

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
INSTITUTIONAL AND PROGRAMMATIC
ELIGIBILITY COMMITTEE
SESSION 2, DAY 4, AFTERNOON
February 17, 2022

On the 17th day of February 2022, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

1 PROCEEDINGS

2 MR. WAGNER: Welcome back. It is 1:00 eastern, and we
3 have a lot to get to this afternoon. Just one reminder as per
4 the protocols, I want to make sure just to mention to preserve
5 time that the negotiators should not repeat a previously made
6 point when it's their turn to speak. And also point out that
7 Dr. Laura Rasar King is in for accrediting agencies. And Greg,
8 where would you like to pick up as we start off the afternoon?

9 MR. MARTIN: So I believe we had finished our
10 discussions on 26, so I'd like to move to 32.

11 MR. WAGNER: Okay.

12 MR. MARTIN: Vanessa, you can do that, and we'll be
13 bringing that up. Okay. [Inaudible] So here we, in 32, we have
14 clarified in the section that the requirements apply to all
15 states in which the institution enrolls. And so we'll look at
16 that, and this is in 32. In each state in which the
17 institution is located or in which the student and in which
18 students enrolled by the institution are located the
19 institution must ensure that each program is programmatically
20 accredited if such accreditation is required by the state or a
21 federal agency and satisfies the applicable educational
22 prerequisites for professional licensure or certification
23 requirements in the state so that a student who completes the
24 program and seeks employment in that state qualifies to take
25 any licensure or certification exam needed for the student to
26 practice or find employment in an occupation that the program
27 prepares students to enter. So that was the only one we had

1 left in this section, so I'll open the floor to comment or
2 discussion.

3 MR. WAGNER: Rene, if you could stop sharing, that'd
4 be great. Thank you. Let's see here. Okay, I see Johnson,
5 you're up.

6 MR. TYLER: Yeah, hi, so can you hear me okay? I've
7 been having internet connection today.

8 MR. MARTIN: You sound good.

9 MR. TYLER: Okay, great. Thanks. So I want to talk
10 not so much about this provision, but about transcript
11 withholding, which would go into this section. We have
12 discussed this for a while throughout the rulemaking, and I
13 want to make a pitch as to why we should say a school would
14 not need to basically sign a contract saying it's not going to
15 withhold transcripts as a debt collection tool or as a
16 retention tool for that matter. So I don't want to go over the
17 same old stuff, but I have some new stuff I want to say. I've
18 been looking at data because data really is important when
19 creating policy, so as I mentioned before, if you look at
20 SUNY's data on cases that go to the attorney general and where
21 there is not a resolution and hence transcripts are being
22 withheld, you see, when you look at all the students who go to
23 SUNY, 99.25 percent of the students are paying their debts.
24 And so I had a FOIA from Brooklyn College, which basically
25 says the same thing. It says, look at the end of when the
26 semester is beginning. The kids who are coming back, 3.75
27 percent of them have a debt. But after we use the traditional
28 collection tools, which essentially is, we're not going to let

1 you re-register, we reduce that down to about 1 percent. So
2 the 1 percent who don't go back to school and end up having
3 their cases have transcript withholding are largely people who
4 can't afford it. People want to pay their schools to go back
5 to school because they want their degree and they want, as
6 you've seen here on a lot of the Zoom casts, people have their
7 diplomas on their walls, people want to finish up at schools
8 and they're going to find that balance. So the other thing is,
9 so how effective is transcript withholding as a collection
10 tool? Because I'm saying, first of all, it doesn't affect that
11 many people, but to the extent it does, how useful is it? So
12 there's some data out of Ohio that says about 7 percent of
13 people having their transcripts withheld will actually repay
14 the debt. And the SUNY says about the same. So said in other
15 words, like 93 percent of people who have their transcripts
16 being withheld are not going to pay off the debt. So it's just
17 not helping, it's not working. And so the last thing I want to
18 talk about is just the size of this problem. So there's a data
19 point out there by a bunch of policy wonks. It says 6.6
20 million people are having their transcripts withheld. If you
21 just look at the data I've looked at, that's about 1 percent
22 of the population that's going to school. There's about 20
23 million students every year going to undergraduate
24 institutions. So that's about 200,000 students a year. And
25 we've been spending here, we'll be spending three weeks on
26 rules designed to protect students that involve about a
27 million students, maybe a million and a quarter [30 seconds].
28 And so I think this is really an important issue for the
29 Secretary to address. This is something that affects 200,000
30 students a year, and it's within the purview of the

1 regulations of what we're discussing now. And also the
2 arbitration provision was put in exactly for this reason in
3 the same section and then rescinded and then it's up for
4 nomination again. So I just think it's before this, thank you.

5 MS. JEFFRIES: Thanks, Johnson.

6 MR. WAGNER: Thank you, Johnson. Carolyn, I see
7 you're next.

8 MS. FAST: I wanted to also support the suggestion to
9 include a provision in PPAs that prohibits transcript
10 withholding as debt collection. And I think Johnson made a
11 really persuasive argument about how important that is as a
12 goal here, and it is directly related to the investment of
13 Title IV funding and that the transcript withholding for such
14 people who has a debt collection mechanism does also affect
15 the people's ability to continue their education potentially,
16 you know, re-enroll. And so the investment of Title IV funding
17 and as well as their own funding to that point is essentially
18 stranded or wasted through this practice that prevents people
19 from continuing their education.

20 MR. WAGNER: Thank you, Carolyn. Let's see. I see on
21 my list I have Ernest. That's who I have next.

22 MR. EZEUGO: Thank you, Kevin. Yeah, it feels
23 important to really verbally support what my colleagues
24 Johnson and Carolyn have shared on transcript withholding and
25 the importance of taking it up as part of this rule making. It
26 does I think fit with the themes of this rule making and the
27 issue papers at hand. I think it fits in the section as well,
28 and it fits as a thing that I would hope that the Department

1 would consider important to kind of think through its
2 agreements with institutions and its practice. I can share to
3 the chat the research that Young Invincibles did with the
4 Student Borrower Protection Center, which I believe I brought
5 up last session about the kind of racial equity impacts of
6 transcript withholding as we found them. And as part of the
7 [inaudible] system, I would re-up what my colleague Johnson
8 said about the effectiveness of this collection tactic. And I
9 would just summarize by sharing an additional piece and an
10 anecdote. You know, when I dropped out of school, dropped out
11 of school after my mom got sick, and I, quite frankly, I think
12 from there I was very lucky. You know, I got a job at the
13 Department of Education that turned into a career. I think I
14 was much more lucky than a lot of my peers who have to make
15 those kind of decisions. And it still took me years to pay
16 back my institutional debt and receive my transcripts so that
17 I could transfer because of all the other responsibilities
18 that I had. And this is a common thing for a lot of students
19 who want to even maybe transfer out to institutions of lower
20 cost but can't because of transcripts withheld. And I would
21 just urge the committee to consider that. Yeah, and I'll share
22 the stuff I was talking about.

23 MR. WAGNER: Thanks, Ernest. Kelli, you're up.

24 MS. PERRY: Okay, going back to certification, which
25 is what we were talking about in number 32. Since our last
26 meeting, there has been, we've received significant opposition
27 to romanette two from our constituency and on a couple of
28 different positions. One of them documented their concern
29 really well, so I'm just going to read and leave the school's

1 name out of the language. So, many schools have worked to
2 ensure accurate professional licensure disclosures are
3 provided to students, ensuring that they can make an informed
4 decision about their education and future career plans. Yet,
5 the proposed language requiring institutions of higher ed to
6 guarantee that licensure prep programs meet the educational
7 requirements of every state in which the programs are offered
8 as a condition for receiving Title IV far, far exceeds the
9 bounds of what institutions can reasonably accomplish with any
10 degree of certainty. Specifically, the requirement would
11 necessitate 1. the development of compacts and agreements
12 among state licensing boards, 2. cost prohibitive research and
13 subsequent revisions to the institution's curricula to ensure
14 each licensure program meets requirements for licensure in all
15 states and territories where the programs are offered
16 [phonetic], thereby increasing significantly the cost of
17 attendance, the number of credits required, and the time to a
18 degree, 3. the removal of the program offerings from states
19 for which programs do not meet the requirements, therefore
20 eliminating the students' freedom to select the institution of
21 their choice. The institutions recognize the concern that
22 students might be unduly disadvantaged if they were to
23 complete a program that may not prepare them for licensure in
24 a certain state. Our current disclosure and reporting
25 requirements provide students with a structure that reasonably
26 ensures that they are informed of requirements that may affect
27 institutional choice, like many of our peer institutions. Many
28 of the peer institutions prepare licensure disclosures in
29 order to provide students with current licensure information.
30 Requiring institutions to guarantee that their programs meet

1 licensure requirements for all states and territories places
2 an incredible burden on institutional resources when in fact
3 the burden belongs to the state licensing boards themselves to
4 improve consistency among and transparency within their
5 license standards. Because state boards change licensure
6 requirements with such frequency and without notice, it is
7 nearly impossible [30 seconds] for institutions to ensure
8 consistent compliance. Further, this makes institutions liable
9 for the students' and graduates' performance on professional
10 examinations, leading to exam driven or restrictive curricula
11 that only serves the most stringent state requirements or
12 reduces potential enrollment, further exacerbating resources
13 and funding. Finally, if an institution were to modify its
14 curriculum to ensure it meets a myriad of licensure
15 requirements in each state, it would be impossible to maintain
16 a traditional number of credit hours to degree. Total credit
17 hours, time to degree, and cost of attendance would all
18 increase as a result of the proposed regulations. Thank you.

19 MR. WAGNER: Laura, you're up.

20 DR. KING: Hi, my comment is initially on romanette
21 one, and I mentioned this during the last round of negotiation
22 and nothing really changed to resolve it, so, I support
23 romanette one, but I want to make sure that we have language
24 that addresses the fact that new programs are not accredited
25 before they are functional. I can't speak for every single
26 programmatic accreditor, but I can speak for many of them that
27 that's just not how it works. Many of them actually require a
28 program to be up and running to be functional. That's how we
29 look at outcomes to make sure it's a good program before we

1 confer full accreditation. Some accreditors have pre-
2 accreditation, provisional accreditation. They may have
3 applicant status. All of those kind of early statuses at a
4 program they have, they're not accredited, but it shows that
5 they are in good faith working through the process to become
6 fully accredited. So I think it's important to sort of align
7 this with some of the provisions in 602, so that accreditors
8 can, you know, can serve the role that they're supposed to
9 serve here, the way that we do our work. So I'm not, I don't
10 have necessarily a language proposal for that, but there
11 definitely needs to be an acknowledgment that the program has
12 to be working through the process with the accreditor. Could
13 be that the accreditor somehow certifies that they're working
14 through the process. But we are not in the business of handing
15 out accreditation when we have not seen outcomes.

16 MR. WAGNER: Thank you, Laura. Adam, you're up.

17 MR. WELLE: Yeah, I just wanted to speak again on the
18 transcript withholding issue. Our office and I know other AGs
19 offices have had a number of complaints around this issue
20 historically. I think there's been some comments in the chat
21 about this not being the forum, but you know the concern is
22 that there's language in this section below that would only
23 prohibit transcript withholding for institutions that [audio]
24 are facing closure, which would potentially give tacit
25 permission that institutions can use this practice in all
26 other scenarios. So I do want to just reiterate that you know
27 our office believes this is a sharp and unfair debt collection
28 tactic. The states have tried and have started regulating on
29 this issue, including Minnesota, in prohibiting this practice

1 as having unfair and discriminatory effects. Obviously,
2 Minnesota's law is undermined when an out of state school
3 through an interstate compact is entering and enrolling
4 students in Minnesota without following that requirement. I do
5 think you know this is going to continue to be an issue, and
6 the Department, when it comes to giving financial aid and
7 conditioning financial aid, shouldn't be on the wrong side of
8 this issue. Schools have an extraordinary amount of leverage
9 over students in this regard when students have made huge
10 investments in their education. There's a suggestion in the
11 chat that some schools have an obligation to collect debt.
12 Well, I don't think any of those requirements specify the
13 manner in which they collect debt. And so when there is an
14 unfair and harmful practice, it should not be followed when
15 more ordinary debt collection procedures, which have laws and
16 protections, are available. Again, students have taken, this
17 is about students that have taken out federal student loan
18 debt and completed their coursework. The Department has made
19 their investment in the student. It seems like a basic
20 expectation for access to federal financial aid that schools
21 be required to provide that transcript for coursework where
22 the student has made that, where Department has made that,
23 investment. Thanks.

24 MR. WAGNER: Greg, I see your hand up.

25 MR. MARTIN: Yeah, I just wanted to address a couple
26 of things here, first with respect to the transcript issue. We
27 will be discussing that as was just pointed out in (e) where
28 schools are at risk of closure. But to the issue at large
29 about whether or not institutions, whether or not we should

1 prohibit institutions from withholding transcripts for
2 payments, we do have, we are considering that, we're looking
3 at it. We have to, there's a number of things we have to look
4 at, including legality. So we are aware of the concerns at the
5 table. We are looking at it and we'll come back with a more
6 official position in March. But right now, we're still in the
7 process of internal discussions on that particular request.
8 With respect to 32 romanette I, the programmatic accreditation
9 and seeking accreditation, I can say that we encourage
10 institutions to support their students if not yet eligible for
11 Title IV. However, given the risk an institution may not
12 obtain the programmatic accreditation it seeks, we do not
13 believe it is appropriate to commit Title IV dollars to those
14 programs, again, because the prospect of the potential for
15 that program never to receive its programmatic accreditation.
16 And with regard to romanette two that satisfied the applicable
17 educational prerequisites in each state in which the
18 institution is located or the students enrolled by the
19 institution are located. We do understand that it adds an
20 additional burden to institutions to make certain that the
21 program meets those requirements in each state that the
22 students are located who take the program. However, I do want
23 to point out that this does, this is limited to instances
24 where the students that seek employment in that state, there
25 is a licensure or certification exam that is required for the
26 student to practice or find employment, so that student is
27 taking that program ostensibly to meet those requirements to
28 practice in that profession, which requires licensure
29 certification. We believe it is incumbent upon the institution
30 if offering that program to students in this state. And this

1 would primarily occur, I suppose, with distance education
2 where you are outside the state where you're located. But yes,
3 it does become potentially burdensome if you're offering this
4 education to students in, say, 30 different states. But that
5 is the institution's decision to do that. Take that step to
6 offer that education via distance in all those states, and we
7 feel it's incumbent upon the institution then to accept the
8 responsibility that comes with that, which is to make certain
9 that this program, which is being offered in order for
10 students to secure, specifically secure, that licensure or
11 certification and get that with this program.

12 MR. WAGNER: Thanks, Greg, appreciate it. Let's see,
13 next is Marvin. Go ahead.

14 MR. SMITH: Kind of two issues I guess I want to talk
15 about is I put some comments in the chat on concerns about
16 transcript withholding, and the state of California prohibits
17 this, but I think there's only maybe one other state that's
18 doing that right now. And I just think this deserves a lot of
19 discussion and I'm afraid of the unintended consequences of
20 collection agencies harassing students. Is that worse than,
21 you know, them not being able to get a transcript? A lot of
22 students don't even want to get their transcript. And I do
23 feel for the students that are subject to R2T4, and that's a
24 whole other issue that they didn't plan on paying any money
25 and then they suddenly get a debt. And I just think there's so
26 much complexity to this issue that I think it deserves a whole
27 other discussion. And I don't want to appear like, I'm not a
28 student advocate because again, California is prohibiting
29 this. Maybe that could be looked at as a model. On the second

1 point, maybe I'll have to get back in line because I don't
2 know if we're going to keep talking about transcript
3 withholding. But you know, four-year colleges are very
4 concerned about the expectation that they determine licensing
5 in all 50 states to offer programs and I just think that it's
6 already been said, and again, we're mixing up two different
7 issues, so I'll shut up now.

8 MR. WAGNER: Marvin, thank you. Amanda, you're up.

9 MS. AMANDA MARTINEZ: Great, thank you to the
10 Education Department, and Greg, thank you for confirming and
11 taking up previous speakers' and negotiators' comments about
12 transcripts and committing yourself to taking that back to the
13 Department and hopefully conducting a thorough analysis. As
14 you heard, this is a large, significant problem, potentially
15 even 10 times more. [Audio] You know, [audio]in potentially
16 solving this problem, you can impact millions of people, which
17 I would assume, is the Education Department's ultimate goal.
18 Another ultimate goal, I think, is still equity impacts here.
19 You know, we were trying to decipher that here in this
20 specific topic when it comes to transcripts. I just want to
21 highlight that those, you know, however many students close to
22 200,000, you can potentially say that while we may not have
23 the hard data and facts about who those students are, they're
24 potentially more likely to be students who are first
25 generation, potentially parents, students who tend to be older
26 or are black and Latino students and other underrepresented
27 students in higher education. You know, some research suggests
28 that some of the lowest payments are about like \$200 of debt,
29 and maybe to some disconnected from this issue or who do not

1 come from a family or generation that has lower median
2 incomes, which tend to be students, may not understand why a
3 \$200 debt payment seems insignificant when actually, for those
4 families and students who have low median incomes, \$200 to
5 \$400 is insurmountable and could potentially waive off their
6 entire opportunity of education or economic mobility because
7 they have to pay for increasing costs not just for their
8 education, but outside living costs. You know, someone once
9 told me that no one can take your education away, but that's
10 not necessarily true, not true in this case, because
11 transcripts really are a way for you to further your
12 education. And we know that also with lower income communities
13 and Latino students and black students, is that transcripts,
14 you know, are we know that they don't necessarily go the
15 traditional route of straight into a four-year degree. They're
16 more likely to enter more than one institution to accomplish
17 their career goals, and they need that transcript to accrue
18 more credits to finish their [30 seconds] educational degrees.
19 So because we know that their rates for this population, lower
20 transcript or lower transferability, we need to solve this
21 problem. And yes, I understand it's complicated, but [audio]
22 truly need to put that first, forefront in their mind.

