguishing between the main committee and the subcommittee. The subcommittee will provide timely recommendations to the main committee. The primary negotiator, negotiators from the main committee, and the federal negotiator, Jennifer Hong will vote on the package. The committee may also request additional information from the subcommittee as needed. We do not need to decide right now, but by the end of the day, today, we will need to designate a member of the subcommittee who will take notes and present the subcommittee's recommendation to the main committee. It can be more than one person. But the presentation will include the proposed regulatory or mandatory language that we develop here. And it should have some sort of accompanying report or PowerPoint presentation to provide a more high level overview. As I mentioned, and as we mentioned several times, Vanessa will be sharing her screen and making real time edits. She will only make

edits when the committee has generously agreed to the change, and I will be sure to alert her when a change should be made. If you are suggesting a generally agreed upon change, please be sure to speak slowly and clearly so that Vanessa can capture the change. If you do not have exact language you would like to propose, but you do have a concept that the group agrees with, the Department will do its best to draft language for you to consider at the next day's meeting. Finally, I will periodically ask the subcommittee members to show a thumbs up or a thumbs down or sideways thumb to determine if the subcommittee is on track to provide one recommendation to the main committee. That's the goal, to provide one strong recommendation to the main committee. This also provides an opportunity to see if there is division on a path forward and how we can work together to resolve any outstanding issues. Amy, were we able to see Dr. Stanley?

MS. WILSON: Let's try. Stanley?

DR. ANDRISSE: Good morning. Thank you for helping me work through those technical difficulties. Sorry for the delay. I felt like my voice was being muted, I guess, in a technical way it was, but it's a pleasure to be here, Stan Andrisse. I am at this table as a formerly incarcerated individual with multiple felony

convictions, who was sentenced to 10 years in prison and was told that I, you know, was not going to ever get out of that kind of hole that I was in I you know, fast forward some time I'm now, Dr. Stanley Andrisse an Endocrinologist and professor at Howard University College of Medicine, as well as the executive director of From Prison Cells To PhD, which is what I sit here representing-- the Formerly Incarcerated Student Constituency. I'm also on the full committee as a representative of individual students. So it is a pleasure to be here with you all, and I look forward to our conversations.

MR. WASHINGTON: Thank you. And finally we have Dr. McTier. Is he able to rejoin us, Amy?

DR. MCTIER: Yep. I can. Good morning, everyone. I am Dr. Terrence McTier. I am the director of the Prison Education Project at Washington University in St. Louis. I am coming to the space representing directors who will be responsible for implementing the changes within the Pell Grant for incarcerated students. I'm also on the main committee, representing the non-private and nonprofit sector. I'm really looking forward to a clear, concise, and equitable process for implementing Pell Grants for our students and our institutions. Thank you.

MR. WASHINGTON: Thank you Dr. McTier. Dr. McTier, are you able to turn your camera on?

DR. MCTIER: Okay, got it.

MR. WASHINGTON: Thank you. Okay, so I want to pause there for any questions, and if there are none, then we will dive into today's agenda. Okay, so let's dive into the agenda. So the first section, Vanessa, if you could pull up the amendatory language or share your screen. All right, that is perfect. So, the first part of the regulations that we're going to take a look at today are just some definitions and that the Department believes need to be updated in order to ensure proper reporting, and in order to ensure that we're capturing every, all the different locations. So the first step is we're going to look at a different location and that the black text is language that is already in current regulation. And so the definition of an additional location is a facility that is geographically apart from the main campus of an institution and at which the institution offers at least 50% of a program and may qualify as a branch campus. So the Department's text that's used there is what we propose to add--the definition of additional location, and that is the federal, state, or local penitentiary prison, jail, reformatory, work farm, juvenile justice facility, etc.

A correctional institution is considered to be an additional location as defined under 34 CFR 600.2. Even if a student received instruction primarily through distance education or correspondence courses at that location. So, we're proposing to update this definition and to ensure proper reporting of additional locations to the Department, regardless of the format of education, whether that be in person, online, through the mail, or electronic transmission. This will also ensure that additional locations are reviewed under accreditors substantive change policies to ensure the institution has adequate faculty, facilities, resources, and academic and student support systems in place, the institution is financially stable, and that the institution has engaged in long range planning for expansion. Also, if an additional location closes, meaning that if a school closes, all programs at the correctional facility, per section 437 of the Higher Education Act, the student would be eligible to have their Pell grant restored for the entire period that the student was in attendance at the institution. And so to be clear, this is already the Department's interpretation. So we're essentially proposing to codify our existing policy and regulation. So I will pause there and open it up for questions. I'm seeing none. Can-

MS. WILSON: Brenda, Belinda has her-
Belinda yeah.

MR. WASHINGTON: Belinda, yeah.

MR. SCHELLING: Belinda has a
question. Go ahead, Belinda.

MS. WHEELER: Thank you very much. So
just wanted to clarify, I love the extra definition that
has been listed here and the inclusivity. With regards to
the different types of carceral spaces. I think that's
really important. I just had a clarifying question. And
that is, with the existing language, how it refers to at
least 50% of a program. With regards to just this little
piece that we have here. Is that potentially something
that the Department may look at like I know, Aaron, you
had mentioned that you'd be beyond the additional
language you had mentioned all these things that ED sees
as existing policy for people who are currently
incarcerated undertaking educational experiences. But it
just wanted to double check about this at least 50%
because I know with some of the other documents that
we're going to be looking at later, there's potentially
the idea of as soon as an educational institution is
considering being in that space, that that might actually
trigger when this additional location paperwork makes its
way from an education. institution to their, their

corresponding accreditation agency. So just wanted to be clear about that percentage and how ED is seeing that.

MR. WASHINGTON: Well, we're just trying to clarify that no matter what the means of instruction, that the additional location will have to well, it'll either have to be well, you'll see we'll see later in the mandatory language that the program will either have to apply to the Department for approval of the program, or subsequent programs that you aren't required by regulations that apply to the Department will be all will be reported to the Department. Regardless, if 50% of the program is offered at this location or without regard to without regard to the means of instruction, correspondence, distance, we're just trying to simply clarify that you must report all prisoners escaping programs to the Department of Education. I'm not sure that answers your question.

MR. SCHELLING: Dave has his hand up and then Dr. McTier?

MR. MUSSER: Yeah, I think I got it. I just wanted to clarify one aspect of the language that indicates 50% of a program. The Department interprets that to mean that a student can complete up to 50% of a program. So if there's ever a case where an institution has begun a program, and students are just beginning and

they haven't actually taken 50% of a program, the fact that the program will offer 50% of the program there will result in that being treated as an additional location that must be reported to the Department or approved based on the new requirements that Aaron just mentioned.

MR. SCHELLING: Dr. McTier.

DR. MCTIER: Yes, just I guess a clarifying question for me. Would distance come into play here? If the courses that are at the prison are primarily administered through a virtual space, would that be considered a branch campus as well, or is this solely if you go into that space, into the prison?

MR. WASHINGTON: It will be considered an additional location if it was offered through distance education. So if your institution, for example, when it offers a program at a correctional facility solely (100%) through distance, that facility where you're offering the program, it will be considered an additional location, and it would have to be reported to the Department or you'd have to apply. Perhaps there may be some credit or approval in there as well. Brian, do we have any other hands?

MR. SCHELLING: I do not see any. I also I should have mentioned earlier that Teams apparently does not order when hands go up anymore. So if

more than one hand goes up at a time, I'll try to call people in the order that they raise their hand, but I can't guarantee that I will get it right every time. But I will try.

