

Memorandum

To: U.S. Department of Education and Negotiated Rulemaking Committee
From: Carolyn Fast
Date: March 16, 2022
Re: Definition of a nonprofit institution

To address concerns raised by negotiators during today's discussion, I recommend that the Department restore the definition of a nonprofit institution proposed in the Department's *Issue Paper 5: Changes of Ownership and Change in Control, Session 2*. The Department's Session 2 language, found in § 600.2, is as follows:

Nonprofit Institution: An institution that -

(iv) When the Secretary makes the determination regarding net earnings, the Secretary considers the entirety of the relationship between the institution, nonprofit entities in its ownership structure, and other parties. By way of example, for purposes of participating in the Federal student aid programs, a nonprofit institution is generally not an institution that:

(A) Is an obligor (either directly or through any entity in its ownership chain) on a debt owed to a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution; or

(B) Either directly or through any entity in its ownership chain, enters into or maintains a revenue-based agreement with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution; or

(2) For a foreign institution -