23 MR. WAGNER: Thank you, Amanda. Debbie.

24 MS. COCHRANE: Thanks. Most of what I wanted to say
25 was actually on some of the points that Greg had just made, so
26 will definitely just thank him for those comments regarding
27 paragraph 32 and the importance of those. I would also just
28 want to address one thing that I think I heard Kelli say in
29 the email that she was reading. You know, I think to the

1 extent that this would have widespread new burden on
2 institutions, that would seem to suggest that institutions are
3 currently routinely and knowingly enrolling students across
4 state lines in programs that they are aware will not prepare
5 students for employment. So to me, that underscores the
6 importance of these provisions.

7 MR. WAGNER: Thank you. Let's see, Barmak, you're up.

8 MR. NASSIRIAN: So I want to address both the
9 transcript issue as well as section 32, romanette two, with
10 regard to transcript withholding. First, I want to acknowledge
11 the thoughtful comments that Marvin and other colleagues have
12 made about some of the complications here. But what really
13 alarms me about the civil rights implications, I don't think
14 middle income people understand the gravitational force of
15 poverty and what poverty can do. Simple things that maybe a
16 middle income person sees as an inconvenience can checkmate a
17 low income family's ability to move forward. And I do see this
18 issue of withholding transcripts as basically terminating
19 somebody's entire journey through higher ed because they are,
20 they are stuck. They had no way of anticipating the debt. The
21 debt is unrepayable and the student's entire future is being
22 held hostage to the payment of a debt that could ironically be
23 repaid downstream if they're allowed to access higher ed and
24 enhance their wages. So I really hope the Department takes a
25 broader view of this and its impact on communities of color.
26 We heard a lot of eloquent comments about the disparate impact
27 of racism in our society, of the impact on African-Americans
28 within the job market. You know, racial justice isn't only a
29 good idea when it's convenient, you have to do it when it's

1 also inconvenient for you. And that's an example. Apropos of
2 number 32 in Kelli's comments, Carolyn and I were sort of
3 instigators of this language. We were approached during the
4 break by our colleagues at WCET and WICHE. They did not seem
5 to have a substantive problem with this. Rather, they raised
6 their legitimate issue that maybe the language the Department
7 is using of requiring institutions to ensure programmatic
8 conformity may be a challenge in those states where the
9 requirements are unknown or unknowable. And we will attempt to
10 submit some language to that effect, but I did not hear from
11 them, and I generally defer to them with regard to their
12 judgment of what is entirely unworkable. I did not hear from
13 them that the substance of this requirement is unreasonable.
14 After all, the institution is choosing to go into a state to
15 deliver services to people that it knows reside in that state.
16 [30 seconds] So it seems to me that professional licensure
17 makes a lot of sense there. Thanks.

18 MR. WAGNER: Okay, Carolyn, you're up.

19 MS. FAST: Thank you. A couple of points, and Barmak,
20 thank you, that was really, really very helpful on both the
21 points. With regard to the transcript withholding issue, just
22 a quick point that was raised in the chat, but just for anyone
23 who missed that or is watching and doesn't have access to the
24 chat, there was a suggestion that we might look to California
25 as a useful model and just wanted to reiterate that some
26 proposed language that was put forward by myself and a number
27 of others was actually based on the California statute on
28 transcript[inaudible] withholding. So we hope that that would
29 be useful to take a look at. And also, I wanted to echo

1 support for the Department's proposal in 32 regarding the
2 licensure requirements. I think it's absolutely critical, and
3 students put a lot of trust in their schools when they sign up
4 for a course that they will be, that it will prepare them to
5 be employed in their state. So I think this is extremely
6 important. I'm very glad that the Department has taken this
7 proposal and made it here. I think it'll add enormously
8 important protections. And just one other point here, we have
9 proposed, and I think it fits well within 32, some additional
10 language that would also require that when states, that when
11 schools are going to be offering programs in multiple states,
12 that they should also comply with the state consumer
13 protection laws that are in effect in those states as sort of
14 a reasonable protection to make sure that students can get
15 protection whether they're online or whether they're brick and
16 mortar in a particular state. And we do realize that that can
17 be a complicated issue because of the way that reciprocity
18 agreements currently work in our country and in most states,
19 except for California. And so that's why we added some
20 language there to make it clear that where there was a
21 reciprocity agreement in place, then there would be an
22 exception that laws related to the state authorization, such
23 as like an application fee or etcetera, would be exempted out
24 to take that into account. And I just wanted to flag that as
25 something that we have proposed for this section.

26 MR. WAGNER: Thank you, Carolyn, but before I get to
27 you, Kelli, I just want to mention that, you know, the
28 Department has addressed the transcript withholding issue and
29 that we request that you keep your comments to the section

1 that is currently on the table. So with that being said,
2 Kelli, you're up.

3 MS. PERRY: Yeah, I would just like to respond to
4 Debbie and Barmak's comment about romanette two. And I'm not
5 an expert on this. In any case, I'm going based on, you know,
6 information that we received over the course of the last
7 month. I don't think that it's fair to say the schools are
8 knowingly offering programs for students that don't meet the
9 licensure requirements in the state. I think the concern is
10 that it's limiting the students' choice. So for example, if a
11 student, you know, if an institution is in Virginia and a
12 student wants to take a course that a university in Virginia
13 is offering, but they live in Georgia and that university in
14 Virginia or the school in Virginia has said we do, you know,
15 disclose we don't meet licensure in that state, but the
16 student knows that and wants to take the course because
17 they're moving to Virginia. So I think that's more of the
18 concern is the logistics around it. I don't think that four-
19 year institutions are knowingly offering licensure programs. I
20 can't obviously attest to that, but I don't think they're
21 knowingly offering programs that don't meet licensure
22 requirements. I think it's more that the students have the
23 choice to attend that program with the disclosure requirements
24 that are there, that states whether or not it meets the state,
25 because you don't know where the student is going to move or
26 where they want to be. So I think that's where the schools are
27 coming from. And obviously you know the additional
28 requirements and burdens that I talked about. Secondly, you
29 know, I've been quiet on this whole concept of withholding
30 transcripts for balances because I didn't feel that it was

1 part of this neg reg that we were talking about. And I am
2 sympathetic to students who can't move on in their careers or
3 in their education because of them. Believe me, I am
4 especially for small balances, but when you get into the
5 larger balances, you know, those students received education
6 and they received credit as it relates to those balances that
7 they owe, and Marvin did put in the chat about the whole
8 context of, you know, the changes that schools would have to
9 be, that would have to be made if schools didn't withhold
10 those. You know, you're talking about going to collection
11 agencies early. Schools don't like to go to collection
12 agencies with students because that affects them for the rest
13 of their lives, you know, and can affect their credit
14 [inaudible]. So, you know, withholding the transcript [30
15 seconds] to try to work with the student on collecting the
16 debt, a debt that they actually received education for and
17 credits for that they ultimately could transfer to another
18 university. So, you know, I'm not going to belabor it. You
19 know, if it's something that is put into this neg reg, you
20 know, obviously there's more conversation to be had about it
21 because I think some of the percentages-.

22 MS. JEFFRIES: Time is up, Kelli. Thank you.

23 MR. WAGNER: We have Laura up next.

24 DR. KING: Thanks. So I get that this issue is arcane
25 and I'm the only one speaking to it. However, I do need to say
26 again, Greg, you've got to understand how accreditation works.
27 I fundamentally support the substance of what you have in 32.
28 I want to say that. You've at least got to add pre-
29 accreditation into that, into how it is written now, because

1 if you look at CFR 602 pre-accreditation, the Department
2 recognizes accreditors to confer pre-accreditation. We have to
3 have it in our scope of recognition. There are requirements
4 that programs have to meet in order to get accreditation
5 that's got to be in there. It's a fundamental
6 misunderstanding, and the words are important. And I feel like
7 when I'm saying this, the response is always we feel like it's
8 important to be accredited. Of course, I feel the same way,
9 but we don't want to not include words that make that a
10 possibility. So I get that I'm probably the only one that
11 cares about this, but it is important in order to avoid
12 unintended consequences for programs. I mean, you'll
13 essentially say that there can be no new programs, which I
14 don't think is what the Department is trying to say.

15 MR. MARTIN: We'll take that back with us. Again,
16 you're right, our overriding concern is for the possibility of
17 students being in a program that doesn't eventually receive
18 accreditation, and although that might not be the norm, it is
19 a possibility. But we'll take back the suggestion that we add
20 pre-accreditation.

21 MR. WAGNER: Johnson, you're up.

22 MR. TYLER: Thanks. Just going back to the licensure
23 thing. You know, I view this as kind of having watched a lot
24 of YouTube's promotions of for-profit schools that then go
25 bust and trying to get loans forgiven. I mean, there
26 constantly you're seeing people working during the day and
27 going online and studying for a degree at night. And I think
28 that this provision is going for that. And with all due
29 respect for what Kelli has said, I think the four-year

1 institutions are not the people that this is designed to
2 police in terms of licensing and so forth. So I think it's
3 really important if you're reaching out online across state
4 borders to think about whether your student there is going to
5 have any chance of entering that profession. I would think
6 that if you're, you know, having gone to a law school that had
7 a very low bar passage rate, people start looking at what do
8 we have to do to make sure our students access the profession
9 that we're training them for? And so it would seem to be an
10 institution needs to know what the licensure requirements are
11 in another state if they're taking students from that state
12 online.

13 MR. WAGNER: Thank you. Before I get to Debbie, I do
14 see Greg, you have your hand up.

15 MR. MARTIN: Yeah, I just wanted to address one final
16 time just to say about the issue of transcripts. We have heard
17 what people have said on both sides of it. It is not
18 currently, you know, up for consideration in the package we
19 have before you, which is not to say that we're precluding it.
20 It's just that we still have to think about, you know, what
21 we're going to do with regard to it. So I think we've heard
22 the arguments on either side. It's a very important issue and
23 I fully understand that. And I don't, I'm not trying to cut
24 people off or to diminish the passion people have about it.
25 But in the interest of moving on, I think and I hope we can
26 table that for now, and we've had a lot of great comments
27 about it. The Department has a lot to consider, so I just want
28 to point that out. And when we get to (e), I know, of course,
29 we'll bring up the release of holds on transcripts for

1 institutions that are at risk of closure. I'd like to ask you
2 to consider that in the context it's written just for what is
3 in (e) at this time, understanding that there are a range of
4 opinions and that the idea of prohibiting the withholding of
5 transcripts is a very popular one among many of you. Just to
6 restrict what our comments will be when we get to (e) to that
7 specific circumstance. Thank you.

8 MR. WAGNER: Thanks, Greg, appreciate that. Just want
9 to echo that, that we have had a lot of comments on the
10 transcripts, but we're going to be moving on and address
11 what's on the table. So with that being said, let's see,
12 Debbie, you're up.

13 MS. COCHRANE: Thank you, and I wanted to come back
14 on the question of choice. Kelli, thank you for the response
15 in the clarification of what you think some of the concerns
16 are. I mean, I think we have to think about this not just as a
17 question of student choice and whether the student has every
18 institution that they can choose to enroll. But this is also a
19 conversation about federal Title IV eligibility. And that's a
20 choice of where federal taxpayer investments are going to pay
21 off. I think you know if we're worried about the student, the-
22 I can't remember which order you had them-but if the Georgia
23 student who wants to enroll in a Virginia institution because
24 they're going to, they're moving to Richmond, I think you
25 could think of some sort of solution, like you know allowing a
26 student to submit a handwritten attestation that they
27 understand the limitations of licensure requirements or any
28 associated restrictions, and they're choosing to enroll anyway
29 for that purpose. But I don't think it's either good for

1 students or taxpayers if students are routinely enrolling in
2 programs that aren't going to provide them sufficient
3 preparation, and I do believe it is the responsibility of the
4 institution for understanding those requirements.

5 MR. WAGNER: Thank you, Debbie. Brad. I'm sorry,
6 Barmak. Sorry, two Bs. Barmak, you're up, then Brad.

7 MR. NASSIRIAN: We get mistaken for each other all
8 the time. Back to 32. I appreciate the fact that my
9 institutional colleagues don't spend most of their day the way
10 some of us do looking at giant cases of fraud. But it's really
11 important to understand that vague hypotheticals don't
12 actually trump known facts. The case of the Georgia student
13 enrolling in a program that does not meet their future
14 intended residence in Virginia does raise the question of why
15 did they choose that program since it's online? This is not
16 the student going to Virginia. This is really only intended to
17 deal with distance education. So, that's the theory, and it
18 makes you kind of ponder how many of those cases are there.
19 The more typical case, of course, is an institution sitting in
20 one state, delivering subpar, entirely inadequate education
21 everywhere else and then hanging its hat on the fact that the
22 education meets the criteria in one state. We have examples. I
23 cited this case of a particular law school, but a subset of
24 law schools that deliver what is labeled as legal education
25 nationwide even though they do not have ABA accreditation,
26 they do not meet their students, who cannot sit for the bar
27 exam in any state except the state of California. And of
28 course, the nationwide delivery is all predicated, I suppose,
29 on the theory that all these students are intending to move to

1 California, which is decidedly not the case. This is really
2 not, I think the substance of this should not be a problem for
3 legitimate institutions. I do concede that maybe the word
4 insurer needs to be modified a little bit, and we will work on
5 language to address that concern. But I don't, I really have a
6 hard time seeing somebody objecting. The school is in a far
7 better position to know what the criteria in various states
8 are than students, and disclosures don't really cut it because
9 they haven't worked. So that's my comment on 32.

10 MR. WAGNER: Brad, you're up and then if we can move
11 on from there. Okay, take it away.

12 MR. ADAMS: Alright, well, I thought I was going to
13 make it through without a comment, but I, you know, with some
14 of the comments with Laura back and forth, I got to come in
15 and support Laura on this. She's 100 percent right. We've got
16 to add the pre-accreditation for folks in higher-end graduate
17 healthcare programs. In PA, for example, you don't receive
18 full accreditation until five years after your first class
19 graduates. That's seven years after you start the program and
20 about 10 years after you submit your first application. So
21 that's just one example. D.O. has got its own rules. DDS
22 programs have their own rules. DPT is also five years after
23 graduation. So again, CAPTE requires that, so we've got to
24 change that. You can't delay someone seven years based on not
25 having the preapproved. I guess it would be a pre-
26 accreditation, so that's very, very important. Thank you,
27 Laura, and I support your comments.

28 MR. WAGNER: Laura, do you have anything new you'd
29 want to add?

1 DR. KING: Yeah, just real quick, since what Brad
2 said, you know, it could be 10 years for some agency to get
3 full accreditation. I did want to clarify, though, for the
4 committee that during those 10 years, that agency is
5 intimately involved with that program. It's not like, oh get
6 pre-accreditation and then get accreditation in 10 years, not
7 like that at all. During that pre-accreditation timeframe, the
8 accrediting agency is monitoring and monitoring and
9 monitoring, and the institution is doing report after report
10 and there's decision after decision at interim points. So I
11 did just want to make that clear that it's not, you know, five
12 years and then see you later. It's a very involved process,
13 which is why I support adding pre-accreditation.

14 MR. WAGNER: Thank you. Alright, Greg, where would
15 you like to go from here?

16 MR. MARTIN: Where do we go from here? Let's take a
17 temperature check on (b). That was all of these provisions
18 that we just discussed. So on 668.14(b).

19 MR. ADAMS: Can you clarify? So, this would be 3, 26,
20 and 32 that we have been discussing?

21 MR. MARTIN: Yeah, we have been talking, remember I
22 broke up the discussion because there were so many of these,
23 so we have yet to take a temperature check starting in 668;
24 let me find it here. So there's 668. All of these stemmed from
25 (b), by entering into a program participation agreement, that
26 was 5, 17, 26, 32.

27 MR. WAGNER: So, we're taking a temperature check up
28 through 32, right Greg?

1 MR. MARTIN: Right. Up through the end of (b). Up to
2 the end of (b) for 32, where (e) begins, right.

3 MR. WAGNER: Got it. Up through (e). Alright, can we
4 see thumbs? Hold them high. I see five thumbs down. Would
5 anyone like to make any comments on the rationale for the
6 thumbs down or we good to go? I see. There you go. We have two
7 hands up. Go ahead, Anne.

8 DR. KRESS: I think there might be more clarity on
9 why people are voting, how they're voting, if we were to take
10 these separate by number, because my no vote is based on 26,
11 right? So, I think the Department would get greater clarity
12 that way.

13 MR. MARTIN: I can do that, I mean, normally I like
14 to go by paragraph. I can do that, but I don't think we have
15 time to entertain a great deal of additional discussion about
16 each one of those if we do that. I can, I'm willing to break
17 them out, but I, we just don't have enough time to spend
18 another half an hour on this section.

19 MR. WAGNER: So, Greg, you want to do temperature
20 checks on each of those but no comments on them?

21 MR. MARTIN: Right, so we can start with what's
22 discussed in three, if we want to do three. That's
23 institution's program participation agreement must be signed.
24 I'm sorry, no, that's eight. I'm sorry about that. We're going
25 to five. I'm sorry. We're starting with will comply with the
26 provisions of subpart L, so we're starting with (b)5. This is
27 entirely (b). I misstated that. So, starting with (b)5.

1 MR. WAGNER: Okay, could we do a temperature check on
2 (b)5 and reserve- Brad, I can't see your thumb.

3 MR. ADAMS: So it is just that one word in (b)5 or
4 approve (b)5? I'm sorry.

5 MR. MARTIN: (b)5 and it's what's in (b)5. We did, it
6 was just a, basically we just changed it, the subpart L. So if
7 everybody wanted to do-

8 MR. ADAMS: Just making sure.

9 MR. MARTIN: Yeah, that's all it is. If you don't
10 like subpart L, then I guess you're-.

11 MR. WAGNER: Alright.

12 MR. ADAMS: I wanted to vote on the fax machine
13 earlier.

14 MR. WAGNER: No fax machine votes.

15 MR. MARTIN: I'm voting thumbs down on fax machines
16 even though it's our suggestion.

17 MR. ADAMS: Full thumbs up approval on the fax
18 machine, I think.

19 MR. WAGNER: Alright, Greg, I assume 17 is next.

20 MR. MARTIN: Yes, 17 is next.

21 MR. WAGNER: Alright, [Inaudible] everyone, thumbs. I
22 don't see any thumbs down on 17. Alright.

23 MR. MARTIN: 26.

1 MR. WAGNER: 26. We'll just say, several thumbs down
2 and no comment on those as we talked about. And then-

3 MR. MARTIN: 32.

4 MR. WAGNER: 32, yeah, thank you. And there are a few
5 thumbs down on 32.

6 MR. ADAMS: We didn't vote on three, but we had a lot
7 of conversation on three. Do we need to vote on three or does
8 it matter?