MR. WASHINGTON: I don't see any. Oh, well.

DR. ANDRISSE: I did have a question.

MR. SCHELLING: Stanley has a question.

DR. ANDRISSE: Yes, thank you. So I have a question. But I may, it pertains to institutional eligibility as it ties to this question, but I don't know, if it will make more sense to bringing up when we move away from the definitions and are talking about institutional eligibility. But maybe it does get answered here. The idea of the 50% and, you know, are how are we going to address institutions that are solely or mostly, you know, providing education through Pell only? And, you know, is that something that needs to be addressed in some form of definition in this part here to say that there's a limit on how much Pell your institution offers or if it's the only source? And again, maybe that is better answered in the institutional eligibility part. But it does kind of tie to this idea of offering 50%.

MR. WASHINGTON: Just a clarifying

question, Stan, are you so I guess just to back up a bit, to access Pell a student would complete the federal, the free application for Federal Student Aid. And there's some work that's done by our central processing system to determine the amount of aid the student is eligible to receive. Pell acts almost like if you if you apply and you're eligible, you would get hurt, you would get whatever Pell you were entitled to based on calculations about the expected family contribution and cost of attendance.

DR. ANDRISSE: So maybe I could re-clarify. And, you know, the question is, does/will the Department restrict Pell access from programs that rely solely on Pell funding, and that do not admit students who are not Pell eligible? So for programs and institutions that are solely just, you know, allowing Pell, you know, that is their sole means of the type of students that they bring in? You know, I think there, we will probably get into this conversation, some institutions that have that makeup are particularly targeting incarcerated students and disadvantaged students. And, again, I think that this question may be for later.

MR. WASHINGTON: Thank you for bringing that up. Say, I understand your question. And

better now. And I can definitely take that back and discuss that as well, and have an answer for you at a later time, but I appreciate the clarification. Thank you. Brian, do we have any more hands for the definition of dislocation?

MR. SCHELLING: I do not see any.

MR. WASHINGTON: And also, Belinda, thank you so much for your comments, I, if you have any, do you have any language proposals, and this is for the entire subcommittee. If anybody has any language proposal that they'd like to offer, and you'd like small tweaks to what we were saying here, or, any general concepts that you'd like to see included, you can send the entire subcommittee an email. I think I stated before the Department will try and draft some language or we can ask Vanessa to type on the screen in real time to see what would work better to ensure that we're getting to everybody's goal. But seeing no more discussion about this topic, Venessa, would you mind scrolling down to the confined or incarcerated individual definition? Exactly. So for this definition, this is also in 600.2. Currently, there is a definition of incarcerated student and the Department wanted to update the definition to mirror the definition more closely in the higher education 2021 appropriations bill that amended the Higher Education

Act. The amendments to the Higher Education Act, referred to an incarcerated individual and not incarcerated students. So that's why you see those changes there. We, I, see this as a technical update to the regulations. But there is one place where we did add some clarifying language. You'll see that it says as an individual who was serving a sentence in a federal state or local penal institution , jail, reformatory, work farm, and we've added juvenile justice facility because we consider that to be a similar Correctional Institution. And then you'll see there that underneath that definition, we have a definition of juvenile justice facility that's already in the regulation in that we've provided that so this subcommittee and the public can see how the Department has historically defined juvenile justice facility. The rationale behind that is that we believe that juvenile justice facilities that any program offered at juvenile justice facilities also have to meet the proposed definition of a prison education program. And going forward we wanted to codify that our interpretation that the juvenile justice facility was a similar correctional facility and the regulation applies.

MR. SCHELLING: Stanley and Dr. McTier.

DR. ANDRISSE: Yes. So. thank you, I

think these clarifications, I really appreciate these clarifications that were made. If I could ask for a clarification from the Department. A formerly incarcerated individual, or an individual who has a criminal, you know, background, or that has some type of conviction on their record, if they're in the community, they should be able to access Pell. And so that would mean people that have, I'm just asking for clarification on you know, individuals in a halfway house, home detention, or serving weekends--I just wanted it to be clarified that they actually are already still eligible for Pell. Is that correct?

MR. WASHINGTON: That is, that is correct. So under the current definition, instead, well, the statute only prohibits those that are incarcerated in a federal or state penal institution. That's how the statute refers to it. Currently, if you're incarcerated in a federal or state penal institution, you are not eligible to receive Pell Grants. However, if you are in any Correctional Facility, other than a federal or state penal institution, let's say a local jail, juvenile justice facility, work farm, or reformatory you are currently eligible for Pell. And that won't change with these proposed regulations. The only thing that will change is, as of July 1 2023, incarcerated individuals or

individuals that are confined or incarcerated individuals will, in order to access Pell, will be required to enroll in a prison education program. And so that is the slight change. Right now, students are accessing Pell at local jails and juvenile justice facilities to enroll in any eligible program. And as a product of the changes to the ACA, these students would have to enroll in a prison education program as defined by our proposal, or whatever is published on November 1st of next year. And so that's the only slight change. I think you also mentioned the halfway house or detention. So the definition says we don't consider a halfway house or home detention to be incarcerated. So those students would be eligible for not only Pell, but also federal student loans. And they would not have to enroll in a prison education program, they would be eligible to enroll in any eligible program at the school of their choosing.

MR. SCHELLING: Thank you, Stan. Dr. McTier?

DR. MCTIER: Yes. How it worked-- release programs actually fit within this definition. I know. I've had students who were part of a work release program where they would go to school Monday through Friday, and then return back to the facility for an extended period of time. But based on this definition,

actually wouldn't fit within the weekends and/or the prison jail. I'm wondering if it will actually fit within that. But I think there would be some clarifying language on adding work release program students who choose to take college courses during that particular process because they are technically still incarcerated. But they actually leave the facility.

MR. SCHELLING: Aaron, were you going to address that? If not-

MR. WASHINGTON: I wanted to make sure I was like raising my hand. Dr. McTier, was that a question you want me to answer now?

DR. MCTIER: I just would like to see that added to this definition. Yeah, that's basically what I wanted to see.

MR. WASHINGTON: Just a clarifying question, you would like to see it added to the definition of an unconfined or incarcerated individual or not confined or incarcerated?

DR. MCTIER: A part of the confined or incarcerated individual.

MR. WASHINGTON: So you would consider these individuals who work with these program providers to be incarcerated.

DR. MCTIER: Correct.

MR. WASHINGTON: Thank you.

MR. SCHELLING: Terrell has a question. Terrell?

TERRELL BLOUNT: Thank you. I wanted to know two things. One, is the individual serving a criminal sentence specific to protect students or people who are in a jail and are pretrial, they haven't been sentenced to a, you know, any type of confinement yet? And that's to again, I'm asking to protect them from being, you know, enrolled in a program when they may not even be in the facility for an entire semester or half a semester?

DR. ANDRISSE: Could I add a comment to that?

MR. SCHELLING: Yeah, go ahead, Stanley.