9 MR. MARTIN: I think we have what we need, there were
10 no changes over that there, and we have the comments, so I
11 think we'll just move on.

12 MR. WAGNER: Yeah. Thank you. So now we're going to
13 move. Greg, I'll turn it back to you. We're on 32. Is it (e)?

14 MR. MARTIN: We're at (e) and Rene will bring up
15 paragraph (e). Thank you, Rene. So starting here with (e), we
16 have and obviously, the first one we're going to take a look
17 at here would be under one, under (e)(1) at negotiators'
18 suggestion, we have added some language regarding the teach
19 out plan to be acceptable and ensuring that it will also be
20 provided to our partners in the states. You see that reflected
21 under (e)(1)(i), submission of an acceptable teach out plan or
22 agreement to the Department, to the state, and to the
23 institution's recognized accrediting agency. And then we move
24 down to romanette two and the negotiators' suggestion. We have
25 added some language regarding the, that's, we already did
26 that, that's not what I want to do, not what I wanted to do at
27 all. Oh yeah, we, at negotiators' suggestion, we have further

1 specified that the records for the records plan must be
2 acceptable, that it must include a plan for student
3 transcripts and other Title IV records, and that the
4 institution must implement the plan and demonstrate that
5 implementation. So you see that reflected in romanette two,
6 submission of Acceptable Records Retention Plan, including,
7 but not limited to, transcripts and other Title IV HEA records
8 to the Department and evidence that the plan has been
9 implemented. And moving down to, at the risk of stepping into
10 dangerous territory here, down to romanette three. At
11 negotiators' suggestions, we have broadened this item to
12 include more transcript holds; you can see what we did there:
13 the release of holds on transcripts and we removed the
14 reference to over de minimis amounts. And then moving down to,
15 okay, yeah, moving down to five. There we have updated the
16 text to use more standard language on financial protection, so
17 you can just see there that we have eliminated surety and just
18 change it to financial protection to make that uniform across
19 all of our regulations here. Moving down to six, at the
20 negotiators' suggestion, we have added the reference to
21 student complaints here. We also know that this is a non-
22 exhaustive list, so additional reporting requirements, which
23 may include but are not limited to cash balances and actual
24 and protected cash flow statement, student rosters, student
25 complaints and interim unaudited financial audits. And that is
26 it for (e), so I'll open the floor for discussion of
27 668.14(e).

28 MR. WAGNER: Okay, let's see. First I see Adam,
29 you're up.

1 MR. WELLE: Yes, I appreciate the admonition around
2 not discussing transcript withholding. I just wanted to point
3 out that I think, like, you know when I'm considering this
4 part, I think it's impossible to not consider, you know, the
5 broader impacts around transfer, transcript withholding. And
6 so that's kind of part of what's been said on that, and I
7 think it's part of this discussion. When I, I'm probably going
8 to vote, you know, thumbs down on this. And the reason would
9 be because of the implication around transcript withholding
10 being permitted in other circumstances. So I just wanted to
11 put that out there, and I won't say anything more about
12 transcript withholding.

13 MR. WAGNER: Thank you. And before I get to Johnson,
14 I just want to mention that Jamie is back for accrediting
15 agencies. Welcome back, and Johnson, you have the floor.

16 MR. TYLER: Yeah, so the literature I've read on
17 transcript withholding, that where other people have dug into
18 it, the Secretary has never issued a regulation on it. So this
19 would be the first mention of transcript withholding as
20 anything. So I wouldn't want that to be a precedent here,
21 especially since we've been talking about having a larger
22 discussion about it. I think you better omit it completely,
23 even though I am empathetic to the people who would be
24 affected. It just would be a bad precedent.

25 MR. WAGNER: Alright. Let's see, we have Barmak.

26 MR. NASSIRIAN: So I submitted the report from the
27 National Student Legal Defense Network for the Department to
28 review. The component of it that I think is relevant here has

1 to do with the statutory basis for in this case, the 10
2 percent surety that the Department may require of
3 institutions. As you will note in reviewing that memo, the
4 statutory provision, section 498 (c) (3) (A) of the HEA reads,
5 the only reference to this construct is, not less than one-
6 half of the annual potential liabilities, one-half, 50 percent
7 of annual potential liabilities, not last year's most recently
8 completed fiscal year, but future looking. And the Department
9 has deviated from that statutory text, both with regard to
10 percentage in this case, as well as what that percentage is
11 indexed to. So that's one issue. Again, I'm not an attorney. I
12 raised that. I submitted that, for the record, so that the
13 Department would have an opportunity to address it. But even
14 leaving the legality question aside, why would the Department
15 not want to receive adequate protection against the
16 possibility of loss? I mean, the Department has time and
17 again, Vatterott [phonetic] 12 years on provisional
18 certification, \$242 million dollars of losses and the
19 Department held a 15 percent letter of credit that didn't
20 cover, that really only covered a fraction of the amount. Why
21 wouldn't the Department want to do what any prudent lender
22 would do and look at the totality of the liabilities that this
23 entity may owe it and require a surety that is adequate to the
24 level of risk that it's undertaking? I just don't understand
25 why after having been burned this many times, why are we still
26 doing this sort of de minimis, timid kind of oversight?

27 MR. MARTIN: I'm sorry, and we have here that, you
28 know, I would point out that the amount determined by the
29 Secretary is not less than 10 percent of the volume for the
30 prior fiscal year. It does give us authority to request to

1 require more than that. But you're suggesting that it be that
2 we'd be required, that we require ourselves to regulate
3 ourselves to 50 percent of total liabilities?

4 MR. NASSIRIAN: Well, I'm not requiring that.
5 Congress requires that, and Congress has set that percentage
6 arbitrarily, I admit, but that's the law of the land. And yes,
7 you do have the ability and I encourage you to use that
8 ability. But in articulating what you index that 50 percent
9 to, why are you looking back as opposed to the future? Where
10 are you basing it on the past year when the statutory language
11 references potential liability in the future, not what they
12 owed you, not what they did last year, but what they
13 [inaudible]. And remember, this is a case, this becomes very
14 relevant in the case of institutions that are in distress and
15 have every incentive—if you know you're going to go out of
16 business, you may floor that pedal and just go for broke. You
17 might have, that may well be your only Hail Mary at that point
18 is to enroll as many people as you can and take in as much
19 money as you can. So it seems to me like you really want to,
20 just out of prudence, not even out of legality, you really
21 want to do a full assessment of what the liabilities are and
22 not just Title IV. Frankly, Congress says Title IV, but I
23 would look at the totality of their liabilities this entity is
24 facing.

25 MR. WAGNER: Thank you, Barmak. Brad, you're up.

26 MR. ADAMS: Yes, I've got several questions in this
27 section, but I'll start with an easy one, and this is just
28 truly an operational question here. Not saying I disagree with
29 it. So (e) (1) romanette one, the submission of a[audio] teach

1 out plan or agreement. So does that just mean submission is
2 okay? Or do all three have to approve or do all three, is
3 there an order you have to go through? I'm just not sure if
4 the word acceptable means you have to get it approved or how
5 that's going to work. So maybe help me out with that. Those
6 aren't, and those are three big different entities there.

7 MR. MARTIN: The regulation is the acceptable teach
8 out plan would be, as it says here, a submission of an
9 acceptable teach out plan or agreement to the Department. With
10 respect to teach out plan and Title IV funds, that would be
11 the Department's decision as to whether it was acceptable. Of
12 course, that would be for our purposes. States could also, you
13 know, I think states could step in there as well to determine
14 whether they believe that it was acceptable to them. But as
15 you know, these regulations are acceptable to us and would
16 have to be that would have to be submitted to the state and to
17 the institution's recognized accrediting agency. So once it's
18 been determined that that teach out plan is acceptable, that
19 must be submitted to all of those entities. The intention here
20 was to make certain that all of these entities had the teach
21 out plan.

22 MR. ADAMS: Alright, and so just to confirm, so the
23 Department's the only one that has to approve it, just
24 submission to the state and the regional accreditor is
25 acceptable is the way I, the way you just described that.

26 MR. MARTIN: I'll ask Steve to weigh in here. That
27 has to be acceptable to us. I don't think we can preclude a
28 state from saying that they don't find a teach out arrangement
29 to be acceptable. I'm not sure what impact that would have on

1 the teach out arrangement as it is if it were to be accepted
2 by the Department but a state were to say this is not
3 acceptable to us, what ramifications that would have. I'll
4 take that back unless Steve has a comment on that.

5 MR. FINLEY: I mean, I'll just add the Department is
6 usually working with the state and the accrediting agency on
7 these issues. So in the large part, whether it's acceptable to
8 the Department is likely to hinge on whether it's acceptable
9 to the accreditor in this state. We're not, we're usually not
10 the lead party on hammering in the terms of the teach out.

11 MR. ADAMS: Okay. Alright. So I'll defer to the state
12 folks then, but I think you answered that question. Seven,
13 real quick, just it's a simple question here: limitations on
14 an institution in a written agreement. I just want to clarify,
15 does that mean new agreements going forward? Does "entering
16 into" mean new or is that so existing agreements are okay in
17 seven as I read it. That's the way I read it, I guess. So, my
18 question is I'm confirming that if you've got an existing
19 agreement with another institution, that's okay, you just have
20 limitations on anything that's a new agreement. Confirm that.

21 MR. MARTIN: I believe that's the way it's written. I
22 will get confirmation of that, but it does say limitations on
23 institutions entering into written, entering into a written
24 arrangement.

25 MR. WAGNER: Okay, perfect. I'll get it back in line.

26 MR. MARTIN: It's going, it's going forward.

27 MR. ADAMS: Okay, thank you.

1 MR. WAGNER: Jamie, before we get to you real quick,
2 just want to announce David Socolow is in for state agencies.
3 Jamie, take it away.

4 MS. STUDLEY: Two quick points, underlining what
5 Steve Finley said a moment ago. While the Department can
6 decide when it is satisfied that the teach out plan is
7 acceptable, accreditors may have their own determinations that
8 they choose or are required to make about the acceptability of
9 a teach out plan. And as he said, the Department may take that
10 into account when it makes its determination of acceptability.
11 Or we may go first, or we may even coordinate on that. Second
12 point, I hate to raise the word transcript again, but I was
13 surprised, if I understood the—I think it was Adam and maybe
14 Johnson—why you would object to the inclusion of the
15 transcript item here, recognizing that if a broader solution
16 is addressed and covers this and this is no longer necessary,
17 it could be eliminated. But why wouldn't a step that made it
18 possible for the Department to address releasing holds on
19 transcripts here be a positive step, recognizing that this
20 provisional situation may be a special one? And you know,
21 make, take that one step, and if it's possible to identify a
22 broader step, then double back if this is no longer needed.

23 MR. WAGNER: Alright. [Inaudible] let's see, Anne,
24 you're up.

25 DR. KRESS: Thank you. I have a question about number
26 three, restrictions on the rate of growth and enrollment of
27 students for Title IV volume. And so recognizing that these
28 are colleges that have already, or institutions that have
29 already been determined at risk of closure. Just the phrasing

1 there, the growth and enrollment of students. Is there a
2 reason it isn't just more simply restrictions on the
3 enrollment of students or of Title IV volume or loans? I mean,
4 the way it's written, it's almost assuming or even promoting
5 the potential growth of institutions that are at risk of
6 closure. And given all of the discussions we've had about the
7 students who are at risk, if this is an institution that the
8 Secretary has already determined is at risk of closure, I
9 think the last thing we would want is any growth, let alone, I
10 don't know why we're restricting the growth.

11 MR. MARTIN: I think I can address that. Well, okay,
12 so here, if we start at the top of (e), this is, we're talking
13 about provisional certification in general and one is for, one
14 we did for that was for institutions the Secretary determines
15 to be at risk of closure. And then we move down to the rest of
16 these numbers, so I think that with provisional certification,
17 there could be a lot of reasons to provisionally certify an
18 institution. I don't think it would be perhaps a stretch to
19 say that every time we provisionally certified institutions is
20 because we believe that there's an imminent risk of closure,
21 although that might be, that might be the case. Under
22 restrictions of growth, this just enables us to look at the
23 school that is on provisional, and it doesn't mean that we are
24 expecting or accepting a large amount of growth, but just
25 restricting part of that growth, generally what this involves.
26 And Steve has worked a lot more with this in the field than I
27 have, so I will defer to him. But for instance, we might
28 prohibit a school from adding additional programs while
29 they're on provisional certification just because we have
30 concerns about, you know, maybe their ability to adequately

1 administer aid for the programs that they have. So these
2 restrictions on growth or volume are to deal with that. But
3 most of the ones that I've seen have to do with the
4 restrictions, have to do with adding additional programs for
5 those reasons. So in most cases it doesn't mean that because
6 we say restricting the growth that we're going to allow a
7 great deal of explosive growth with just these restrictions. I
8 think it should be looked at in terms of things that
9 ordinarily an institution would be able to do once it's fully
10 certified, such as add locations or add programs, where we
11 just restrict those two things. So I think in large part it's
12 programs and locations, but I'll let Steve add to that if he
13 wants to.

14 MR. FINLEY: Just a little bit. I mean, there's
15 relative concerns about closure and the imminence of closure,
16 right? And if you've got somebody that really is, there's a
17 concern that it's week to week. I mean, the rate of growth,
18 the acceptable rate of growth, there might be zero. Right?
19 That is a rate. Maybe it's an irrational number if you're
20 dividing, but it is a rate of growth for somebody that's in
21 imminent harm of closure. So this is just creating a
22 touchpoint to note; these limitations can be applied to deal
23 with situations of concern.

24 MR. WAGNER: Alright, we have Brad up.

25 MR. ADAMS: Well, that's a great lead into my
26 question, Greg, and one of my favorite things, so I'll leave
27 alone the fact that two and three are still undefined, but,
28 you know, Anne made her case. But I want to go to my favorite
29 topic, number eight, for an institution that's been alleged to

1 have engaged in a misrepresentation to students. So I ran some
2 numbers this morning—I was having fun—postsecondary education
3 participants, there's 2,406 institutions at the eight-digit
4 OPEID, so that would include branches that are provisionally
5 certified, 2,406. I have no idea how often this occurs in
6 alleging something, but a Department operationally that can't
7 get a change of control approved, how in the world are they
8 going to manage this? And just for an example, Grand Canyon, I
9 believe, is provisionally certified. They've got 100,000
10 students. They get one alleged comment on an ad, and now
11 you're going to review every single ad existing and new? That
12 would be like a full-time by itself department within the
13 Department. So help me out on this one, Greg, how in the world
14 can the Department manage this?

15 MR. MARTIN: I don't see what is in seven as
16 obligating the Department.

17 MR. ADAMS: I said eight. I'm sorry, I said.

18 MR. MARTIN: You mean seven, right? Yeah. I mean,
19 yeah, you mean eight.

20 MR. ADAMS: Eight, yeah.

21 MR. MARTIN: I'm sorry, eight.

22 MR. ADAMS: Alleged have been to, let me just read
23 it. Alleged or have found to be engaged in misrepresentations
24 to students. Alleged, that's not a very hard hurdle to hit.
25 Right?

1 MR. MARTIN: I mean, there certainly is and, you
2 know-

3 MR. ADAMS: 2,406 locations that could happen and
4 you're going to do every single marketing material?

5 MR. MARTIN: This doesn't obligate us to review
6 marketing materials in upwards of 2,000 cases. I mean, this is
7 in looking what this says alleged to have engaged in
8 misrepresentations to students. It doesn't mean, I mean,
9 there's always a certain amount of discretion involved with
10 things. I mean, here you have provisional certification, which
11 the Secretary does for numerous reasons, and there is some
12 discretion involved in that. The Department can also initiate
13 program reviews for student complaints. Do we go and do a
14 program review because of one student complaint? Generally not
15 unless that was a very serious complaint that we had. But I
16 mean, it's always possible. Students complained about schools
17 all the time; that runs the gamut from every type of school in
18 the country. We could initiate program reviews as a result of
19 student complaints. We don't do so in every case. So again,
20 there's discretion. If 100 students complained about a school
21 with, might that precipitate something? Perhaps. Here, we're
22 looking at if we see a pattern of misrepresentations to
23 students, what we believe are aggressive recruiting practices,
24 you know, and violations of incentive comp. So I mean, I think
25 for the alleged are found to have engaged in
26 misrepresentations if a school is engaged in practices that we
27 believe are misrepresentation. That's a very important thing
28 for us to get a hold of, ahead of because these could be
29 instances where students are being given information upon

1 which they have a reason to rely that is inaccurate. They're
2 making decisions about this. So we want to see in that case
3 what types of materials institutions are providing these
4 students with. And it does not obligate the Department to
5 review the recruiting and marketing materials of 2000
6 students.

7 MR. ADAMS: So additionally, in (a) I still, you
8 know, I submitted language, I do think the word "substantial"
9 needs to be in front of misrepresentation; allege is a very,
10 very low bar to clear. And I also believe that we need to
11 delete aggressive recruiting practices because it's still not
12 defined. I'm not against that, but we've got to define it, and
13 we've seen no definition on what that is at this point. And
14 that's come up several times throughout. So I'll resubmit my
15 proposed text to number eight and into the chat. Thank you.

16 MR. MARTIN: Thank you.

17 MR. WAGNER: Thank you, Brad. Let's see, Johnson,
18 you're up.

19 MR. TYLER: Thanks. Yeah, with respect to number
20 eight, I mean, having done a lot of discovery against the
21 institutions that engage in deceptive practice, they don't
22 give you stuff that you want. The government's giving out
23 Title IV money, it seems completely legitimate for the
24 government to ask you for marketing materials if it feels like
25 it's on a threshold of information. I just find that hard to
26 believe. So, I support that. With respect to Jamie's question
27 as to why we would be against this, so, there are only two
28 statements that I've ever found where the Department of

1 Education has talked about transcript withholding, in 1998 and
2 1996, and they basically endorse it. It's in the handbook. So
3 if we go forward and this is never touched on again, we're
4 going to be left where the only time that the Secretary has
5 ever said anything against it is in this situation. I just
6 don't, you know, I hope we'll get it, address this in a
7 regulatory fashion. But if it comes down to a regulation that
8 may be a court's only information that they have, that it's
9 only applicable in extreme situations where the school is in
10 consideration of being shut down. And I just don't want that
11 to be a precedent here. Thank you.

12 MR. WAGNER: And we're going to take Adam next on
13 sections one through nine, and then I'll turn it back over to
14 Greg. Take it away, Adam.

15 MR. WELLE: Johnson made my point, so I won't have to
16 say anything about transcript withholding. Thanks.

17 MR. WAGNER: Alright. No problem, Adam. I appreciate
18 it. Greg, you want to take a temperature check on (e) one
19 through nine?

20 MR. MARTIN: Yes, we can do that. And I do understand
21 that the reason for some people's, some negotiators providing
22 thumbs down there will be as a result of the transcript. So
23 I'll stipulate that. Okay, go ahead.

24 MR. WAGNER: Okay, if you could, please hold your
25 thumbs high so we can see them. Alright. One, two, three,
26 four, five. Five thumbs down. Okay. Thank you. Alright, Greg,
27 would you like to move on to (f)?

1 MR. MARTIN: Yes, please. We'll wait for Rene to
2 bring that up, please.

3 MR. WAGNER: Thank you, Rene.

4 MR. MARTIN: And okay, so we are now in (f). The
5 first thing we see in (f), a change that we made was we had an
6 erroneous reference there, and we fixed that, we removed it
7 rather. 668.28(b) is reserved, so that's the only the only
8 change there. And then we move over to, oh, I'm sorry. My
9 mistake there. So also in (f)(1). No, I'm sorry, that was all
10 for (f)(1). I just was, got a little confused there. So then
11 we go to the next area where we have made changes is in
12 (f)(4). So that is the institution may not advertise that it
13 operates as a nonprofit institution for the purpose of Title
14 IV until the Department approves the institution's request to
15 convert to nonprofit status. So we've added this provision as
16 a requirement for institutional advertising when a nonprofit
17 institution seeks to convert to for-profit status. And that is
18 everything for (f), so not much, but the only substantive one
19 there would be in four. So in the interest of going paragraph
20 by paragraph, I will open it up for discussion on that.

21 MR. WAGNER: And this will be on (f) one through
22 four. Let's see, we have Jamie up first.

23 MS. STUDLEY: Just a simple issue. I have no problem
24 with the piece that says that an institution must be clear
25 about its status with the Department. But as somebody who's
26 tried to explain it a number of times, the difference between
27 IRS, a nonprofit designation for IRS tax purposes and what it
28 and the Department's determination about whether it will

1 provide its own version of nonprofit treatment to an
2 institution is confusing. And I don't know if there's an
3 opportunity in this rulemaking to consider making that clearer
4 or finding some way so that it's understandable because if you
5 looked up, if I made a gift to this place, would it be tax
6 exempt? It is very possible that there's an institution where
7 the answer is yes. The IRS would say you would be exempt. That
8 contribution would be treated as a contribution to a
9 nonprofit. At the same time, the Department has not determined
10 to grant it its nonprofit treatment, which has certain
11 characteristic provisions. I don't need an answer that's
12 complicated, but if there's my second choice, if it's not
13 possible in regulatory language, would be to give us a phrase
14 so that it's easier to explain for students and their advisers
15 who could be confused about which it is and so that other
16 regulators know, you know, is it both are nonprofit? Yes,
17 check two boxes. One is, one's not, I think could be helpful.
18 But I'm not asking for an answer on the fly, Greg.

19 MR. WAGNER: Thank you, Jamie. Brad, you're up.

20 MR. ADAMS: You know, I don't have a dog in this one,
21 but I'm curious on number four on the institution may not
22 advertise that it operates as a nonprofit institution for
23 purposes of Title IV. So I just got to ask the question, does
24 purposes of Title IV mean the nonprofit institution can
25 advertise they're a 501(c)(3) for IRS purposes? Is that what
26 that essentially means, that that's okay?

27 MR. MARTIN: I wouldn't want to say that the
28 regulation provides some type of imprimatur to advertise in
29 any specific way. I think when you talk about advertising that

1 operates as a nonprofit for the purpose, there becomes a
2 reasonable person test there. Obviously, if you see it, you
3 know, let's make it an easy one. If you see an advertisement
4 for an institution on a television commercial where it
5 obviously is seeking to enroll students and the school also
6 participates in Title IV, you know, and may or may not say,
7 you know, the usual Title IV available for those who qualify
8 or something like that, that there clearly is a tie there. So
9 and it would obviously be an instance where the institution is
10 trying to advertise it's not-for-profit status as a selling
11 point or something for, you know, to attract students. We do
12 say for Title IV purposes because obviously we don't determine
13 IRS tax status. That's the IRS's determination. But we are
14 saying here that they cannot do that until we, we are making
15 it clear that there is a difference, until the Department
16 approves the institution's request to convert to nonprofit
17 status., we can't, we represent itself for those purposes. I
18 don't know that we can take all the nuance out of this, Brad.
19 You know, would the institution go on TV and say they are
20 501(C)(3)? You know, however, for the purpose of Title IV we
21 are not. I guess they could do that. I don't think you would.
22 I'm not sure that would happen, but we'll take the language,
23 we'll take the concerns back and see and review it. But I
24 think as written, it would be one of those, maybe, you
25 certainly would know it when you see it, I think in most
26 cases, but we will take the concerns back.

27 MR. ADAMS: Yeah, I mean for me, I think more people
28 across the country know what a 501(c)(3) is, you know for
29 Title IV purposes. That's just, you know again, but you all,
30 yeah, just come back to us with an answer. I really am not up

1 or down on this one. I just thought that was an interesting
2 addition. So thank you.

3 MR. MARTIN: I mean, you know, you could say for
4 Title IV purposes or also that, you know, I also want to add
5 the Department's saying we don't consider you a nonprofit
6 until the Department has approved the institution's request. I
7 mean, if you're making a nuanced statement, could they
8 advertise that as having met the tax status, but then put a
9 disclaimer on there, however, the Department of Education has
10 not approved us to operate as a nonprofit. I think that would
11 have to be something our attorneys will look at on a case by
12 case basis.

13 MR. ADAMS: Yeah, and I think it'd be more prevalent
14 in the Google ads. You know, just the bottom 501(c)(3)
15 nonprofit. Just a quick little disclaimer that would be on the
16 TV ads.

17 MR. MARTIN: Yeah, I don't think we've explored it to
18 that level. But as I said before, we will have a discussion
19 about that.

20 MR. WAGNER: Okay, Johnson.

21 MR. TYLER: Hi, yeah. So, I have two comments. I
22 think I really support four. I haven't run into this problem
23 with the clients, but just trying to understand if an
24 institution is a for-profit or nonprofit, you can't tell by
25 the website because they are edu and they're all treated the
26 same. So you've got to go dig around to find out. Most clients
27 don't do that, and I can say that if they see something with
28 an org on it at the end of the website, they may think it's a

1 nonprofit. We get this all the time with scams involving debt
2 relief services where they funnel people into for-profit
3 entities but they're a collector of information that then
4 sends them to these places. So, you know, making sure that
5 institutions are where people are clear what the institution's
6 mission is, whether it includes shareholders or simply
7 education, I think is an admirable and correct thing for the
8 Department of Education to take a stance on.

9 MR. WAGNER: Thank you, Johnson. Before I get to you,
10 Barmak, just wanted to mention that Yael is joining us for
11 state attorneys general. Thank you. Barmak, go ahead.

12 MR. NASSIRIAN: I have to confess that that I don't
13 have an overarching sense of how the different pieces of these
14 regulations dovetail with each other if they do dovetail with
15 each other. I'm a little confused with this section because it
16 appears to address interim behavior between approval as a
17 501(c)(3) by the IRS and recognition of the entity as a
18 nonprofit by the Department. Let me ask that, is that correct
19 or is it something else?

20 MR. MARTIN: I don't, the rule says, the rule does
21 not obviously obligate the Department to recognize. I don't
22 think it necessarily presupposes that we will just because of
23 the 501(c)(3) status that we will ever recognize. It's
24 possible that we will never recognize that institution as a-

25 MR. NASSIRIAN: Right, but-

26 MR. MARTIN: -not for profit. So, I don't think it
27 necessarily means it's always an interim. It's always a limbo
28 type situation where it's always between what it could be.

1 There's also the possibility the Department will never
2 recognize it as having converted.

3 MR. NASSIRIAN: Well, this is, look, if it's a
4 nonprofit, if it's a for-profit, triggers a change of status
5 that the Department ends up denying, it remains a for-profit I
6 assume. If it's for-profit and it actually satisfies not only
7 the IRS, but the Department that it is in fact now a
8 nonprofit, then that's a separate set of issues. And the
9 question then becomes are you imposing some new constraints on
10 that entity based on its legacy status? And then, of course,
11 there is that interim period where the entity is an IRS
12 501(c)(3), but not yet. No adjudication has been made as to
13 its status with the Department. I'm just struggling to
14 understand what this is attempting to address.

15 MR. MARTIN: Well, what it's addressing is that the
16 reality that just because it has the appropriate IRS status to
17 be considered not for profit does not mean that we recognize
18 it as such. And they can't-

19 MR. NASSIRIAN: Why can't you just say that? I guess
20 that's what I'm struggling with. Why can't you just simply say
21 you are what you are until we tell you you're something else?

22 MR. MARTIN: We cannot tell the IRS what it can do
23 and not for not-for-profit organizations, that's why this is
24 limited to Title IV purposes. And, you know, I don't think we
25 can, I mean, even if we deny, even if we don't approve it,
26 they remain 501(c)(3) for IRS purposes, right? It's a matter
27 of what the Department, I mean, with the Department, with us,
28 I don't really see it as being interim. You know, when they

1 get that status, they can ask us for a conversion, a not for
2 profit. But until we approve it, it's they remain for-profit
3 irrespective of what the IRS has, what the IRS does. I see
4 Steve has his hand up, so I want to defer to him.

5 MR. FINLEY: Yeah, there is an interim status here
6 where there's a prerequisite that the institution that seeks
7 approval to be recognized as a nonprofit for Title IV must
8 already have the 501(c)(3) designation, right? But this is
9 just addressing that interim period. There's reporting
10 requirements that still apply to the for-profit entity because
11 until the Department recognizes it and approves the change of
12 status, it is still a for-profit entity. And it is important
13 to address this issue about how advertising its status because
14 that could mislead students and that's why that's there.

15 MR. NASSIRIAN: So just to, that's a very clear
16 answer. Just so I'm clear, this is not articulating
17 substantive criteria for approval. This is simply addressing
18 that period of pendency during which the Department is making
19 a determination whether the applicant is in fact now a not for
20 profit entity.

21 MR. FINLEY: I think that's correct.

22 MR. NASSIRIAN: Okay, thank you.

23 MR. WAGNER: Thank you, and Brad, you're up.

24 MR. ADAMS: So in (f)(2) here you know we're
25 proposing that the institution seeking nonprofit will continue
26 to meet gainful employment requirements for at least two years
27 under new ownership. Is that a point the regulation gets

1 approved? Is it, is it retroactive? What is the intent here on
2 this one?

3 MR. MARTIN: We're saying the institution must
4 continue to meet the gainful employment requirements of
5 subpart Q of this part until [interposing] accepted and
6 reviewed? Well, obviously it presupposes subpart Q being the
7 new subpart Q being in effect. So if it's subject to the
8 gainful employment rules, would have to continue to meet those
9 requirements to complete fiscal years under the new ownership
10 or until the Department approves the request to convert,
11 whichever is later. So that's in recognition of our proposed
12 subpart Q.

13 MR. ADAMS: So, it would be sometime after July of
14 '23 then I guess, said another way. Let's start applying.

15 MR. MARTIN: If those rules went into effect at that
16 point, yes.

17 MR. ADAMS: Okay, and then 90/10, not being part of
18 that two-year. Just curious if that's a regular regulatory
19 reason or?

20 MR. MARTIN: I'm not sure where you are, Brad.

21 MR. ADAMS: Same point, two, though, you're saying
22 you've got to meet GE for the next two years, but you're not
23 saying you have to meet 90/10 for the next two years. It's
24 clarifying that's the intent there. These are for-profits that
25 convert to non-profits, they had to meet 90/10 up until the
26 conversion date. And then we're saying two years after the
27 conversion date, you're subject to GE. Which I still struggle

1 with because GE is for for-profits only, and if you approve
2 them, I don't know how you subject them for two years after.
3 Because they're no longer for-profit, but we can argue that-.

4 MR. MARTIN: There's no reference to 90/10 here.

5 MR. ADAMS: Okay, so 90/10 ends once the conversion
6 starts.

7 MR. MARTIN: Steve, I want to ask Steve about that.
8 When we, it ends, they're subject to 90/10, I'm trying to
9 think, do we have any rules in the, do we have anything in
10 90/10, Steve?

11 MR. FINLEY: It's defined in (f)(1) right above it,
12 Greg.

13 MR. ADAMS: I missed that.

14 MR. MARTIN: [Inaudible] data, okay.

15 MR. ADAMS: Oh, it's the 668.14 reference?

16 MR. MARTIN: Right. I'm sorry. [Inaudible] We just
17 moved, we just, what we did there was, thank you, Steve. I see
18 what you're talking about in which the institution 90/10 was
19 struck out. But we have 668.14, which is the program
20 participation agreement reference to 90/10.

21 MR. ADAMS: Thank you. I should've gotten that.

22 MR. MARTIN: So, I'm sorry. Yes, it does.

23 MR. ADAMS: I just saw the reference.

1 MR. MARTIN: There is the reference there in 90/10
2 until the Department approves. It is until the Department
3 approves that request to convert and it is [inaudible] fiscal
4 years.

5 MR. ADAMS: Thank you. Sorry about that. I missed the
6 reference.

7 MR. WAGNER: Two quick things. One, Carney King is in
8 for students and loan borrowers, and then we're going to take
9 David, take a comment from David and then do a temperature
10 check on (f)(1). David, take it away.

11 MR. SOCOLOW: Yeah, it's a question for the
12 Department. I know this whole Section (f) is about for profit
13 converting to nonprofit. But is there any other place where
14 there's contemplation of similar rules for a for-profit
15 converting to public status? Or would this be the right place
16 to put it?

17 MR. MARTIN: For-profit converting to a public, to
18 public status.

19 MR. SOCOLOW: Surely the Department has considered
20 that prospective problem.

21 MR. MARTIN: I don't know we, I'll take that back
22 with us. I don't know that we have if we've had discussions
23 about that that I've I recalled them, but I'll certainly take
24 that back. So you're talking about a for-profit entity that
25 would not only seek to convert to not for profit status, but
26 be public, right?

1 MR. SOCOLOW: Yes, convert to public status. I mean,
2 I think there's three statuses, public, profit, and
3 proprietary, and you've got one conversion discussed here, and
4 there's another possible thing that can happen.

5 MR. MARTIN: Okay. Yeah, I don't I don't know, we
6 don't have anything on it. I don't want to speak to that right
7 now until I've taken that back and we have some more
8 discussion about that. Thank you. Could you put that in the
9 chat, please?

10 MR. WAGNER: Okay, Greg, you want to take a
11 temperature check on (f) one through four?

12 MR. MARTIN: Hold on one moment.

13 MR. WAGNER: You want to, you want to go to (g)?

14 MR. MARTIN: Just hold on a second, please. Okay, I
15 do, before we get to that point, I have something here, I just
16 was prepared for us by some of our people. I just wanted to
17 say this clarification of our communication, with conversion
18 to not for profit status, we are not restricting institutions
19 from saying they are 501(c)(3). And further, although the
20 Department has not yet approved, some phrasing we have here is
21 not yet approved an institution's request for recognition as a
22 not for profit institution, the Department does not take a
23 position with respect to whether the institution or its owner,
24 its owner's 501(c)(3) tax exempt stays with the Internal
25 Revenue Service. However, the institution would have to
26 refrain from identifying itself as a nonprofit institution in
27 any advertising publications or other notifications. Use of
28 the term nonprofit may be potentially confusing the students

1 and the public, who may interpret the use of nonprofit to mean
2 the Department has granted the institution nonprofit status
3 under its regulations. The Department does not take a position
4 regarding statements in reference to IRS status, such as
5 501(c)(3) tax exempt organizations as designated by IRS. So I
6 just wanted to point that that would be just some
7 clarification of the Department's position on that. So yes,
8 going back to this, we can take a temperature check on, I
9 believe, I'm confused here, (f) right, correct?

10 MR. WAGNER: Yeah, (f) one through four.

11 MR. MARTIN: (f) one through four, correct.

12 MR. WAGNER: If everyone could hold their thumbs up
13 so we all can see, that would be appreciated. Looks like there
14 are no thumbs down. Greg, I'll turn it over to you.