DR. ANDRISSE: So, that's a good point, thank you, Terrell. And I think so again, there needs to be, I mean, maybe there needs to be some clarification, because we, our program works inside of both prisons and jails. And I know, a lot of jails, for instance, people in jails and the, you know, correctional staff, and leaders are not familiar that incarcerated individuals can get Pell or, you know, federal aid, because that was the question that I first had. As you

mentioned, you know, people in jail have actually always been able to get access to Pell, under, you know, the changes that were made in '94. But, you know, I think this is saying some people serve sentences in jail. And that was a pretty gray area. Because if you're serving a sentence in jail, it's under a year, for instance, your sentence. There wasn't clarity on if that person could get Pell. But, you know, my reading of this is that people in jail who were pretrial should be able to get access to Pell already anyway. There needs to be more knowledge about that. But under this definition, I think it's safe. If you're serving a sentence in jail, then you can get access, but I agree with Terrell, I think there would need to be some clarification behind that.

TERRELL BLOUNT: Yeah, and I raised that only because, you know, to what Stan was just saying, um, so you do have some places where people are, because the state correction system is, you know, overly populated. People are serving their state sentences in the local jail in some states, right? So I can see if a prison education program is teaching folks who are serving state sentences, which may be well over a year, to reach those students. But I think specifically to the pretrial folks, I don't suspect that people would be arrested, you know, for a crime, awaiting to be in front

of the judge and automatically say to themselves, like, hey, let me enroll in college. I think there will be more situations where institutions are interested in reaching people, in just enrolling folks in programs, and not caring what happens once they leave that jail and those support services being added. So I wouldn't, thinking about it, I'm not saying that, you know, I would want to open it up to pretrial. But again, it was just a question on what was the purpose of that criminal sentence part, if it is a protection or not?

MR. SCHELLING: Aaron? You're on mute, Aaron.

MR. WASHINGTON: This language was taken, so any language that's in black, it was taken directly from the statute. So the rationale, that was the rationale so you'll see on the screen, we've changed we've added confined or we've changed students individual. But anything in black is language that is already in the in the regulation. So we've made changes on top of the statutory language or language that's already in regulation so that the committee can see what exactly changed. I will say that if you have any suggestions for ways that we can make this more clear, that would be helpful if you can either email those to the group or state on record right now, what those

specific changes would be. Now I'm not saying that you have to have a specific regulatory language. But if you could provide us with a concept of how you'd like to see a change, that would be helpful to ensure that we're capturing everything in this definition.

MR. SCHELLING: Ron, Stan, and Terrell. In that order.

RON SANN: Thanks. I just wanted to kind of echo what Aaron is saying. And this will be the theme we may encounter, often during our discussions, but this language is statutory. And we of course, recognize that that it's a big country in different state correctional and criminal justice systems may approach things a little bit differently. But in this case, serving a criminal sense is, is seems to me, at least at this point, pretty, pretty clear language. And you know, when we look at these in practice, oftentimes, in making these determinations, there'll be consideration of individual cases. But right now, we are dealing with the statute as it's been drafted. So if, if the there's possibility that if there's a need for changes, then that's a possibility of amending the statute, but at least for now, the law is pretty clear on how we would implement that based on what individual cases might present? We would see, but at least from now, I think

it's pretty clear.

MR. SCHELLING: Dave, did you want to interject something there out of order? No, I'm good for now. Okay, thanks. Stan. Terrell. And then Kim.

DR. ANDRISSE: Yeah, so I would, um, I mean, I would I have a, you know, to, as written, it is pretty clear language. But as implemented and understood, there is certainly some confusion in the field. I mean, again, we, you know, our program operates inside of both a prison and a jail. And, you know, people in pretrial, I would argue, you know, the folks that we work with the incarcerated students that we work with, and pretrial are eager to take part for various reasons. I mean, what we've seen for one thing is that, you know, they see benefit in the potential of helping their sentencing out from being involved in postsecondary education. And then, you know, some of the students are just this is, as we know, about incarcerated at, you know, prison education programs. Sometimes this is a first real opportunity for some folks to get postsecondary education, unfortunately, is how, you know, data will show. Um, so. But as you said, the language currently--pretrial individuals are eligible for, I just think there's, I don't know, I don't know if it's something that gets written in or how we make more people aware of that. But, you know, I do think

that it's a population that we're interested in at least and know that we know, through our connection with this body, you know, with pretrial, individuals who are confined, that they do, they are interested in postsecondary education, and they see the value in it. But you know, as it is written, now, it's actually available to them. I think it's just not as widely known.

MR. SCHELLING: Aaron, did you want to respond?

DR. ANDRISSE: And I want I'm sorry, one additional thing, I think, you know, we have the opportunity to add language, you know, Terrell's point of, you know, the danger of offering to pretrial and how some institutions, it offers a kind of maybe a predatory type of environment where they can get involved with the person and not really have real interest and seeing them continue. I think we have the opportunity to right language and that says, if you are going to be working with pretrial, then you know, there needs to be you need to fit the other criteria that we're going to put in place for credible programs and such that, you know, would you know, one of the things that I know, I'll be interested in talking about later, is the follow up to continue. As you know, a student would transition out of incarceration and how programs helping them transition

into college, you know, into college campuses. So, yeah. I'll end there.

MR. SCHELLING: Aaron, did you want to respond?

MR. WASHINGTON: As long as that was in the order of speakers.

MR. SCHELLING: No, but I thought if you wanted to respond to Stan's points, then-

MR. WASHINGTON: I can wait. I'll wait till my turn.

MR. SCHELLING: Okay. Terrell, Kim, and then Dr. McTier.

TERRELL BLOUNT: Yeah, thank you. I'm curious, where do people who are involuntary--civilly committed fall into the conversation, people who are convicted of sex offenses (the majority), that population is after completing their criminal sentence, if you will, if it is determined that they are not to be released, and therefore are put into a certain section of the facility, housing unit, or possibly even an entirely different facility where they're civilly committed. I know that within second chance Pell, that was a group that was eligible to participate. But technically, at least to my understanding, someone who is confined or incarcerated, it sounds like those folks will fall into that. So I was

just curious, where do they you know, where does that stand in this conversation?

MR. SCHELLING: Kim?

KIM CARY: Thank you. One of the things I just wanted to mention, from a financial aid perspective that we run into is maybe a later conversation, but I think it's important to interject here, when we talk about facilities. One of the things that the second chance Pell does not do for us right now is we don't have any other exceptions to the eligibility process. So if a student is transferred from one jail to the next, which is usually out of their control, and then they, how do we continue their education, depending on where they go? They could be going completely across the state, not having an educational facility close. It depends on the type of the medium that they're using to learn and be taught in that institution. So and then it puts the student in a unique position like it does normal students, where there's no criteria for this specific group to withdraw and then not have to return funds. So it's very interesting that we've put these things into place to help these students. But at the same time, we're still using the same criteria as normal students who were in an educational facility who can make those decisions to stay in the program for the whole semester and not be

forced out of it mid-term, or at any times beyond their control. So I just wanted to just throw that out there that as we talk about the different locations, some are very set, and we know the students are going to be staying there, the individuals, but some of them, like your local jails and things like that, where they could be serving a sentence, even in that scenario, they could be transferred out depending on the jail capacity and what's happening there.

MR. SCHELLING: Dr. McTier.

DR. MCTIER: Yes, I was going to actually, I actually agree with Terrell in terms of clarifying the other types of spaces. I was going to say that in the definition, it says or other similar correctional institutions, I think that there's a level of ambiguity there. I want to be clear on what those institutions are, if this definition is going to be long, I'd rather it be long and clear. And the reason why I say that is I'm thinking of diagnostic centers and whatnot, that many men and women attend, that will also operate as a correctional facility, but they don't have the correctional name included in their facility name, I guess, in a sense, you just want to make sure that that's added. And I'm just thinking about long term care facilities as well. Also, as I'm thinking through this

particular definition, the word confined, is a little bit concerning. When we think about home detention. We know that there's a large portion of people who are incarcerated at home, and so I'm just a little bit challenged by that. Can find when it actually says at the very end not considered X, Y and Z. So, just wanted to throw that out there.