15 MR. MARTIN: So we will move on to (g) in both one
16 and two here of this section. We've clarified that reports
17 related to agency action servicing agreements and/or IRS
18 communications be submitted within 10 business days. While
19 negotiators proposed 14 business days, we have used 10
20 business days to comport with current agency practice, so we
21 look at and that's the, in (g), an institution is initially
22 certified as a nonprofit institution or if it has undergone a
23 change of ownership and seeks to convert to nonprofit status,
24 the following conditions will apply to the institution upon
25 initial certification or following the change in ownership. In
26 addition to any other conditions the Secretary deems
27 appropriate, the institution will submit reports to will
28 submit timely reports on accreditor and state and

1 authorization agency actions and any new servicing agreements
2 within 10 business days until the Department has accepted a
3 review to approve these financial statements and compliance
4 audits that cover the two fiscal years. And then two, the
5 institution will be required to submit reports of
6 communications from the Internal Revenue Service or any state
7 or foreign related tax exempt or nonprofit status within 10
8 business days so long as the institution participates as a
9 nonprofit institution. So that's the entirety of (g). Will
10 open that up for comment.

11 MR. WAGNER: Okay. Comment on (g). David, you're up.

12 MR. SOCOLOW: I just, that same point that I
13 mentioned about (f) in the chat and mentioned it also belongs
14 here in (g) as well.

15 MR. WAGNER: Thank you, David. Jamie.

16 MS. STUDLEY: Minor technical question. I did not
17 take the time to go back and determine whether the 10 days
18 matches the timing by which the accreditor is already
19 obligated to tell the Department about actions relating to
20 institutions. So, the Department may already be getting this.
21 And is it, you know, just I have no problem with being sure
22 that you get that notification, but do you need to ask for it
23 if the Department, if the accreditor is required to give it to
24 you? And do you want and need that extra set of things? And if
25 so, if there's a reason that it is helpful to the Department,
26 it might be useful to just check the 10 business days matches
27 or allows time for the accreditors' notification to then let
28 the institution, to let them notify you.

1 MR. MARTIN: I'm not sure-

2 MS. STUDLEY: [Inaudible] question to take a look at.

3 MR. MARTIN: What do you mean, about the 10 business,
4 about the 10 business days here?

5 MS. STUDLEY: Yeah.

6 MR. MARTIN: Well, this has to do with the
7 institution's requirement to notify, it must submit
8 [inaudible] statement. Yeah, within, I don't, we just change
9 this. Is there any, I'm just not sure I understand the concern
10 you have with it, I guess. I'm a little confused.

11 MS. STUDLEY: It doesn't say within 10 days, 10
12 business days of what. So has the accreditor, the accreditor
13 has an obligation to tell the institution. But is it the date
14 of our action, the date the institution must know? I can give
15 this to you offline. I just think that it's a little unclear
16 about what, within 10 business days of what because the action
17 and notification date may be different for the school and you
18 may already be getting this from the accreditor such that I
19 don't know that you need to burden the school or yourselves on
20 that point. It's a very minor-

21 MR. MARTIN: Oh, you're talking about when, you're
22 saying when the accreditor takes the action, accrediting
23 agency takes the action and then when it notifies the
24 institution? It currently has, we have it written here. It's
25 incumbent upon the institution that irrespective of what the
26 accreditor does, but we'll certainly take that back if you

1 want to write, if you want to write that up, if you think it's
2 redundant.

3 MR. WAGNER: Thank you, Jamie. I don't see any
4 additional comments. Greg, would you like to take a
5 temperature check on (g)?

6 MR. MARTIN: Sure.

7 MR. WAGNER: One and two?

8 MR. MARTIN: Sure.

9 MR. WAGNER: Okay. Okay, so if everyone could raise
10 their thumbs up so we can see them on (g) (1) and (2)? That'd
11 be great. No thumbs down on G. Back to you, Greg.

12 MR. MARTIN: Okay, so we have for the remainder of
13 this section we just we have nothing in, and here's my
14 favorite lettering schemes again, nothing in (h), (i), or (j).
15 We've updated some cross references here, which is all that we
16 have, all that we have done in K. So I'd like to move on to
17 668.43 if we can, institutional information. And this will
18 take us to the end of the paper. So, thank you, Rene, for
19 pulling that up. This is 668.43, institutional information.
20 The change here at negotiators' suggestion, we have added back
21 this disclosure and sought to make it more streamlined. We
22 agree that institutions should assess whether they need
23 licensure requirements across the country and should make that
24 information accessible to students. And so we're looking in
25 668.43(a) (5) (v) . And if an educational program is designed to
26 meet educational requirements for specific professional
27 licensure or certification that is required for employment in

1 an occupation or as advertised as meeting such requirements, a
2 list of all states where the institution offers the program
3 and where the program meets such requirements and a list of
4 all states where it does not meet such requirements. So I'll
5 open it up for discussion on that addition to 668.435.

6 MR. WAGNER: Renee will bring it to you. Barmak.
7 Debbie Cochran is back in for state agencies and then Barmak,
8 you're up.

9 MR. NASSIRIAN: We're going to add the words "and
10 programmatic" to this to make it conform with the way you had
11 it. You labeled it under gainful, I assume?

12 MR. MARTIN: What are you suggesting, Barmak, just to
13 be sure?

14 MR. NASSIRIAN: In gainful, the same section was
15 called "institutional and programmatic information." I assume
16 that's the one that you, that's the one you're going to keep,
17 right?

18 MR. MARTIN: Well, this is just, oh, I see oh, you
19 mean in oh, I see what you're saying. In this-

20 MR. NASSIRIAN: The section, the section label, the
21 section name is going to be "and programmatic."

22 MR. MARTIN: "And programmatic," right, yes.

23 MR. NASSIRIAN: Right.

1 MR. MARTIN: I see what you're saying, the way it was
2 renamed, in the way it was named in gainful employment, not
3 [inaudible].

4 MR. NASSIRIAN: That's the one that [inaudible]

5 MR. MARTIN: Yeah. Correct.

6 MR. WAGNER: On my mute button, I'm sorry. Anne,
7 you're up.

8 DR. KRESS: Sure. So just a clarification question.
9 So as I read this, it says is advertised as meeting such
10 requirements, a list of all states where the institution
11 offers the program and where the program meets such
12 requirements and a list of all states where it does not meet
13 the requirements. So are you saying that a college or an
14 institution—let me ask this question a different way. Is that
15 second part a list of all states where it does not meet the
16 requirements? Those are also states in which the institution
17 offers the program, correct? Because that's not what it says.

18 MR. MARTIN: I understand that and given our current,
19 given what's currently proposed, an institution wouldn't be
20 allowed to have a program offered to a student in the state
21 where it doesn't meet the requirements. So, well, I see what
22 you're saying. We'll take a look at that.

23 DR. KRESS: Okay, thank you.

24 MR. WAGNER: Thank you. Brad.

1 MR. ADAMS: I just wanted to state in closing that
2 668.43 is a great place for a GE metric for all students.
3 Thank you.

4 MR. MARTIN: Thank you, Brad.

5 MR. WAGNER: Okay, let's see, we have Jamie and then
6 Debbie.

7 MS. STUDLEY: I think Adam's question may have
8 cleared out several kinds of underbrush, but if it were done
9 this way, I was going to ask whether there was a third
10 category, which is we don't know or we haven't determined. But
11 you're saying that it may be possible that there's, if Montana
12 is not on my list of places where it's offered, I don't have
13 to say it does not meet Montana requirements.

14 MR. MARTIN: I don't want to say that yet. I want to
15 take that back with us. I think there is a wording issue here
16 with how it's going to mesh with our, with the proposed
17 requirement that in order to offer the program to a student
18 who is in a different state that it would have to meet the
19 licensing or certification requirements of that state. So then
20 if it's being offered to that student it necessarily meets
21 those requirements. There could be, but as a matter, but this
22 is a, you know, disclosures or information listing to
23 students, to prospective students that it just doesn't meet
24 the requirements in these states. You know, it could well be
25 something useful to students just when they're exploring which
26 programs they might be interested in, having a list of states
27 that it doesn't, that it doesn't need. Even though the
28 potential for schools to offer the program anyway in those

1 states may not exist, it still would be of interest to
2 students, whether or not it meets the, you know, whether or
3 not it meets the requirements in that state.

4 MS. STUDLEY: You may want to consider a blanket if
5 it's not listed here, what does that mean? But if you don't
6 want to demand that an institution, if there are no students
7 and it's not being delivered, go to the trouble of determining
8 it does not satisfy. Maybe it does. They just haven't ever had
9 a place schools in the northwest that want it. But, but it's
10 not a task they have done. They have not made an affirmative
11 determination that it does not meet what you need. What you
12 want to be clear is you cannot assume that it meets any but
13 the ones where we have said that it does.

14 MR. MARTIN: Okay, we'll, we'll take that back.

15 MR. WAGNER: Debbie.

16 MS. COCHRANE: I'm not going to offer specific
17 language because I know that probably you need to go back and
18 look at this in light of some of the other issues in 32, but I
19 just, I would really encourage the Department to think beyond
20 just certifications that are required because I think really
21 there are a number of certifications beyond, like, hard and
22 fast requirements that would practically increase
23 employability or the lack of which would decrease
24 employability. So I think it makes sense to keep that separate
25 from the types of requirements that are discussed in paragraph
26 32, but I think it is still an important consumer disclosure.

27 MR. WAGNER: Thank you. Kelli, you're up.

1 MS. PERRY: And as it relates to five, aren't these
2 disclosure requirements already required in 668.43? So, I
3 guess I question why we're adding them again. I mean, in light
4 of the conversation that we had earlier as well, I mean, I
5 don't necessarily think the constituency I represent agrees
6 with this, but that these disclosure requirements are already
7 required.

8 MR. MARTIN: Yeah, I think, let me take this back. I
9 want to go back and review other areas of state auth and 43
10 before I comment on that.

11 MS. PERRY: Thank you.

12 MR. WAGNER: Thank you. Johnson, you're up.

13 MR. TYLER: Yeah, I just want to, I agree with what
14 Jamie said, which was essentially, if you're not reaching out
15 to students in other states and you have no history of it,
16 this is more. There are lots of disclosures. You don't want to
17 not only burden the institution, but you don't want people
18 just to stop reading disclosures. So I did read this way, this
19 being fairly encompassing of obligations here. I would just
20 try to change the wording so it doesn't unnecessarily burden
21 things. On the other hand, you know, as Barmak gave the
22 example, if you want to go to an accredited school in
23 California and you're going to do it online, you're not going
24 be able to sit for a bar exam anywhere else. And people should
25 know that if they're doing it online, obviously so.

26 MR. WAGNER: Thanks, Johnson. Marvin.

1 MR. SMITH: Yeah, I just wanted to make the point
2 that I think the unintended consequence of this is making
3 four-year publics think about whether they really want to
4 offer programs with the burden that would go along with this
5 requirement. So I think that's a major concern, and I
6 understand what you're trying to do, but there's maybe
7 unintended consequences of administrative burden on this.

8 MR. MARTIN: We'll take that back. I do want to say
9 that, you know, it is our feeling that, you know, in all these
10 instances, we don't compel a school to go and provide
11 education in other states; that's an institutional decision.
12 So it's always up to the institution, whether or not they want
13 to do that. When an institution takes the step to provide, you
14 know, via distance education to students in other states, then
15 it becomes is it a burden to determine to make these
16 determinations and to make certain that the licensing
17 requirements are met where you're advertising the program, as
18 well as providing an education to meet those licensure
19 certification requirements? Yes, we can see that as a burden,
20 but it is one institutions take on voluntarily and you know
21 with the expanded student base that comes with offering these
22 programs this way comes the responsibility to students. I
23 think that it's about it comes down to why are students taking
24 your program that's educating those students for certification
25 or licensure? Presumably to get that certification or
26 licensure and obtain employment. And understanding that it's
27 possible that somebody who lives in Georgia seeks to relocate
28 to Virginia. Obviously, nobody would ever leave Pennsylvania,
29 but I'll leave that out. But, I do think that when schools
30 decide to do that, it is the Department's position that it's

1 incumbent upon those institutions to make certain that those
2 requirements are met. But I will take back that concern.

3 MR. WAGNER: Thanks, Greg. Carney.

4 MR. KING: Yeah, I just want to reiterate that I
5 support any kind of measures of transparency for students, so
6 I do appreciate this requirement.

7 MR. WAGNER: Great, thank you, Carney. Alright, Greg,
8 you think it's time for the temperature check on, was it
9 668.435?

10 MR. MARTIN: (a) (5). I'm sorry.

11 MR. WAGNER: (a) (5). I'm sorry. It was an I or a J.

12 MR. MARTIN: It wasn't I or J, but I blew it anyway.
13 So yes, it's (a) (5).

14 MR. WAGNER: Alright. If everyone can hold their
15 thumbs up, please. Alright, we have one thumb down. So, let's
16 see. That should complete certification procedures. Back to
17 you, Greg. Do you want to start with the next topic?

18 MR. MARTIN: Yeah, we're going to start with change
19 of ownership and control, but before we do that, I need to
20 take a brief break, so can we have five minutes?

21 MR. WAGNER: Understood. It is 2:56 eastern time, so
22 we'll take a five minute break and come right back at 3:01.

23 MR. MARTIN: Thank you very much.

1 MR. WAGNER: Thank you. Alright, welcome back from
2 that short break. We just got through certification
3 procedures. I'm going to turn it over to you, Greg, and we can
4 start the next topic.

5 MR. MARTIN: And our next topic is changes of
6 ownership and change in control. So we'll be pulling up the
7 regulations there, and the first place that we're going to go
8 to where we have any changes here is in 600 under definitions,
9 600 point, I just want to make sure I get this right, 600.25.
10 So this is under, I'm sorry, this is under, and I should say
11 this is under, oh no, this is right under distance education.
12 This is number six. So we're starting with distance education,
13 one, two, three, four, five, six. The problem with this is in
14 definitions. Things are numbered a little bit differently than
15 they are in other sections. So it can be a little confusing.
16 So we're starting in six, and we have added language here to
17 conform to the forthcoming amendments to regulations to
18 address prison education programs, so you can see that
19 reflected in six, except for an additional location at a
20 correctional institution, as described in the definition of an
21 additional location in this section for an institution that
22 offers on-campus programs and distance education programs. The
23 distance education programs are associated with the main
24 campus of the institution. For an institution that only offers
25 distance education programs, the institution is located where
26 its administrative offices are located and approved by the
27 accrediting agency. So I just want to point that out, and that
28 is to account for changes made in prison education. And we did
29 achieve consensus there so that regulation will stand as it
30 is. And then we move down to the definition of a nonprofit

1 institution under (1)(iv). And this is in response to
2 negotiators' comments; the Department has proposed to add
3 language clarifying that this language is non-exhaustive. So
4 in romanette four when the Secretary makes the determination
5 regarding that earnings, the Secretary considers the entirety
6 of the relationship between the institution and nonprofit
7 entities and its ownership structure and other parties. And in
8 four and then going down to, okay, I think that's it for not
9 for profit institutions and that is it for the definitions
10 then in 600.2. So I'll stop there and open the floor for
11 discussion.

12 MR. WAGNER: Thank you, Greg. Before I get to you,
13 Yael, I just want to mention that Donna Mangold is in for the
14 Office of General Counsel. Welcome. And I, let's see, Yael,
15 you're up first.

16 MS. SHAVIT: Thanks and apologize if I'm a little
17 turned around right now. But I think there was proposed
18 language here with respect to the definition of nonprofit that
19 would have expressly included arrangements such as leases,
20 longer term leases between previous owners and entities with
21 the new nonprofit as an arrangement that would not qualify as
22 nonprofit. And I really want to emphasize this inclusion
23 language that was included and that we supported in part
24 because we have actually seen this in practice: that
25 institution, that one of the points where the previous for-
26 profit entities or the owners of the for-profit entities
27 maintain close financial relationships with the new entity.
28 That should be of great concern to the Department and are of
29 great concern to us are included in these long-term leases of

1 all of the brick and mortar, you know, campuses and equipment
2 of the previous institution. And these are problematic
3 arrangements. So I was hoping that you might be able to
4 provide some insight as to why that suggestion wasn't
5 included. Greg, you're on mute.

6 MR. MARTIN: We still, we still have that in
7 consideration; some of them we have not been able to put in
8 yet, and so we will address that. Donna, you want to speak to
9 that at all?

10 MS. MANGOLD: No, just to tell you that leases are
11 something that we are looking at anyway, but we'll take the
12 issue of having it in the regulations more specifically back
13 and look at it, but it is something we look at now for sure.

14 MS. SHAVIT: Thank you. I appreciate it.

15 MR. WAGNER: Thanks, Donna. Brad, you're up.

16 MR. ADAMS: I'm back up in six here, the first part,
17 and it's not about the correctional institution. I just
18 remember there was a lot of back and forth about why we want
19 the distant ed program associated with the main campus to be
20 approved in the same state. I know this could be an
21 administrative burden to comply with this proposal and move
22 our distance ed programs to the main campus. We'd have to seek
23 additional approvals from states and creditors. I just don't
24 recall getting to consensus on six, so maybe I'm forgetting,
25 but I remember a whole lot of back and forth of being a heavy
26 lift if we're going to really do that. Jamie is shaking her
27 head. So yeah, so did we, did we resolve that issue?

28 [Inaudible].

1 MR. MARTIN: But where are you in six, Brad?

2 MR. ADAMS: I'm in six. Not what you added in six.
3 It's the statement that says for an institution that offers
4 on-campus programs and distance education programs, the
5 distance education programs are associated with the main
6 campus and it must be located where the administrative offices
7 are located and approved by its accrediting agency.

8 MR. MARTIN: Right, for an institution. I see what
9 you're saying for an institution that offers only distance
10 education programs. The institutions are located where its
11 administrative offices are located and approved. Right.

12 MR. ADAMS: That's just not the way it works in
13 operation today. And we didn't really resolve that. So I just
14 want to call-

15 MR. MARTIN: We'll open it up if you want to. I
16 certainly will entertain comments about that.

17 MR. ADAMS: I mean, I just, we hit on this for a long
18 time in week one, and I just don't think we got to a
19 resolution. So maybe I'll defer to Jamie next because I know
20 she and others had some things on this one.

21 MR. WAGNER: Barmak, you're next. Then Jamie, if you
22 want to join, join the queue.

23 MR. NASSIRIAN: Yes, I'm on the same provision and
24 have the same concern. It's worrisome to suggest that an
25 institution's location, that an online institution's location
26 could be a storefront in the least demanding jurisdiction it

1 can find when it is actually delivering education to
2 significant numbers of residents of another state. It seems to
3 me that this issue of location has to be tied to where the
4 education is being delivered, and if it is in more than one
5 state, maybe we can peg it to where they had the largest
6 number of students for the previous X many years. But tying it
7 to headquarters just doesn't make a lot of sense to me because
8 headquarters can move. We have not regulated higher ed
9 institutions that way. In general, higher ed institutions
10 don't tend to move physically when there is brick and mortar.
11 It is very easy to just move an office from one state to
12 another state across the country. So this creates forum
13 shopping and a real race to the bottom, leaving students
14 unprotected in the state where the institution may be
15 delivering the most, the most education.

16 MR. MARTIN: And Barmak, do you have suggested
17 language for how that, how you would-

18 MR. NASSIRIAN: I submitted, I'm not wedded to the
19 language I submitted. I defer to the wisdom of the group, but
20 I suggested as a policy proposition, if you had to pick a
21 state for an institution that does not have a physical
22 presence anywhere, that state would be where it enrolled the
23 largest number of institutions during the previous X many
24 years. I don't care how many years, but to make it workable to
25 just suggest that they should be under the jurisdiction of
26 whatever state they did the most business in.

27 MR. MARTIN: Thank you. Any other comments on that?

28 MR. WAGNER: Thank you, Barmak. We have Brad up.

1 MR. ADAMS: I'll go behind Johnson because I've got
2 another section, so.

3 MR. TYLER: Thanks. Yeah, I would just echo Barmak's
4 statement. You see it, saw this with credit card companies.
5 They all went to either North or South Dakota. I can't
6 remember which it was. It didn't have a cap on interest rates.
7 And so it's, you know, if there is no physical place, they're
8 all going to, they're going to find a very sympathetic,
9 profitable place to move to and it won't serve the students
10 well.

11 MR. WAGNER: Brad.

12 MR. ADAMS: I'd like to confirm something, you know,
13 a few days after the first session on January 27th, I asked
14 the Department for a clarification about the nonprofit
15 definition, and what I'm looking for here is a public
16 institution, is a type of nonprofit institution for the Higher
17 Education Act. And so what I'm exactly asking is do we
18 consider public institutions a form of nonprofit and will they
19 comply with number four as that it is in under main campus one
20 section four. Into that nonprofit institutions, generally not
21 an institution that does nonprofit include publics in that
22 definition they're in four. Last sentence. You know down to
23 600.4 right below it, it does say that, but I just want to
24 confirm that with the Department.

25 MR. MARTIN: So you're talking about one romanette
26 four?

27 MR. ADAMS: Yeah. Last sentence.

1 MR. MARTIN: For purposes of participating that, for
2 purposes of participating in the federal student aid programs?

3 MR. ADAMS: Yes.

4 MR. MARTIN: Okay. A nonprofit institution is not an
5 institution that has an obligor, either directly or through
6 any entity that has ownership on debt owed to a former owner
7 or institution. I'll, I'll, or for, either directly or through
8 any entity in its ownership chain [ph] enters into or
9 maintains a revenue-based agreement with a former owner of the
10 institution or a natural person related to or affiliated with
11 the former owner. So you're talking about an instance here,
12 Brad, where a public institution may have those things. I'll
13 ask Donna to respond to that.

14 MR. ADAMS: And I asked if we could send that
15 question to Donna back on January 27th, so hopefully she got a
16 chance to look at that.

17 MR. MARTIN: I'll give her a chance to respond.

18 MS. MANGOLD: A chance to get off mute. The
19 definition under the HEA does say other nonprofit, which we
20 believe means that a public has to be treated in the same way
21 as a nonprofit.

22 MR. ADAMS: Okay, well that answered my first
23 question, so then in romanette B, when we talked about
24 revenue-based agreements, I assume then Purdue University,
25 University of Arizona, University of UMass, University of
26 Arkansas are now subject to gainful employment? Am I reading

1 that correctly? Because they have revenue-based servicing
2 agreements.

3 MS. MANGOLD: Let me take a look. This has to do with
4 how we evaluate whether a school can convert, and we are, and
5 these are the categories that we deem to be examples and will
6 be looking at all of them in terms of new conversions.

7 MR. ADAMS: New conversions only going forward?

8 MS. MANGOLD: Well, we'll take back the issue in
9 terms of looking backwards.

10 MR. ADAMS: I'll get back in line.

11 MR. WAGNER: Barmak.

12 MR. NASSIRIAN: Wasn't somebody else ahead of me?
13 Okay, I'll go. I'm interested in the same provision, and I'm
14 concerned that not all, I don't know that public entities are
15 necessarily 501(c)(3)'s. So, it seems to me like you really
16 need to take a look to ensure that these provisions apply not
17 only to entities that convert to 501(c)(3) status but also
18 entities that purport to be public institutions. Whether you
19 apply it retroactively or not, it seems to me, I just want to
20 emphasize that we had conversations elsewhere with regard to
21 financial responsibility specifically, where the definition of
22 public needs to be firmed up. It would be non-controversial
23 now. It won't be non-controversial for very long because
24 public entities are headed in an ominous direction here. So I hope you
25 can make those conforming changes there as well. Thanks.

26 MR. WAGNER: Thanks, Barmak. Brad, you're up.

1 MR. ADAMS: So, I just want to go back to the
2 question, and I do think there is statutory guidance and Donna
3 referenced it, Barmak, so I do think you don't have to be a
4 501(c)(3) to be considered a nonprofit. You actually just read
5 600.4(a) right below it. It says an institution of higher
6 education is a public or other nonprofit education
7 institution. So to me, that's your answer right there. They
8 are nonprofits. So back to my question here. If you're not a
9 nonprofit based on a revenue-based agreement, and by
10 definition, I guess you qualify for GE as a for-profit and it
11 doesn't say a retroactive date. I'd like to continue the
12 discussion. We know these are in place. I just referenced four
13 of them that are active in place right now. Are they subject
14 to GE if this rule passes as-is?

15 MS. MANGOLD: We need to take a look at that issue
16 specifically with regard to the GE question you're raising.

17 MR. ADAMS: I think they should be. Thank you.

18 MR. WAGNER: Thank you, Brad. Jamie, you're up.
19 You're on mute, Jamie.

20 MS. STUDLEY: Barmak's point about the location
21 question and where education is delivered, I don't want to do
22 dueling hypotheticals, but if an institution is based in New
23 York and it provides distance education and its students
24 gradually over time shift south and west, your theory would,
25 your approach would require that New York state institution to
26 move someplace. Its students are no more or less fixed than an
27 institution and the students move too. So a simple approach
28 like where your students were for the last five years, the

1 largest number of students for the last five years could
2 change, and you'd be asking an institution to move every year.
3 And while I can solve that by saying one of the top five or
4 one of the top 10 where your students are located, I think the
5 point is we need better ways to get at the quality of the
6 institution and the variety across states and recognize that
7 there are both federal and accreditation reviews in addition
8 to the state level. Even if you're frustrated, which I
9 understand some people are with all three of them, the
10 solution is so potentially distracting, confusing, unhelpful
11 to quality control and accountability of an institution to
12 move around in that way that I think we should focus on better
13 ways to accomplish that. And I have a footnote, just some of
14 the things that Brad is saying, and while I respect the
15 importance of answering those questions, some of the
16 assumptions you're making about the nature of agreements are,
17 to my knowledge, not accurate, so I don't think, I just want
18 to be careful that people don't assume they that he is
19 accurately describing the nature either of the status or of
20 the arrangements that at least some of the institutions are
21 involved in. Donna does, but not all. Not everyone knows all.

22 MR. WAGNER: Thank you, Jamie. We have Barmak and
23 then Brad. Just want to give everybody a quick time check, it
24 is 3:22. We do have, 3:23. We have public comment coming up in
25 seven minutes. So Barmak and Brad, you guys are up.

26 MR. NASSIRIAN: I appreciate Jamie's comments, and I
27 agree with her that we do need some sort of a more nuanced
28 approach. It's just that I don't think a storefront should
29 qualify. You're essentially allowing the institution to select

1 who its authorizer is going to be and to which state's
2 consumer protection under current, particularly under current
3 reciprocity agreements. You're basically allowing the
4 institution to select whose consumer protection laws it's
5 going to apply nationally. So I see that as a problem. I
6 concede that focusing on the students retroactively may not be
7 the best solution, but that's the best I could come up with. I
8 would welcome some more, some more dialog on the topic at some
9 point.

10 MR. WAGNER: Thank you, Barmak. And Brad.

11 MR. ADAMS: You know, I don't know all the specifics
12 of the West Coast deal that maybe Jamie does, but I do know
13 Purdue acquired Kaplan for a dollar and entered into a 20-year
14 revenue share agreement, and UMass paid a sizable amount of
15 money for Brandman. I need to look into more on the Arkansas
16 Grantham deal, but I just want to point out that we need to
17 apply these rules consistently to all programs. I mean, in all
18 areas of higher education, and we can't just separate out ones
19 because we like them or they're big names or they have big
20 basketball teams. So I want to be clear on this. By the way it
21 reads, we need a clear definition of whether or not Purdue is
22 considered a for-profit from this point forward. Thank you.

23 MR. WAGNER: Thanks, Brad. Let's see, I don't see any
24 other comments. Greg, do you, would you like to take a
25 temperature check on, was it 600.2, the definitions?

26 MR. MARTIN: Sure.

27 MR. WAGNER: Okay. We have everyone's thumbs up high
28 on 600.2, the definitions. Okay, I don't see any thumbs down.

1 Thank you. I'll turn it back to you, Greg. Just be mindful,
2 we, it's 3:25.

3 MR. MARTIN: Alright. Just looking at 600.4 briefly,
4 I think we can probably get this list, get, go through this
5 even if we don't finish discussion on it. So if we can have
6 Rene pull up 600.4. Here we are. Institutions of higher
7 education, and we have made a change here in (a), we have
8 deleted the word private to match the statute exactly and
9 lighten [ph] some confusion about the text from some
10 negotiators, so an institution of higher education as a public
11 or other nonprofit educational institution. And that is the
12 only change over the last amendatory text that is in 600.4. So
13 we do have a brief amount of time if we have any comments
14 about what is there.

15 MR. WAGNER: Okay.

16 MS. STUDLEY: I have one comment. We would have been,
17 we would have done a better job writing that sentence than
18 Congress did.

19 MR. MARTIN: Well, we just won't tell them that,
20 right?

21 MR. WAGNER: And we have Emmanuel joining us for a
22 comment.

23 MR. GUILLORY: Hello. Yeah, I believe this was pretty
24 much clarified in the previous discussion, but I just wanted
25 to make sure because we were hearing some concerns about the
26 way this was drafted, and I understand now that you're just
27 taking the exact language that's in the HEA. But is it your

1 intent to treat all public institutions as if they are 501(c)(3)'s?
2 Because technically, not every single public institution is a
3 501(c)(3).

4 MR. MARTIN: I don't believe so, but I'll let Donna
5 address that.

6 MS. MANGOLD: I'm sorry, can you give the question
7 again?

8 MR. GUILLORY: So what I've been hearing back from
9 folks is they were a little bit confused as to why in 600.4,
10 you added the word other and now I understand that you did
11 that because in the HEA it says it's a public or other
12 nonprofit institution, but is the intent of the Department to
13 treat all public institutions as nonprofit institutions since
14 every single public is not technically a 501(c)(3)? The vast
15 majority of them are, but not every single one.

16 MS. MANGOLD: And we have to maybe take a look at the
17 language again to see whether it makes sense to actually for
18 purposes of public institutions to include that as the same kind as the
19 requirement as it is for other nonprofits. So that might solve
20 that issue. But we need to take a look at that.

21 MR. GUILLORY: Yeah, further clarification would be
22 great.

23 MR. MARTIN: Thanks, Donna. I think we have to cut it
24 off soon, I'm saying, so we probably ought to forego any more
25 comments until tomorrow.

1 MR. WAGNER: I was just going to say the same thing,
2 Greg, which was probably a good stopping point. We can carry
3 over tomorrow with 600.4 and we'll, should be ready for public
4 comment momentarily. It's 3:28 eastern.

5 MR. ROBERTS: Alright, Kevin, shall I begin admitting
6 folks?

7 MR. WAGNER: Yes, please. Who do we have Brady?

8 MR. ROBERTS: Our first speaker is Jessica King
9 representing themselves. They are a veteran.

10 MR. WAGNER: Thank you. Good afternoon, Jessica, can
11 you hear me? Jessica, can you hear me?

12 MR. ROBERTS: She's logged in under Jen, so Jen, can
13 you hear us? Oh, you just muted yourself, but alright, take it
14 away, Kevin.

15 MR. WAGNER: No, go ahead. Jen, can you hear us, or
16 Jessica?

17 MS. KING: My name's Jennica. That's why I'm-

18 MR. WAGNER: Oh, Jennica. Okay, welcome.

19 MS. KING: Hi, everyone. So sorry. Just I'm pulling
20 up my little statement here. They said to stick with it, so.

21 MR. WAGNER: Alright, you-

22 MS. KING: Can everyone hear me properly?

1 MR. WAGNER: Yes, we can hear you, thank you. You
2 have three minutes for public comment, which will begin when
3 you start speaking. Go ahead.

4 MS. KING: Alright. Good afternoon. My name is
5 Jennica King and I'm an Army veteran and the spouse of an
6 active duty service member. I used my GI Bill to attend
7 Ashford University. One reason I went there is that they
8 stressed that they were military friendly and that my GI Bill
9 would cover all my tuition. I trusted them, so in December
10 2016, I enrolled in the bachelor's degree program for
11 psychology. Pretty soon, I found out that military friendly
12 was just empty words to get me to sign up. There was nothing
13 special that veterans received, and actually, I felt
14 mistreated. The school made me feel irrational when I asked
15 about my financial aid and other administrative questions.
16 They were short and rude with me, and the counselors and
17 military representatives that were promised were nowhere to be
18 found.

19 MR. ROBERTS: Jennica, it looks like you got muted if
20 you want to unmute yourself.

21 MS. KING: Okay. Trying to see where was the last
22 part you guys heard?

23 MR. ROBERTS: It was only for about for about 10
24 seconds if you just want to walk back.

25 MS. KING: Okay.

26 MR. WAGNER: Were nowhere to be found.

1 MS. KING: Okay, mistreated, okay. So, the school
2 made me feel irrational when I asked about my financial aid
3 and other administrative questions. They were short and rude
4 with me, and the counselors and military representatives that
5 were promised were nowhere to be found. Even the instructors
6 were not responsive to the mental and physical injuries
7 commonly faced by veterans. But the biggest problem came in
8 April 2020, when I was a few months away from graduating. I
9 learned that my GI Bill benefits had expired in March, but the
10 school did not tell me so I could take steps to find other
11 benefits or ways to cover my tuition. Instead, Ashford just
12 put a balance on my account, expecting me to pay out of
13 pocket. I was shocked that the benefits were gone when I was
14 promised they would cover everything, and I was furious that
15 they were not lifting a finger to help me find a way to finish
16 my degree. Then, when I reviewed my balance, I realized the
17 problem was worse than I thought. I found out the school was
18 not applying the full military discount that the recruiters
19 have promised and I had received earlier in my time at the
20 school. Also, I discovered I was being overcharged for courses
21 and being charged a higher rate than I was told when I
22 enrolled. This meant that my GI Bill benefits were exhausted
23 long before they should have been, and I owed a debt that
24 never should have been there. When I finished the program,
25 Ashford told me that they would not give me my transcript and
26 degree if I didn't pay the balance they claimed I owed. This
27 was a major problem because I was hoping to continue my
28 education at a different school or get a job, and I really
29 needed my transcripts and degree to do that. The bottom line
30 is that Ashford made promises to get me to enroll at the

1 school that did not turn out to be true. I would never have
2 gone to Ashford if I had known that my GI Bill was not going
3 to cover all my tuition, and that Ashford is unfriendly and
4 unhelpful to military veterans, especially those experiencing
5 issues like PTSD. I hope that you write strong [30 seconds] I
6 hope that you write strong policies to protect veterans and
7 stop the type of recruiting and financial aid problems that I
8 experienced at Ashford. Thank you.

9 MR. WAGNER: Thank you, Jennica, for your comments
10 and for your service.

11 MS. KING: Thank you. No problem. Bye.

12 MR. WAGNER: Who do we have next, Brady?

13 MR. ROBERTS: Alright, Kevin, I just admitted Arty
14 S., who is representing themselves.

15 MR. WAGNER: Okay, great.

16 ARTY S.: Hi, this is Arty. Can you all hear me?

17 MR. WAGNER: Yes, Arty. There you go. If you could,
18 if you're comfortable, enable your screen, that'd be great. If
19 not, you have three minutes for public comment, which will
20 begin when you start speaking.