MR. SCHELLING: Aaron.

MR. WASHINGTON: Thank you, Brian. I just wanted to go back through a few points. So just to start with that last point--confined-- that is also in the statute. So what we were doing here is trying to mirror what the statute said, to the regulation, and again, the only change from the statute was adding juvenile justice facility or other similar correctional institutions. I think it would be interesting, it'll be interesting to hear from the subcommittee, whether we would want the Department to provide an exhaustive list of every type of facility that a student could reside in. Or would that be something that would be better put into a summary with guidance perhaps, or maybe preamble language? Do we want to have, you know, a really expansive definition of a confined incarcerated student, I'd like to hear from the committee about that. In regard to the transfer of a student being involuntarily transferred to another

facility, there are two parts of the definition of prison education program that we will see that do require-- not only will that require the Bureau of Prisons and State Department of Corrections or other oversight entity, to take into account whether credits can be transferred to at least one institution, one (inaudible) institution, and also that there, there is also a part of the definition of a prison education program, credits have to be transferred. So the creditor, the Department and the Bureau of Prisons, the State Department of corrections will be looking at. Well, we can't control whether a student is transferred or not. So a different facility, there are requirements in the statute, the end in the proposed regulation, that would require us to require multiple entities to look at how easily credits can be transferred.

MR. SCHELLING: Ron.

RON SANN: Thanks, I just want to echo what Aaron's saying and sort of provide the subcommittee with just a little guidance in that. While I understand this, you know, often the desire to put more specificity into the rules, having flexibility is actually beneficial, especially in a situation like this, where we're, we're making determinations based on state laws and procedures. And while we're, you know, fortunate to

have tremendous expertise here on the subcommittee, it is a large country with lots of different possibilities for types of institutions. So Aaron's suggestion that we include some discretion in the preamble in terms of the types of similar correctional institutions that we may identify in our discussions, but to restrict the rule beyond what's here, ultimately may be counterproductive to what I think the subcommittee's objectives seem to be. Thank you.

MR. SCHELLING: I don't see any other hands raised.

DR. ANDRISSE: I don't know if anyone addressed Terrell's point about the civilly committed issue that was raised-- that point? Was Aaron, were you or someone else going to address that?

MR. SCHELLING: Go ahead, Aaron.

MR. WASHINGTON: I can address that can be one second, I apologize. So right now, the statute, essentially, the changes, the amendments made by the appropriations bill essentially struck all of the language prohibiting--- confined are those that are confined into a federal or state penal institution from the statute. It also struck the language that those currently having an involuntary civil commitment from that language as well. So the fact that I don't the best

implication does not prohibit those having an involuntary civil commitment from accessing Pell. I will say that, you know, correction, the correctional facilities as well as you know, may have, well, I think that, that I'll leave it there. Did I answer your question, Terrell?

TERRELL BLOUNT: To my understanding, you're saying that that language has been removed and therefore, people who are civilly committed involuntarily should be able to access Pell Grants?

MR. WASHINGTON: They may be able to access Pell Grants-- that's all dependent on, you know, their student eligibility requirements that are, you know, any student that's going to access Pell still has to establish eligibility through, you know, things like having a high school diploma or the equivalent of a valid social security number. I see David, I'm going to allow David to chime in as well.

MR. MUSSER: Yeah, thanks, Aaron, just really was just following on to what you already said the student after the provisions in the new law become effective, otherwise an eligible student who is in an involuntary civil commitment, but is not incarcerated in one of the facilities listed in this definition, is fully eligible for Title IV aid, meaning they'd be eligible for

Pell Grants, direct loans, etc. And they would not have to be enrolled in an eligible prison education program as individuals who are incarcerated would.

MR. SCHELLING: If I could, Dr. McTier?

DR. MCTIER: I was just going to say, I can send an email with, but I think the prison policy initiative actually has an exhaustive list of the different types of facilities that exist within the country that will be useful and helpful for crafting this or expanding this definition, specifically around the other similar Correctional Institutions. It actually gets that a lot of what Terrell is talking about regarding the pretrial detention centers, but also thinking about trying to, I'll just send that report out so that you all can review that in terms of crafting this, this definition.

MR. SCHELLING: Thanks, Dr. McTier. Stan.

DR. ANDRISSE: I just wanted to add I think the civil commitment point was also addressed in the in question 23 of the FAFSA, which asked about drug convictions as well. So I think they the new law, removes that and the civil commitment aspect to my understanding.

MR. SCHELLING: Dr. McTier, is your

hand still raised or did you have another question? Okay, Dave?

MR. MUSSER: Just one last question. Actually, from me to Dr. McTier. Going back to our earlier conversation about individuals on work release programs. You had indicated that there are occasions where work release programs have individuals working, but and serving some portion of their time just not necessarily on weekends. Did you have a particular set of criteria for what someone on a work release program would need to fulfill in order to not be considered incarcerated under these provisions? I was just curious what you had in mind with that? So for example, did you have in mind that the individual would be serving a small number of days per week in a facility, but otherwise is working? And just the days that they that they are incarcerated aren't necessarily on the weekend? I just wanted to understand what you had in mind for that type of exemption.

DR. MCTIER: Yeah, so I think that so when individuals doing work release programs, they typically spend a significant portion of their time incarcerated. So that could be seven days a week. But they're able to Monday through Friday, or whenever they have classes, leave the facility, take their classes, and

then come back to the facility, where they're incarcerated. So that timeframe can be a little tricky. I will need a little more time to kind of digest that question. But for the most part, I will say that a person on federal workload not federal but on work release is actually still incarcerated.

MR. SCHELLING: Stan?

DR. ANDRISSE: Yeah, to that point. So that's, I think, the individual that Dr. McTier is talking about. So from the Department of Justice in most state correctional and even Federal Correctional perspectives, an individual who is on home detention is considered under the confines of that state correction or federal correction. So you know, home detention, for instance, is by the correctional institutions considered incarceration, you are still under the confinements of that Department. So I mean, you know, there is that person who by the Department of Corrections definition, they consider them to be incarcerated, even though they're on home detention, or even if they're on work releases Dr. McTier was just mentioning, but we're trying to say that we're going to create a definition that says they're not incarcerated. So there are some, I mean, I think there's confusion between, you know, what this definition is, and what the definition of most

Departments of corrections,--I think that we just need clarification. What Dr. McTier is mentioning, is that person-- Dr. McTier, is that person taking classes, does, does that person need to be included here, because are they taking prison education classes? Or it sounds like the example that you're giving, they're going to a campus? And so they're already enrolled in an outside campus? But are they eligible? Are they getting--Because I think there's some confusion around that, because by Department of corrections, they're still incarcerated. So either they may think that they're not eligible to get federal aid, or, you know, are they having challenges getting federal aid? And I know, in my experience that a lot of people don't know. And then some people do experience getting aid in that, who fall into categories like that.

MR. SCHELLING: Aaron.

MR. WASHINGTON: Thank you, for all the comments. I think we have enough, I think we have enough information to move to the next topic. I know that we're going to be getting some emails with proposed language or kind of, you know, proposed it-- like a framework for ideas of what we can add to the regulation. I want, I want to also tell you what to keep in mind that we have, so we have the regulations, right that

definitions like that, the rules that your school institutions are required to follow. But we also have preamble, preamble means like, that's kind of the explanation of, essentially, of what we're proposing to do in the regulations. And we also have subregulatory guidance, like things like Dear Colleague letters and electronic announcements that we can also provide more information. So when you're sending all those, when you're sending all those ideas, you know, keep in mind that if it's if it's captured in the regulation, it's just something that you'd like to see. The Department tells the community that doesn't necessarily have to be in regulation, it can also be explained elsewhere. And finally, the last point I'll make about the home detention definition or, you know, I understand what you're saying. Stan, I think that this is language from the higher the statute. So that is the language that we are required to follow. So if somebody's in a home detention, they would, they would be they would not be considered confined or incarcerated, part of the Department's awarding of Title Four aid. That doesn't mean that changes the definition for the bureau of prisons are part of Department of Corrections. We're only talking about Title Four aid. And we're essentially saying that if you're on home detention, you'd be

eligible for not only Pell, but also loans and also to enroll in any eligible program that you wish to enroll in. So I'd like to move forward to Section 2.7. And Vanessa if you wouldn't mind scrolling down. Thank you. Perfect. Thank you so much. So, um, both the law and the regulations state that an institution does not qualify as an eligible institution if more than 25% of the institution's regular students in the most recently completed award year were incarcerated. We'll see below that institutions submit an application to waive this rule. The waiver is automatic for public and nonprofit institutions that consist solely of four year or two year educational programs for which it awards a bachelor's degree, an associate's degree, or postsecondary diploma. And there are other programs at the institution that are not four or two year programs that lead to a bachelor's or associates or diploma, the Department, the institution must submit documentation to the Department that confirms that in other programs that have a completion rate of 50% or more. So that's basically just giving you all a background on what the regulations currently say are and Vanessa, can you scroll down to the redline language? Oh, you already have it up, thank you. So we proposed several changes to regular--First, that an institution cannot apply for the waiver until it has provided eligibility of

the present education program for at least two years. We also propose to codify the circumstances under which the Secretary will not approve the waiver. For an institution that has a program other than a two year or four year program. Similarly, , we propose that the program maintain a 50% completion rate or greater, we also propose that an institution that violates any part of 668, well, 668.0 --that's where we're proposing to put the definition of a prison education program. So I'll probably say that a lot. And so we get that it might not be clear to the public just yet. But in your amendatory language that you've received, you'll, if you look at 668.0, that's where we're proposing to put the definition of a prison education program. So if so, so we also propose that if the institution violates any part of 668, point eight, or the proponent of the proposed definition of a prison education program for the first two years, or if the Department determines the school is not administratively capable, or financially responsible, then we would not approve the waiver to exceed 25%. of students incarcerated, student enrollment. So I want to pause there for questions. Or comments, doesn't have to be a question. It can be a general comment.

MR. SCHELLING: See no hands raised.

MR. WASHINGTON: Okay. Vanessa, would

you mind scrolling down? I think you can see on your screens that we've added May about several paragraphs and to clarify, the waiver is not automatic. So they do have to apply for the waiver, and there will be a review by the Department.

MR. SCHELLING: Terrell.

TERRELL BLOUNT: Yeah, could you just provide a little bit more information on what the waiver is and like the purpose of it?

MR. WASHINGTON: Yes. So essentially, in the statute in the law and the statute, the statute says that if 25% of-- there's a definition of eligible institution. And we say that your school is not eligible if more than 25% of the students in the regularly enrolled students were incarcerated. And there is a process by which you can exceed that 25%. But it's, but you have to apply it to the Departments--So I have some language. If you give me a second, somebody else can chime in. But if you give me a second, I can find the process by which the Department approves the waiver. If the waiver is for a two or four year institution with this only granting bachelor's or associate's degrees apply for the waiver, the waiver is automatic. But if the institution offers programs that aren't two or four year programs that lead to a bachelor's or associate's

diploma, then they would have to submit documentation that the students in those programs have a 50% completion rate. And that documentation will also have to be approved at some point by an independent auditor.

MR. SCHELLING: Stan.

DR. ANDRISSE: Yeah, I might need, this is very, so it seems just one question I have is what is the could you give us background as to the purpose behind adding this waiver? And two, do you have information on the institutions that have been granted this waiver or that have applied for this waiver within the second chance, Pell, you know, so I guess, just more it seemed, you know, if I could have more information on what you're trying to protect from in adding this language?

MR. WASHINGTON: Well, the waiver already exists. So that's the statutory requirement that like you know, as an eligible institution. But I think the addition, currently, you know, we went with a codifier process, and regulation that describes the circumstances under which the Secretary would approve the waiver. So if, let's say, for instance, if an institution-

DR. ANDRISSE: Can I clarify one point? So the 25, when this was originally the 25%

aspect, that was, you know, what year was that established and was it trying to prevent, you know, some institution just solely providing prison education? Because, you know, I'm just trying to get to what is, what was the original thought behind that needing to be added in? Give me a little more help in understanding crafting this new language for it?

MR. WASHINGTON: I would have to defer to my colleagues in the Office of General Counsel about when it was added to the statute, but it is a statutory requirement. So that is something that we will have to follow.

DR. ANDRISSE: Yes. And I mean, I guess even more clarity on what I'm thinking, you know, so this would, if we move to a place where there are places of higher education, that meet all the other quality aspects that we're going to make sure get instilled in this, you know, providing prison education programs? As it's written now, an institution couldn't be primarily built upon focusing on providing education to the prison population, you know, like, we have HBCUs, for instance, that are particularly you know, their whole mission is to try and which, you know, which were created after slavery ended, and were, you know, created as a means to, you know, specifically educate a certain

population of people. As the law is written now, there couldn't be an institution that comes into place, providing quality education, that was specifically focused on educating people in prison. And I'm wondering, you know, why was that put in place? I mean, I can understand how you would not want predatory institutions to come in and prey on incarcerated individuals. But what about if there were an institution built that met all the other quality aspects? I mean, and is this just in place to stop predatory institutions from coming in? You know, I just wanted clarification on the thought behind that. And also, I mean, for us to think forward on, you know, my thinking of how HBCUs were created with this effort to educate a certain population, you know, is it unimaginable for higher education institutions to be created with the whole, you know, initiative to help educate this group of individuals?

MR. SCHELLING: Aaron.

MR. WASHINGTON: Stan, you know, I can, we can take that question back and give you more of a historical background on the question. As it stands right now, this is a statutory requirement, but we will, we will take it back and provide you with more information on like the historical context of fact, in the statute. If we could, if I could get the

subcommittee's thoughts on the actual waiver application, the requirements of, you know, the requirements as we see the 50% completion rate for the other programs was already a part of the definition. However, we've added you know, if the institution is not compliant with our definition represented case program, and also if they're not administratively capable, or financially responsible. Does this subcommittee have any feedback on that? Brian, I'm not.

MR. SCHELLING: Not seeing any hands raised.