21 ARTY S.: Okay. And I'm with AYA, I wanted to say.

22 MR. WAGNER: Okay, go ahead.

23 ARTY S.: I'll go ahead and start. Thank you for this
24 opportunity to speak and to share a sliver of my student loan
25 experience for the purpose of advocating for gainful

1 employment and financial responsibility. As a child of working
2 class immigrants whom I saw in multiple uniforms a day as they
3 switch shifts between places of employment, my student loan
4 experience has been a dark cloud of shame and guilt hovering
5 over the past 12 years of my adult life. Higher education was
6 supposed to be the great equalizer, the mechanism to break the
7 cycle of overworked and underpaid people of color. It was
8 supposed to be the tool that empowered generations like mine,
9 the most diverse at its height to give back to the country
10 they love, build a foundation solidified by opportunity and
11 make up for the burdens of our parents who sacrificed in the
12 face of inequities to give us the American dream. The higher
13 ed dream was taught to me throughout my formative years. I now
14 understand that this dream was illusory. The path I was
15 encouraged to take was not cultivating a manifestation of this
16 dream. Rather, it was targeting me to fall prey to the harsh
17 and oppressive impact of student loans for others to profit.
18 To illustrate a real life example that I wish were only in
19 theory, I graduated from college in 2006 from a well-known
20 public university. There were no job prospects for me when I
21 graduated, and then I also went to law school. The job outcome
22 after law school was the same. At the time, neither entities
23 offered much viable, relevant help in the job realm. The way
24 you made it was by who you knew or the cushion of generational
25 wealth. The rest of us were left to our own devices
26 struggling. I ended up taking a position at a nonprofit with a
27 starting salary of thirty two thousand dollars. The curious
28 part is that it took me two degrees to get to a position that
29 someone else could get with a bachelor's degree due to the
30 connections they had or the familiarity they had with the

1 sectors landscape by virtue of who they were in the society,
2 likely a non-person of color. What I mean to say that me as a
3 South Asian, I did not have awareness or access to a variety
4 of career paths because I didn't know anyone in diverse
5 industries. So it took a lot more resources, including time
6 and settling for salaries to even make it into a field, which
7 I was overqualified. \$100,000 plus in debt plus interest in a
8 thirty two thousand dollar income is not viable. It is not
9 possible to build a future with this. Furthermore, this is not
10 the deal I made when I signed up for loans. In fact, I was
11 reading an artifact received in high school from the 2000s
12 that discussed if education was worth it. It pushes that
13 higher education was more valuable than not having a degree
14 and showed a scale of an average on average, how someone makes
15 with a degree. With a post-grad degree was supposed to be 96
16 to 144K with a high school degree was 46K. I graduated law
17 school and started at a salary of thirty two thousand. That is
18 below both the post grad and undergrad degree averages. I
19 believe that if there were accountability practices like
20 gainful employment available, this would not have happened.
21 This also goes to show that opportunities are not the same for
22 everyone, especially working class families and those who are
23 black, indigenous or people of color. As such, because not all
24 borrowers and working class families are more likely [30
25 seconds] and experience more inequities in access to jobs, as
26 well as salary and careers, the U.S. Department of Education
27 needs to insert accountability measures to ensure that these
28 groups are not oppressed by predatory loan tactics and
29 promises of a dream which society has not yet made a reality.
30 Reinstating gainful employment will help ensure that these

1 student borrowers are no longer just targeted, groomed and
2 exploited for gain. Then I had more, but it's going to be too
3 long. Thank you all so much for the time.

4 MR. WAGNER: Thank you for your comment.

5 ARTY S.: Thank you, and can I submit these like
6 these comments via email as well?

7 MR. WAGNER: Sure.

8 ARTY S.: Okay, thank you all so much, I really
9 appreciate this.

10 MR. WAGNER: Thank you. Brady.

11 MR. ROBERTS: I just admitted David Rhodes, who is
12 here representing the School of Visual Arts.

13 MR. WAGNER: Alright. David, connecting. Hello,
14 David, can you hear us?

15 MR. RHODES: I can hear you.

16 MR. WAGNER: Great, welcome. You have three minutes.
17 You have three minutes for public comment, which will begin
18 when you start speaking, so you have the floor. Go ahead.

19 MR. RHODES: Thank you. Good afternoon, my name is
20 David Rhodes. I'm president of the School of Visual Arts, SVA,
21 in New York City. Thank you for the opportunity to comment on
22 the gainful employment regulations. In Anthony P. Carnevale's
23 most recent paper on ROI for low income students based upon
24 long-term earnings, SVA ranked 998 out of 3,110 institutions.
25 Even though SVA ranks in the top third of institutions, since

1 the 2014 GE metrics were applied only to for-profit programs
2 and short-term programs and used only short term earnings,
3 some of SVA's programs failed. If the same metrics were
4 applied to degree programs at public and not for profit
5 institutions, it's almost a mathematical certainty that some
6 would score lower than SVA's programs and fail the metric.
7 Therefore, it is difficult to see how this advances the
8 Department's goal of ensuring that low income students have
9 access to programs that can benefit them over their working
10 lives. Recently, the Secretary updated the College Scorecard
11 median earnings data. SVA's graduates earnings increased from
12 \$29,900 dollars for six years after graduation to \$50,066
13 dollars ten years after graduation, exceeding the median for
14 all four-year colleges. Given the volatility of results,
15 depending upon the date chosen to measure earnings, it is
16 difficult to justify that earnings shortly after graduation
17 are a reliable way to judge the quality of a program whose
18 benefits accrue over a lifetime. Ultimately, the 2014 GE rule,
19 as constructed, is complicated and out of date. At a minimum,
20 the Department's current proposal has not cast the net wide
21 enough to protect students from programs at all institutions
22 that would fail the metric. If the Department truly wants to
23 put students first and center students in this discussion, it
24 would use its existing authorities to develop a programmatic
25 debt earnings metric widely available to prospective students
26 for all programs that did not arbitrarily impact [30 seconds]
27 and not others. Thank you.

28 MR. WAGNER: Thank you.

29 MR. RHODES: Thanks for the warning.

1 MR. WAGNER: Thanks for your comments.

2 MR. RHODES: You're welcome. I now disconnect. Is
3 that it? Thank you very much.

4 MR. WAGNER: Alright. Brady, who do we have?

5 MR. ROBERTS: I just admitted Warren Rosenberg, who
6 is here representing the College of Westchester.

7 MR. WAGNER: Great. Welcome, Warren.

8 MR. ROSENBERG: Good afternoon.

9 MR. WAGNER: You have, I just want to let you know
10 you have three minutes for public comment and will begin once
11 you start speaking, so take it away.

12 MR. ROSENBERG: Wonderful. Thank you. The regulations
13 being considered by the Education Department are directed
14 toward continuing to unfairly and unjustifiably punish
15 colleges in the proprietary sector for outcomes that are in
16 fact often better than those of many institutions in the
17 public and not for profit sectors. For institutions like the
18 College of Westchester, which are members of New York's
19 Association of Proprietary Colleges, or APC, outcomes, as
20 cited by third party sources are among the best in New York
21 state in the nation. For example, the 2022 U.S. news ranking
22 lists the College of Westchester as one of the top 20 regional
23 colleges in the north, with two other APC colleges rated
24 within the top 40. Within the U.S. News New Social Mobility
25 category, the College of Westchester has been ranked as the
26 number one regional college in the North among all sectors,

1 with another APC college making the top 20. In a Georgetown
2 University research study released just last month,
3 highlighting colleges where low income students get the
4 highest return on investment, the College of Westchester,
5 again as an example, was ranked number one in the nation among
6 private for-profit colleges that grant associate degrees and
7 serve more than the national median share of Pell students.
8 And we are not alone. The government's own data released by
9 the National Center for Education Statistics shows that
10 through the two decades between 2000 and 2020, the cost of
11 undergraduate education, and that's exclusively tuition and
12 fees, has increased by 167 percent at public four year
13 institutions, by 126 percent at private, not for profit four-
14 year institutions, while increasing by only 44 percent at
15 proprietary sector four-year colleges. America's proprietary
16 sector colleges have been more successful at controlling their
17 tuition costs than have their counterparts, private not for
18 profit sectors, yet continue to be unfairly characterized as
19 predatory. Granted, there are some poor performing colleges in
20 all sectors, but holding all colleges in the proprietary
21 sector accountable for the poor outcomes of some, while
22 ignoring the poor outcomes and escalating costs of many public
23 and private, not for profit colleges is unfair and
24 unjustifiable [30 seconds]to low income career-focused
25 students served by this sector. We applaud and support the
26 appeal of 17 democratic members of Congress in their November
27 18, 2021, letter to the House Leadership to, and I quote,
28 "Bring accountability to all sectors of higher education" and
29 not to single out and punish proprietary sectors at the risk
30 of having, and again, I quote from those congresspersons, "The

1 disparate impact on minority and first-generation students."
2 Thank you.

3 MS. JEFFRIES: Thank you.

4 MR. WAGNER: Thank you, Warren. Brady, before you let
5 someone in, real quick, I just want to mention that there's no
6 submission of written comments at this time, and they will be
7 opened up during the end ERM period of this process. That
8 being said, Brady, who do we have?

9 MR. ROBERTS: I believe they are all set. We have
10 Jared Bass, who's here representing the Center for American
11 Progress.

12 MR. WAGNER: That's great. Jared, welcome.

13 MR. BASS: Hi, thank you.

14 MR. WAGNER: You can hear us, obviously, right?

15 MR. BASS: Yes.

16 MR. WAGNER: Okay, great. You have three minutes for
17 public comment, which will begin when you start speaking. Take
18 it away.

19 MR. BASS: Great, thank you. My name is Jared Bass
20 and I'm the senior director for higher education at the Center
21 for American Progress. And thank you for this opportunity to
22 comment. At a press conference on January 27, Secretary
23 Cardona said, because we need to make sure schools that focus
24 on career programs aren't leaving students with mountains of
25 debt without good job opportunities, we've begun the process

1 to create a strong gainful employment rule. Students will not
2 be taken advantage of for financial gain, and all we do at the
3 Department will be student centered. A strong gainful
4 employment rule must be student-centered. As you shape the
5 gainful employment rule through this negotiated rule making,
6 keep the following students in mind. The students have granted
7 permission for their names and stories to be shared. Ariel
8 from New Hampshire is a Latina borrower from a low income
9 background who graduated from Full Sail University in 2020 and
10 owes around \$100,000. Ariel said she pursued higher education
11 to be an animator and the requirement for the industry is to
12 have a bachelor's degree. Ariel is discouraged. She's not able
13 to find employment in her field, and she's afraid of her
14 financial outlook for when she has to start making payments.
15 She says, in total, I'll be paying around \$800 a month just
16 for my student loans. I'll be making minimum wage, which is
17 \$15 an hour. Considering taxes at all, I'll only be bringing
18 home \$2,000 a month. My loans are half my overall income.
19 Ariel reported currently being unable to afford food, medical
20 insurance and other basic necessities. She says, I'm
21 struggling to find hope that I won't be homeless someday.
22 Michael from Illinois graduated in 2014 from DeVry University
23 and is a first-generation Asian-American borrower, a parent
24 who owes \$300,000. He defaulted on his loans. Michael says
25 that he pursued his degree to get a better paying position and
26 learn how to make change for the businesses I work for. But
27 even years after graduation, his career prospects have not
28 improved. He says, my wife and I are just barely able to meet
29 our obligations, and the student loan debt has been like an
30 anchor. The school's recruiter claimed I should be able to be

1 more marketable with a master's degree, but I still can't seem
2 to make what I deserve. Michael just wants to be able to
3 provide for his family, but fell prey to questionable
4 practices at a for-profit college. These student experiences
5 underscore the urgent need for improved accountability
6 measures to prevent for-profit institutions from continuing to
7 mislead students. Regulations and regulatory choices have
8 implications not just for institutions but for students and
9 borrowers as well. [30 seconds] Thank you. These are real
10 lives that have been damaged. The Department can hold for-
11 profit institutions accountable for the experiences of
12 students like Ariel and Michael by drafting and enforcing a
13 strong gainful employment rule. Thank you for your time.

14 MR. WAGNER: Thank you, Jared, for your comment.
15 Brady, who do we have now?

16 MR. ROBERTS: Kevin, I just admitted Susan Haise, who
17 is the owner of the Institute of Beauty and Wellness.

18 MR. WAGNER: Welcome, Susan, can you hear us?

19 MS. HAISE: I can hear you perfectly, thank you. I
20 just had to unmute. My name is Susan.

21 MR. WAGNER: Real quick, just real quick before you
22 get started, I hate to interrupt. You have three minutes for
23 your public comment, which will begin right when you start
24 speaking. Take it away.

25 MS. HAISE: Thank you very much. My name is Susan
26 Haise. I'm the owner of the Aveda Institute of Beauty and
27 Wellness, located in Milwaukee and Madison, Wisconsin. I've

1 been teaching in the industry, in school management for the
2 last 28 years. 94 percent of my students are women. 52 percent
3 of them are Pell Grant eligible, and more than half of my
4 graduates desire to own their own small business after they
5 graduate. Since 1993, when I opened the school, I've graduated
6 thousands of students who have gone to work in successful
7 salons and spas and have opened their own small businesses. I
8 want to emphasize my commitment to education that not only
9 leads to licensure, but also leads to a fulfilling career in
10 the industry. 79 percent of, the graduation rate is 79 percent
11 for our institutes. Our median loan debt is approximately
12 \$6,333 dollars. Our graduates' monthly payments are \$63
13 dollars, and my median earning in the first two years of
14 employment after graduation is \$34,885 dollars. I care deeply
15 about my students and their future. I'm here today to
16 highlight my primary concern, which is the proposed gainful
17 employment rule. I am a supporter of documentation in being
18 gainfully employed for all educational opportunities, both
19 for-profit and not for profit. It is well recognized that the
20 cosmetology industry has a high prevalence of under-reported
21 and unreported income. The 2014 rule provided institutions
22 with an appeal up. [Audio] does not include the opportunity to
23 appeal, and I do think that that is essential for all properly
24 run businesses to be able to appeal. Currently or instead of
25 acknowledging we currently [30 seconds] Thank you. We
26 currently provide, what we did, were providing, we were, they
27 were audited. 50 percent of our students needed to provide us
28 with income information that was audited and unbiased. A valid
29 appeal process had to be, should be provided. I want to close
30 by reminding you that our schools are, my schools are

1 dedicated to our students. They have high student outcome
2 rates. We're supporting small, small businesses as well as
3 lots of women in our community who need flexibility-

4 MS. JEFFRIES: Susan, your time is up.

5 MS. HAISE: Thank you so much for the opportunity.

6 MR. WAGNER: Thank you for your comment, Susan.

7 Brady, who do we have?

8 MR. ROBERTS: I just admitted Will Hubbard, who is
9 here representing Veterans Education Success.

10 MR. WAGNER: Welcome, Will. You have three minutes
11 for your public comment, which will begin when you start
12 speaking.

13 MR. HUBBARD: Great. Hello and thank you for the time
14 to present here today. My name is Will Hubbard and I'm a proud
15 Marine Corps veteran and I serve as vice president for
16 veterans and military policy with a group called Veterans
17 Education Success. And indeed, that is our mission. As you
18 work on gainful employment, financial responsibility,
19 administrative capability and the rest of these important
20 topics, I feel it's imperative that we remember why exactly
21 we're all here. Who, after all, is the ultimate customer of
22 higher education? I've received permission from several
23 student veterans to share their voices here today as a
24 reminder of the very real consequences of these negotiations.
25 For them, these are not just policy discussions, but rules
26 that have life changing impacts. First, Chris, a Navy veteran
27 from North Vernon, Indiana, says, "While I was recovering from

1 spinal surgery, I decided to put my hard earned GI Bill to
2 work and get a college education. I chose ITT Technical
3 Institute. I chose wrong. I did finish school, but I did so
4 with issues still from ITT and still don't have my degree. ITT
5 refused to release my transcripts. I still haven't received a
6 reason why. Further, ITT soaked up all of my GI Bill money and
7 then took out student loans for me without my knowledge."

8 Second, Patricia, a Navy veteran from Coconut Creek, Florida,
9 reports, "As the first person in my family to attend college,
10 I didn't understand the enrollment process, and I believe
11 DeVry willingly took advantage of that. Low quality for-profit
12 schools like DeVry have robbed many of us of our hard earned
13 GI Bill benefits, leaving with, leaving us with worthless
14 degrees, crushing loan debt and zero job prospects upon
15 graduation." Third, Jay, a Marine Corps veteran from Oregon
16 City, Oregon, had this to say, "One year before I left the
17 service, the for-profit university, University of Phoenix,
18 began contacting me nonstop, trying to convince me to enroll.
19 They called day in and day out, declaring themselves a
20 military friendly school. I enrolled in their online Bachelor
21 of Science in business. Soon, however, I learned the hard way
22 that Phoenix's hard sell was just that, a sales pitch." And
23 fourth, Carlette, a Navy and Air Force veteran from Austin,
24 Texas, notes, "The University of Phoenix lied when it was
25 recruiting me and strung me along [30 seconds] my money from
26 my military benefits that it could. They actually came on to
27 my military installation and lied to me and my fellow vets.
28 They kept adding courses that were not pertaining to my degree
29 plan. They changed my program twice without my knowledge." As
30 we close tomorrow with the discussion of the 90/10 rule,

1 please let us remember who this is about, the students. Thank
2 you.

3 MR. WAGNER: Thank you, Will, for your comment. Who
4 do we have, Brady?

5 MR. ROBERTS: I just admitted Tomas Leon, who is here
6 representing themselves.

7 MR. WAGNER: Welcome, Tomas, can you hear us?

8 MR. LEON: It's okay. Can you hear me?

9 MR. WAGNER: Yeah, great. Before we get started, you
10 have three minutes for public comment, which will begin when
11 you start speaking. Take it away.

12 MR. LEON: Great, thank you so much. Well, thank you
13 for having me. Hello. My name is Manuel Tomas Leon, and I'm a
14 father of four, married for 31 years. I grew up from humble
15 beginnings in a barrio, a neighborhood on the west side of
16 Tucson, Arizona. I started a family early in life and began
17 pursuing my education as a student athlete. After overcoming
18 many barriers to completing my bachelor's degree as a first-
19 generation student, I wanted to earn my master's degree. I
20 looked around for MBA programs and could not find one that
21 reflected my life circumstances and how busy I was as a
22 father, as a husband, and in my career at that time. I was
23 fortunate that to be introduced to the University of Phoenix,
24 which offered me flexibility to take classes, test and
25 participate in learning groups, on my time and on my terms.
26 The conventional university doesn't work for everyone.
27 Students need an innovative university that meets them where

1 they are at in life and in their career that provides an
2 exemplary academic curriculum and experience. I'm a proud
3 alumnus of the University of Phoenix and grateful that it
4 allowed me to achieve my life and career goals. It enabled me
5 to have a very successful career as a healthcare executive, an
6 entrepreneur investor. I am living the American dream. I'm not
7 a veteran, but my father proudly served in World War II and I
8 have a brother-in-law that's a veteran. In honor of their
9 service and others, I believe that the proposed rules 90/10
10 under 34 CFR 6682.8 [ph] will have a particular impact on
11 veterans and how they use their GI Bill and other federal
12 funds to pursue higher education. This will have an unfair and
13 unjust impact on veterans. I believe this rule will take the
14 decisions out of the hands of veterans as how they as how they
15 define quality education and the institutions they select to
16 pursue their education. At this point in our country's
17 history, we need to promote policies and rules that advance
18 diversity, equity and inclusion, not exclusion. I want to
19 thank you for considering my thoughts and my feedback and
20 supporting veterans' choice to fulfill their American dream.
21 Thank you for your time.