MR. WASHINGTON: Okay. Alright. Vanessa, if you can move down to paragraphs four and five. Thank you. So we also propose to add the authority for the Department to withdraw the waiver if any parts of this section are violated. So if an institution looks like it is not financially responsible or if an institution is not administratively capable. Also, in our discussions, we recognize that the revocation of the waiver would immediately make the institution ineligible per statute and regulations. So, we provide a wind down process for, for example, if the waiver is revoked, today, like during the 2021-22 award year, the school would need to reduce its enrollment of incarcerated students to no more than 25% of its regular students by

the end of the 2022-2023 award year. However, during that time the school could also demonstrate that it meets the requirements, but 50% completion rate for certain programs, it's administratively capable and financially responsible and now they're in compliance with the definition to maintain their waiver. So we're saying that they're if the Secretary revokes the waiver, they would have to wind down that that portion of the program that exceeds 25% of regular enrolled students. However, during that time, they could work to come back into compliance and demonstrate that to the Secretary. And I think one of the targeted questions that the Department had for the subcommittee is, how would we ensure that students are not harmed if an institution's waiver from the 25% threshold is withdrawn?

MR. SCHELLING: Belinda.

MS. WHEELER: Thank you. Yes, the waiver the waiver situation is a very complicated one. So I, so to answer your initial question, Aaron, I think you're right, I think there is a very clear opportunity here for potentially great harm, or great success for students if that waiver was removed. You know, an institution was allowed to increase student enrollment and then for whatever reason, they, you know, the Department has decided that because of these, you know,

requirements, that they're not hitting it that then they have to go down. This gets back to that initial thing partially gets back to that initial point about the 50% of an additional location. You know, if we definitely do the, that institution X has their accreditation, additional location approved, then there's that automatic teach out plan that locks that institution to make sure that those students, you know, that if an institution goes down dramatically with their student enrollment, that the teach out plan will protect them. If there's institutions that haven't yet reached that 50% and they don't have that accreditation, additional location, there's that potential loophole. But then also, now we've got accreditation agencies that have been forced to be removed from regional to national, and say, for example, correctional space A, has institutional accreditation from, you know, accreditation agency X, but then accreditation agency, Y, then wants to bring in the different potential standards between accreditation agencies. There's just a lot of different issues at play here. And if an educational institution in a cultural space where there's only one degree and or one institution in place, how do we make sure that those students that are already enrolled, and that institution has been, you know, forced to go down? Which may be a

very good thing, and we certainly want those institutions to go down. But how we make sure that there's, that if an automatic teach out plan isn't a requirement for an educational institution to enter this carceral space to begin with, then that's a problem. That's where the students could potentially fall through the cracks. So, I just want to bring the larger issue at play here, just to make sure that equity piece is available to students.

MR. SCHELLING: Go ahead, Aaron.

MR. WASHINGTON: Thank you, thank you for that, Belinda. First, I will say as Ron said, and I said, if you have any language for this waiver piece, you know, propose to add that and it will be definitely be helpful. What I heard is that you would like prison education programs to automatically be required to have a teach out plan, did I get that right? And, will go ahead.

MS. WHEELER: Yes, if so, and that gets back to that initial thing of what you said about people being allowed to come back into this space or continuing this space after experimental after the experimental side, or if they've never been in the space, a teach out seems almost automatic to help with the equity of students if they have to reduce their student population.

MR. WASHINGTON: Okay, thank you.

Okay, so we do, we do talk about the requirements around a teach out plan later on in the definition of a prison education program. So perhaps we can come back to that conversation once we get there.

MR. SCHELLING: Stan.

DR. ANDRISSE: I just wanted to reiterate the request for if there was a list of current institutions that received this waiver. And also if it's available to have the institutions that applied. And then additional requests that were or a question, I guess, the ones that got the waiver, will they just be, you know, retrospectively added in and they don't have to apply for the waiver again, since they got it as a you know, under the experimental side?

MR. SCHELLING: Aaron and then Dave.

MR. WASHINGTON: I'll let David speak to that.

MR. SCHELLING: Okay.

MR. MUSSER: Yeah, thanks. We do have the list of institutions that currently have a waiver of this limitation. I will go back to my colleagues and FSA to get that list and if we can, we will share it with the subcommittee members, should not be an issue. Regarding the eligibility for the waiver, moving forward, I defer in part to the Department's general counsel on this.

However, my understanding is that if the institution otherwise meets the provisions that we are putting together here, on July 1, 2023, they will continue to be eligible for the waiver that they had already received. And only if they, you know, one of these, one of these conditions where the Department would revoke the waiver, would they lose the waiver that they already have?

MR. SCHELLING: Aaron.

MR. WASHINGTON: Yeah, um, thank you, David. Do we have any more comments on this section? Outside of, you know, getting the list of institutions and kind of providing more historical framework for why this was added to the statute, did we have any more comments on that post military language?

MR. SCHELLING: I see no hands raised. Oh, Belinda.

MS. WHEELER: I'm sorry, I know you were just getting ready to move on Aaron out, just to clarify, and I know that we've got other language later on in this document as well. But thinking of the FAFSA Simplification Act and a lot of different, a lot of different reporting data points, that educational institutions and or correctional institutions will have to provide the Department but those educational institutions would be aware of it. So things like

employment, you know that the completion levels, there was a, well, you've got the completion level there. But there were other requirements, other data points that were listed in the FAFSA Simplification Act, which are going to be listed later here. Are there also potentially going to be other reasons for an educational institution to be prompted to go to-- for that waiver to be removed or really thinking it's primarily focusing on that on that completion, right and those other you know, financial things? So just wanted to clarify that because in the FASFA simplification act, there's a bunch of other data points, I just wanted to see how they'd be used.

MR. WASHINGTON: Yeah, so the completion rate is defined, the completion rate for this specific waiver is defined in the regulation 600.7. I apologize that it's not posted. But that is separate from the completion rate that the Bureau of Prisons, the Department of Corrections will be using, in their determination. The Department, we'll see later is proposing to define. So those are two separate those will be two separate definitions of the completion rate. I hope that answered your question. And I think you have more to the question, can you repeat those? I may have forgotten to answer a piece of it.

MS. WHEELER: No, no, no worries. I

just and again, I think it's really good that we're going piece by piece, but I know that there's other things coming up and I'm sometimes wondering how things will interrelate with each other, but again, it's just there's a bunch of other data points, which from an accreditation standpoint, and or how the FASFA Simplification Act is written, that some of those data points could, you know, it could say a lot about a, quote unquote, quality of an educational institution success rate in that particular space. So, I'm just kind of wondering, and maybe this, I just need to pencil it in and kind of we move forward. But I'm just curious as to how some of those other data points that are, you know, required as part of the FASFA simplification act, whether or not they will potentially impact the waiver, withdrawal, or removal, that's, um, it's not clear to me yet, whether or not those will and if they will, how, or if they should actually be written in this language.

MR. WASHINGTON: You know, that's something that we can definitely circle back to if you feel as though there should be more additions to the language for why the Department would revoke the waiver, if we, Vanessa if you can scroll back up to C1. So we will see there that, you know, the Department can revoke the waiver, if you look at it with C1, romanette, if the

institution is not compliant with any part of 668.8. The definition 668.8 covers everything, it covers the Department's approval, the creditor approval, it covers the Bureau of Prisons and State of Corrections approval. It covers the reporting and so if the institution is not in compliance with any section of 668.8, which was unfortunately, I'm sorry that people haven't been able to see that yet. But if an institution does not comply with any portion of our proposed definition, that would be a circumstance in which the Department could revoke the waiver. So I think we may be covered there. But if we don't feel that we are, we can always circle back to it. And if you have a proposal to add more protections or guardrails, then we can always consider that as a subcommittee.

MR. SCHELLING: I see no other hands raised.

MR. WASHINGTON: Okay. Vanessa, can you go to oh, and I apologize that we have a break coming up at noon. And so I think we can get through a few more sections before then. And 600.21, Vanessa, sorry I don't think I told you where to go. Okay, so this is this section, this part of the regulations is about updating application information. So all the black is already in regulation and then you see those three little stars, it

just means that something comes after what we've written there and something comes before and after it, I just, I didn't want to copy and paste the entire regulation in there. So we kind of just see exactly what we're trying to get to. So it says its provided in paragraph D, the (inaudible) and eligible institution must report it to the Secretary in the manner prescribed by the Secretary no later than 10 days after a change occurs in the following: There's a long list and then we started at number 12. And the reason we started well, I'll come back to that, but we've added number 14, right, and that's if an institution adds an eligible prison education program, location. And so that will ensure that schools are always reporting their additional locations. If they offer a prison education program at a correctional facility, no matter if it's a correspondence, distance, in person, they would have to report that facility to the Department as an additional location. And we talked a little bit about while we talked about the dislocation definition, about an hour ago, and so that's ensuring proper reporting of that additional location. So, um, oh and um I guess I can just add a little bit more. There is precedent for us, you know, as requesting that the, you know, application information be updated. As you can see, we've added a number 12. It's addition of a second or

subsequent direct assessment program. We generally mirror the language after that, because the best schools already have to report to us certain programs that they add. So that just mirrors that language. I will consider this more of a technical change. If there's any ideas on language or let us know please.

MR. SCHELLING: Belinda.

MS. WHEELER: Thank you for that.

Aaron. I've got two questions. So number one relates to the additional location that's listed at the end of that new section. So just to clarify, when you're saying that you're talking about the substantive change additional location, as described by, or as defined by, you know, the statute and also, you know, additional, like accreditation agencies, I just wanted to I'm just wondering, does this need to be read with the full understanding that we're referring to an additional location, as described by that language and not just a general layman's kind of section on it? And if so, does that need to be then cross referenced back to that definition? So that's question number one. And then question number two, given that, like, for example, in some parts of the country right now, we have higher education and prison programs, where they are 100% in carceral spaces and accredited by their program

accreditor. Given that, would the beginning of the sentence be its establishment as opposed to its addition? Because if it's a carceral, like if it is one of these rare occasions where we have an educational institution, I know there's a couple in Texas, for example, where the entire degree programs, and it's 100% students who are currently incarcerated. I'm just wondering, and maybe this is semantics from an English major, but I'm just wondering whether or not its establishment as opposed to its addition might be more appropriate? But I'll leave that to the legal team to move through.

MR. SCHELLING: Aaron, go ahead.

MR. WASHINGTON: Yeah, thank you for that. I yeah, I think we can take that back to, unless, unless our council wants to weigh in now, we can definitely take that back to see whether we should change it from addition to establishment. And also, so for the cross referencing, you're saying just say it's an addition of an eligible prison education program. add an additional case and as defined under 600.2?

MR. SCHELLING: Go ahead if you want to respond.

MS. WHEELER: Sorry. Okay. Thank you. Thank you. I just didn't want to jump in. So yes if you are indeed saying that that is referring back to that

exact definition. I think it's important for everyone, because I just see how the lines are blurred sometimes in the actual practice of what educational institutions are seeing. So I would appreciate cross references if that's exactly what the government is referring to so that there's no murky water with that.

MR. WASHINGTON: Okay, that makes sense. Alright, I think it is referring back to the additional definition.

MR. SCHELLING: Ron, you know, GC would like to respond.

RON SANN: Yeah, I just want to say we're making, you know, making notes of these comments, lots of these questions are not really strictly legal questions, and we need to discuss it within the Department, from a policy program point of view. Certainly, anything that that improves clarity through cross references is something we would be in favor of. So that's, that's a very helpful comment. Thank you. But the actual decisions that we make are sort of, we need to consult, but thank you.

MR. SCHELLING: I see no other hands raised.

MR. WASHINGTON: Okay. Let's go to Vanessa if you can scroll down to 668.32. So you have to

go all the way past this next the present education program definition, I think it might be the section right after this. So just scroll all the way down. Yeah. You can keep going, Vanessa, I think my screen might just be a little delayed. But if you yeah, you keep going, keep going, keep going. So it should say 34 CFR 668.32. So just keep going, keep going, I'll actually tell you when to stop instead of saying keep going. You can keep going, Vanessa. I don't know maybe my screen is frozen. Vanessa, can you keep scrolling Vanessa? Pause. There it goes. So scroll back up a little bit. I think that it's right, it's right before this one, so it's right before the disclosure so if you scroll up a little bit more. Keep scrolling.

VANESSA GOMEZ: You said 668.

MR. WASHINGTON: 32, right there. That's perfect, that's perfect, you can leave it right there. Thank you. I appreciate that Vanessa. Sorry for not being more clear about that. So here is-

VANESSA GOMEZ: Is that what you mean?

MR. WASHINGTON: I'm sorry? Yeah, it's, it's perfect. The screen is perfect. Right there. Thank you, Vanessa. So this is a technical change to eliminate the so okay, sorry, 668.32 is where in the regulations the Department defines student eligibility.

So this is not the entire section. This is just like a little screenshot of the section that we are proposing to amend and we're just so as you can see in the regulation before us, what we have is not incarcerated in federal or state, you know, institution. And we propose to change that to is not incarcerated, or does not enroll in an eligible prison education program, as defined under that 668.8, which is the proposed definition of a prison education program. So we see this more of a technical change so to eliminate this prohibition, we don't have to do it, per statute. But I'd still want to open that up for discussion if you have any language changes for clarity.

MR. SCHELLING: Real quick here and I'm, I'm not seeing the screen clearly. I'm not sure if any of the other participants are observing the same discombobulation that I am.

MR. WASHINGTON: Okay, let's, let's give Vanessa a moment to work with her three, maybe Vanessa, maybe you want to unshare work with a little bit and come back? And if first, if I can also simply share my screen as well for the committee. Okay, there we go.

MR. SCHELLING: There it is, it's back.

MR. WASHINGTON: Thank you. So as you

can see here, we've just made a technical change. But I do again, I do want to open it up for conversation in case there's um, wording that you that you could recommend to the Department to make the point more clear.

MR. SCHELLING: I see no hands raised.

MR. WASHINGTON: I see people looking intently at the page so I don't know if there's going to be a comment on it, or if everybody's okay with it? I also don't want the subcommittee to feel as I'm rushing them through this language.

MR. SCHELLING: Belinda.

MS. WHEELER: Sorry to be coming back on here all the time. So just to step back for a second, is with Pell. For All being reinstated, is the not incarcerated like is that I'm sorry, Hmm, that doesn't seem like it even needs to be there anymore since Pell is already reinstated to people who are currently incarcerated. So why would we still continue to have the language is not incarcerated? Apologies if I'm overthinking this.

MR. SCHELLING: Go ahead, Aaron.

MR. WASHINGTON: I think there we were trying to ensure that it was clear that the student has to be enrolled in a prison education program. So if the student isn't incarcerated, is incarcerated, sorry, and

is enrolled in maybe just an eligible program. I mean, we can't say that they can't, but they would have to access federal student aid to access the Pell Grants, they would have to be enrolled in a prison education program. You know, you were aware that there are students likely enrolled in prison education that are not accessing Title Four that have right, and may not access Title Four right to finish their program. But for Title Four purposes, In fact, I think we say, a number two for the purpose of the Federal Pell Grant Program, and that's what we're trying to say that they must be enrolled in a prison education program. However, Belinda, would your recommendation be to simply strike unincarcerated?

MS. WHEELER: I'm thinking that way, but I definitely want to hear my other colleagues who have their hands up first before I weigh in. So definitely want to check in with them if that's okay, first?

MR. SCHELLING: Dave, did you still want to respond?

MR. MUSSER: Yeah, I can real quick. This, this was our attempt to implement the statutory provision that connects eligibility for Pell with enrollment in an eligible prison education program. So the law provides that if you are incarcerated, if you if

you meet the definition of incarcerated, then you must be enrolled in an eligible prison education program or else you are still not eligible for Pell Grant funds. So that's the reason for that wording here is that either the individual is not incarcerated, in which case they're eligible for Pell, if they're otherwise eligible, or, if they are incarcerated, they're enrolled in an eligible prison education program.

MR. SCHELLING: Stan.

DR. ANDRISSE: Yes this, I mean, I don't even know exactly, I want to think more on this, and maybe bring this back to some of the other individuals that we've kind of gathered together to, to think about this. But I have a little bit of concern that, you know, so if you're at a correctional institution that doesn't have a prison education program, you one, can't access education, or two, you have access, you know, but you can't access education and get a Pell grant. Or two, you have to participate in a correspondence course, from, you know, an institution offering a correspondence course that has been approved. I mean, I don't know how or what we think about that, or, you know, what, what about the individuals, you know, that that limits what individuals can do in terms of the school that they can attend. I mean, I don't know what

people's thoughts are on that, you know, you are in Denver, Colorado, and Colorado doesn't have any type of prison education programs. But you want to go to the University of Denver, and you have, like, family that will assist you in doing a correspondence course, or doing the course some other way. You're ineligible to get Pell if you are to do that? I mean, is that how we, I mean, that's how it's written now. And I just, you know, I need to think more on that. I'm a little bit uncomfortable with it.

MR. SCHELLING: Aaron, did you want to respond to that? And then Belinda and Dr. McTier.

MR. WASHINGTON: Thank you for your comments, Stan. So there are so far that we're really, I think that for the for the scope of the Department's authority is federal student aid. And we're really talking about federal student aid only. So there are institutional eligibility requirements that have to be fulfilled in order for institutions to be able to disburse federal student aid. There's also other program eligibility requirements, program length or program structure. And there's also some eligibility requirements. So if all of those aren't in line, if the institutional program is-- students are not eligible for federal student aid, and it, you know, they, the student

wouldn't be able to access Pell. So the program would have to be offered by an eligible institution and, and also the Department doesn't currently have the authority in statute to require postsecondary institutions to partner with correctional facilities to offer prison education programs. So I, I think that you know, it would be the postsecondary institution that, you know, that goes into the eligible institution that goes into the facility to offer the eligible prison education program. And if those don't occur, then the student wouldn't have access to aid and of course, the student would then still have to be eligible to receive a Pell Grant.

DR. ANDRISSE: Could I clarify?

MR. WASHINGTON: Oh, sure. I'm sorry if I didn't get that right.

DR. ANDRISSE: So, for instance, you know, an institution that allows internet access. What if someone wanted an incarcerated person wanted to take an online course and that particular Correctional Institution allowed online, you know, them to access the online course. So you're saying as the law, as it's written as we're looking right, if that online course that that person is taking, has not applied to be a prison education program, that individual could not get Pell?

MR. WASHINGTON: It would have to be a prison education program as we're going to define it.

DR. ANDRISSE: Yeah. And that's my challenge, because we're limiting a lot of people from accessing education, if we do that. I mean, the person that I just mentioned, that's 1000s of people. I mean, you know, that's 1000s of people that we're going to miss out on. If we, or then the other thing that I would suggest, is we add language that reconstitutes-- to make every institution apply for being eligible to offer prison education. And that sense, they don't have a physical operating prison education program that they're going inside of in the prison. But that individual who wanted to take an online course, could apply to that school and take an online course, because that institution has done what it needs to do to be eligible to offer prison education.

MR. WASHINGTON: So you mean one single. I'll let, I'll let David, and then I'll weigh in.

MR. SCHELLING: David wants to respond to this.

MR. MUSSER: To be honest, I think Aaron, you were going down a similar road that I was going down. The rules, the Department's regulations for Federal Pell Grants require students to be enrolled in an

eligible program as a regular student. And in general, that means that they have to be enrolled in a program for the purposes of obtaining a degree. And we generally don't have the ability to allow students to enroll in a single course, or one or two courses and qualify for Pell Grants for those two courses. Unless, enrollment in those courses is part of an eligible program for which the student is seeking a degree or other recognized credentials.

DR. ANDRISSE: Yes and maybe then let me clarify that, you know, in my theoretical example, that literally includes 1000s of individuals, they are indeed, you know, what you just mentioned, they are not just taking a single course, they're looking to get a degree, and they're incarcerated. And they're, you know, they're looking to get a degree online. But the institution that they've applied to, has not taken the steps to become a prison education program. You know, so, you know, my thoughts on that, is that, you know, should we add some type of language that encourages, requires, pushes, gives information on every institution, postsecondary institution looking to at least be eligible? And is that even something -- can an institution be eligible and not be in a prison just yet, for instance? You know, I think, I don't know that, as I

mentioned, I don't know the answer to it, but I definitely feel uncomfortable, that we're not including such a large number of people by you know, as it is currently, you know, written or you know, thought about.

MR. WASHINGTON: Brian, you're on mute, but I think you called.

MR. SCHELLING: Yeah, Aaron, did you want to respond and then Belinda?

MR. WASHINGTON: No, no, no, go ahead Belinda, please.

MS. WHEELER: Thank you. I just wanted to get back to that one note about incarcerated with an additional kind of context, Dr. McTier had mentioned earlier, you know, how we were looking at the definitions of, you know, individuals who are considered incarcerated or not, and say, for example, there were people on weekends or things of that nature, home detention. So with that individual group in mind, if they're not considered incarcerated, as listed with that earlier definition that we looked at, does this now then mean if we keep this language that they are now included? And if that is indeed the case, I wonder if we do indeed decide to perhaps get rid of the is not, eliminated section here, whether or not Dr. McTier's point earlier about who is not considered incarcerated, it almost seems like

these two might potentially be, you know, offsetting each other. So like what, while someone may not be covered up in that earlier definition that we were kind of talking about, now seems if I'm, if I'm reading this correctly, seems to be included. And I know Dr. McTier had his hand up anyway. So I just wanted to kind of check in with him to see, am I reading this right, and are we covered? And is this kind of, therefore even more confusing? But I'll default.

MR. SCHELLING: Aaron, did you want to reply?

MR. WASHINGTON: Well, we're so we are at the we're at 12, well, we're at 11:59. I want to make sure that folks have a chance to take a break, which I think we should come back to the discussion after lunch, and then I can follow up with the answer to Belinda's question.

MR. SCHELLING: Okay, Dr. McTier had his hand up earlier, too. I'm not sure he still had a question.

DR. MCTIER: I can yield or wait, yeah.

MR. WASHINGTON: With that said, we will take a break until 1:00 p.m. and return to talk about the technical change a little more. Okay, thank you

so much.

MR. SCHELLING: Okay. Thanks, Aaron.