22 MR. WAGNER: Thank you very much for your comment.
23 Who do we have next, Brady?

24 MR. ROBERTS: I just admitted Roxanne Garza, who is
25 here representing UnidosUS.

26 MR. WAGNER: Welcome, Roxanne.

27 MS. GARZA: Thank you.

1 MR. WAGNER: Before you get started, really quickly,
2 you have three minutes for public comment, which will begin as
3 soon as you start speaking. Take it away.

4 MS. GARZA: Good afternoon. Thank you for providing
5 the public with an opportunity to comment on the topics
6 presented to this committee. My name is Roxanne Garza and I am
7 representing UnidosUS, and as a leading advocate on education
8 policy encompassing the perspectives of Latinos in higher
9 education, we strongly suggest that the committee take into
10 account the unique experiences of Latino students and
11 borrowers as you come to the decision on these regulations.
12 The gainful employment rule in particular, has serious
13 implications for Latino students who tend to be the first in
14 their family to go to college, and it's also common for them
15 to be older, have children, come from low-income backgrounds
16 and enroll part-time. This makes them especially vulnerable to
17 the promises made by predatory colleges to provide flexible
18 schedules and gainful employment after graduation or program
19 completion. In my comments today I will share a story of a
20 student who granted permission for his name to be shared. Luis
21 Torres graduated from Kaplan University online and says he was
22 lied to about his degree and his loans. He graduated in 2010
23 and now owes \$92,000. Luis is struggling to afford his loan
24 payments. He originally pursued higher education because,
25 quote, "I wanted to be the first in my family to go to
26 college." Without student debt, he planned to continue his
27 education and fulfill his dream of starting a business to
28 service his community. Luis says, quote, "Some of the colleges
29 and universities are using students to make money out of them.
30 When I went to college, loans were thrown at me like it was my

1 only option to get an education." Luis was preyed upon by
2 Kaplan University online like thousands of other Latino
3 students and was [inaudible] low quality education targeted by
4 lenders, and now he finds that his degree did not get him any
5 closer to fulfilling his dream. Luis is not an exception.
6 Without a strong GE rule in place, Latino college completion,
7 debt accumulation and earnings outcomes will only worsen.
8 Latino students already experience lower completion rates due
9 to a myriad of systemic barriers in higher education. But when
10 they attend for-profit colleges, they often end up with lower
11 completion rates, higher debt burdens and default rates. These
12 outcomes should alarm anyone who's promoting racial equity in
13 higher education. For-profits often promise students well-
14 paying jobs right after graduation. But more than half of
15 these institutions leave many of their graduates earning less
16 than a high school graduate, and we often hear an argument
17 from for-profit institutions that the demographics of their
18 students are what's at play in their failing of the GE rule.
19 That's the racial wage discrimination that the students face
20 in the labor market that makes it more difficult for their
21 graduates to repay their loans. [30 seconds] Yet, while this
22 is true that racial income disparities exist in the labor
23 market, we've also seen recent data that show that Hispanic
24 serving institutions are actually shown to provide the most
25 economic mobility for their students. And other research
26 points to the fact that there's little correlation between the
27 share of Black and Hispanic students and failing a high school
28 audience metric, and that it has much more to do with the
29 sector level and size of the institution. The Department can
30 restore the promise embedded in the Higher Education Act, a

1 key civil rights law built upon the idea that additional
2 education does sometimes end up in the social and economic
3 mobility. Thank You.

4 MR. WAGNER: Thank you, Roxanne. That completes the
5 public comment for today, Thursday. This is the end of the
6 session for today, and we will be back up tomorrow at 10
7 o'clock. I want to thank everyone for their time and their
8 comments and all your hard work and see you guys tomorrow. We
9 can stop the live feed.

10 STATE OF NEW JERSEY)

11 I, Jamie Young, Shorthand Reporter in and for the
12 State of New Jersey, do hereby certify that the above and
13 foregoing contains a true and correct transcription of the
14 public hearing that was held by the Department of Education
15 virtually, on February 17, 2022.

16 Certified by me this 27th day of February 2022.

17
18
19
20 JAMIE YOUNG

21 Precise Transcripts

22 45 North Broad St.

23 Ridgewood, NJ 07450

24 (201) 677-8496

1 Department of Education, Office of Postsecondary
2 Education

3 Zoom Chat Transcript

4 Institutional and Programmatic Eligibility Committee
5 Session 2, Day 4, Afternoon, February 17, 2022

6 From Jamiene Studley to Everyone:

7 Laura Rasar King will take the chair for accreditors
8 on (32)

9 From Jamiene Studley to Everyone:

10 The FMCS folks no longer show up on my Chat by name
11 so i couldn't just advise you of this change.

12 From Marvin Smith (P) 4 Year Publics to Everyone:

13 While I appreciate Johnson perspective, I think this
14 debate needs to be moved out of this Neg Reg negotiation as
15 the devil is in the detail 1.Many public institutions are
16 required by their states to actively pursue debts. They will
17 need to find other avenues to collect on debts that are owed.
18 2.It is likely more institutions will need to turn to
19 collections sooner than they may already do—a step
20 institutions would prefer not to take. Holds give them a way
21 to get attention from students when calling, texting,
22 emailing, or the postal service isn't successful.

23 3.Ending the use of holds may result in less-
24 resourced institutions being hit the hardest, particularly
25 community colleges.

1 From Anne Kress (P) Comm College to Everyone:

2 +1 Marvin

3 From Kelli Perry - (P) Private Non-Profit
4 Institutions to Everyone:

5 +1 Marvin

6 From Anne Kress (P) Comm College to Everyone:

7 This is an important issue and needs to be
8 addressed, but this is not the forum. Again, in many states,
9 this is state law/policy, it is not institutional discretion.

10 From Kelli Perry - (P) Private Non-Profit
11 Institutions to Everyone:

12 + 1 Anne

13 From Adam Welle, MN AGO to Everyone:

14 I understand Marvin's comment and concern, but the
15 reason it gets students' attention is that the schools have an
16 extraordinary level of leverage over students when it can
17 withhold the transcript for past education. At least when a
18 school must follow traditional debt collection methods, there
19 are legal protections and safeguards. Ordinary creditors are
20 used to these rules and they are not onerous.

21 From Beverly Hogan Primary/MSI to Everyone:

22 +1 to Anne

23 From Ernest Ezeugo (P) Students and Loan Borrowers
24 to Everyone:

1 [https://younginvincibles.org/transcript-withholding-](https://younginvincibles.org/transcript-withholding-across-new-yorks-neighborhoods-a-crisis-for-communities-of-color/)
2 [across-new-yorks-neighborhoods-a-crisis-for-communities-of-](https://younginvincibles.org/transcript-withholding-across-new-yorks-neighborhoods-a-crisis-for-communities-of-color/)
3 [color/](https://younginvincibles.org/transcript-withholding-across-new-yorks-neighborhoods-a-crisis-for-communities-of-color/)

4 From David (A) FA Administrators to Everyone:

5 +Anne

6 From JessicaRanucci2 to Everyone:

7 The Department proposed a ban on transcript
8 withholding as part of certain PPPAs, on page 7 of the
9 certification proposal, so I think this is the appropriate
10 place to discuss this issue.

11 From David Socolow to Everyone:

12 Anne and Marvin, is there any state with a law
13 specifically requiring transcript withholding to collect
14 students' debts to public institutions (as opposed to more
15 generally requiring the institutions to collect debt without
16 specifying this particular method)?

17 From Ernest Ezeugo (P) Students and Loan Borrowers
18 to Everyone:

19 I'm also curious about the answer to that question,
20 David.

21 From Anne Kress (P) Comm College to Everyone:

22 Kelli has made my point, so I'm just going to +1 her
23 in interest of time. I would also add that there are serious
24 concerns about state reciprocity posed by 32.

1 From Ernest Ezeugo (P) Students and Loan Borrowers
2 to Everyone:

3 We were told by Greg that this issue would be
4 discussed as a part of this paper. I don't understand
5 suggestions that this is not the time to discuss it.

6 From Ernest Ezeugo (P) Students and Loan Borrowers
7 to Everyone:

8 +1 Adam

9 From Carolyn Fast (P) Consumer advocates/Civil
10 Rights to Everyone:

11 +1 Adam

12 From Beverly Hogan Primary/MSI to Everyone:

13 What are parameters of withholding transcripts for
14 payments?

15 From David Socolow to Everyone:

16 +1 to Adam's point. Does any State really mandate
17 its institutions to use transcript withholding as a specific
18 method of institutional debt collection?

19 From Barmak Nassirian (A) Servicemembers & Vets to
20 Everyone:

21 +1 on ED's position re (32) (i) and (ii)

22 From Yael Shavit State AG (A) to Everyone:

1 The language we proposed is based on the language of
2 the California statute

3 From JessicaRanucci2 to Everyone:

4 +1 to using the California statute as a model for a
5 provision in PPAs

6 From Laura Rasar King (A) Accrediting Agencies to
7 Everyone:

8 Can we discuss one issue at a time? Section 32 and
9 then transcripts?

10 From Ernest Ezeugo (P) Students and Loan Borrowers
11 to Everyone:

12 +1 Amanda, excellent point.

13 From Anne Kress (P) Comm College to Everyone:

14 +1 Marvin -- there is a relationship between R2T4,
15 which is (understandably) required by the department, and
16 transcript withholding that the department needs to consider
17 that goes beyond the scope of our current discussion.

18 From Jaylon Herbin (A) Consumer and Civil Rights to
19 Everyone:

20 +1 Amanda

21 From David Socolow to Everyone:

22 +1 to Amanda's point about the equity impact of
23 transcript withholding on students of color, low-income
24 students, and first-gen students. Thanks to the Department for

1 willingness to consider adding a ban on this practice to the
2 PPA.

3 From Carolyn Fast (P) Consumer advocates/Civil
4 Rights to Everyone:

5 +1 Debbie.

6 From Ernest Ezeugo (P) Students and Loan Borrowers
7 to Everyone:

8 +1 Barmak's comments on transcript withholding as a
9 practice with serious civil rights implications for students.

10 From Brad Adams (P - Proprietary Institutions) to
11 Everyone:

12 i support not withholding transcripts, but given the
13 amount of discussion thus far and in this chat I will not come
14 on video to state that.

15 From Brad Adams (P - Proprietary Institutions) to
16 Everyone:

17 +1 barmak

18 From Beverly Hogan Primary/MSI to Everyone:

19 Thank you, Barmak, for putting the transcript
20 withholding in context. This is helpful.

21 From Debbie Cochrane (P), State agencies to
22 Everyone:

23 +1 Carolyn on the need for institutions to comply
24 with state laws.

1 From David Socolow to Everyone:

2 +1 on requiring compliance with State consumer
3 protection laws

4 From Ernest Ezeugo (P) Students and Loan Borrowers
5 to Everyone:

6 +1 Carolyn, also encouraged by the addition of the
7 language around compliance with state laws

8 From Yael Shavit State AG (A) to Everyone:

9 +1 to Carolyn

10 From Jaylon Herbin (A) Consumer and Civil Rights to
11 Everyone:

12 +1 to Carolyn

13 From Barmak Nassirian (A) Servicemembers & Vets to
14 Everyone:

15 +1 on Carolyn's comment re state consumer protection
16 laws

17 From Ernest Ezeugo (P) Students and Loan Borrowers
18 to Everyone:

19 Could they transfer it, though? If they can't access
20 their transcripts?

21 From Barmak Nassirian (A) Servicemembers & Vets to
22 Everyone:

1 withholding the entire transcript for debts owed for
2 only one term actually deprives students from receiving
3 consideration for courses that they did pay for!

4 From Anne Kress (P) Comm College to Everyone:

5 +1 Laura

6 From Brad Adams (P - Proprietary Institutions) to
7 Everyone:

8 +1 to Laura. I completely agree that pre-
9 accreditation has to be added

10 From Ernest Ezeugo (P) Students and Loan Borrowers
11 to Everyone:

12 Yeah, as someone who had a large transcript balance
13 that it took several years to repay, I'm sympathetic to a need
14 to get that money back and appreciate that my institution
15 worked with me. But an inability to transfer to a lower-cost
16 institutions because my transcripts were inaccessible to me
17 created, among other things, a time expense I can't get back..

18 From Ernest Ezeugo (P) Students and Loan Borrowers
19 to Everyone:

20 large account balance that took*

21 From Yael Shavit State AG (A) to Everyone:

22 Thank you, Ernest. It is also an ineffective debt
23 collection method. Impeding students' ability to transfer to
24 lower cost programs and become employed is a counterproductive
25 way to facilitate students' ability to repay their debts

1 From Carolyn Fast (P) Consumer advocates/Civil
2 Rights to Everyone:

3 +1 to Debbie

4 From Adam Welle, MN AGO to Everyone:

5 +1 to Debbie

6 From Yael Shavit State AG (A) to Everyone:

7 In depriving students of transcripts reflecting
8 credits that students have already earned, schools are
9 negating the federal tax payers' investment

10 From Carolyn Fast (P) Consumer advocates/Civil
11 Rights to Everyone:

12 +1 Barmak

13 From Johnson (P) Legal Aid to Everyone:

14 +1 to barmak

15 From Brad Adams (P - Proprietary Institutions) to
16 Everyone:

17 that is a lot at once

18 From Debbie Cochran (P), State agencies to
19 Everyone:

20 Should we divide the temp checks?

21 From Adam Welle, MN AGO to Everyone:

22 agree we should divide them

1 From Anne Kress (P) Comm College to Everyone:

2 We should divide

3 From David Socolow (A) State agencies to Everyone:

4 Recommend separate temp checks on 668.14(b) 3, 26,
5 and 32

6 From Laura Rasar King (A) Accrediting Agencies to
7 Everyone:

8 Jamie is back in for accrediting agencies.

9 From Jamiene Studley to Everyone:

10 I am returning for accreditors

11 From Carolyn Fast (P) Consumer advocates/Civil
12 Rights to Everyone:

13 +1 Barmak that letter of credit should be based on
14 totality of liabilities

15 From Debbie Cochrane (P), State agencies to
16 Everyone:

17 David Socolow is coming to the table for state
18 agencies.

19 From Adam Welle, MN AGO to Everyone:

20 I strongly support the insertion of the "acceptable"
21 descriptor to ensure that the teach out plan is legitimate and
22 effective.

1 From Amanda Martinez (P-Civil Rights) to Everyone:

2 + Adam

3 From David Socolow (A) State agencies to Everyone:

4 + Adam

5 From Ernest Ezeugo (P) Students and Loan Borrowers
6 to Everyone:

7 +1 Adam

8 From Adam Welle, State AGs (P) to Everyone:

9 It's very important for provisionally certified
10 schools to be communicating to students accurately. The
11 Department should have the discretion to consider the
12 circumstances listed in (8)

13 From Brad Adams (P - Proprietary Institutions) to
14 Everyone:

15 For an institution alleged or found to have engaged
16 in substantial misrepresentations to students, engaged in
17 aggressive recruiting practices, or violated incentive
18 compensation rules, requirements to submit new marketing and
19 other recruiting materials for the review and approval of the
20 Secretary

21 From Carolyn Fast (P) Consumer advocates/Civil
22 Rights to Everyone:

23 +1 to Adam

1 From Ernest Ezeugo (P) Students and Loan Borrowers
2 to Everyone:

3 Thanks for clarifying, Johnson and Adam.

4 From Adam Welle, State AGs (P) to Everyone:

5 Yael is stepping in for state AGs thanks

6 From Jamiene Studley to Everyone:

7 Barmak: correct, not substantive, only applies to
8 advertising. And it is not necessarily "interim" in the sense
9 of temporary or time limited -- that dual/divergent status
10 could exist indefinitely

11 From Ernest Ezeugo (P) Students and Loan Borrowers
12 to Everyone:

13 Carney King is coming to the table for Students &
14 Student Loan Borrowers.

15 From Barmak Nassirian (A) Servicemembers & Vets to
16 Everyone:

17 +1 on David's concern about for-profit to public
18 conversions

19 From David Socolow (A) State agencies to Everyone:

20 Recommend adding language to section (f) regarding
21 proprietary institutions converting to public institution
22 status (in each instance where the proposed language now
23 applies to schools converting to non-profit status).

24 From David Socolow (A) State agencies to Everyone:

1 I would add a similar point about covering
2 conversions to public institution status in (g), too.

3 From Debbie Cochrane (P), State agencies to
4 Everyone:

5 I am coming back to the table for state agencies.

6 From Marvin Smith (P) 4 Year Publics to Everyone:

7 + Kelli

8 From Barmak Nassirian (A) Servicemembers & Vets to
9 Everyone:

10 +1 on Jamie's comment

11 From Kelli Perry - (P) Private Non-Profit
12 Institutions to Everyone:

13 +1 Marvin

14 From Beverly Hogan Primary/MSI to Everyone:

15 +1 to Jamie's comment

16 From Brad Adams (P - Proprietary Institutions) to
17 Everyone:

18 +1 Carney

19 From Brad Adams (P - Proprietary Institutions) to
20 Everyone:

21 thanks for saying you support disclosures for all
22 students

1 From Beverly Hogan Primary/MSI to Everyone:

2 Yael, did you share the language you submitted?

3 From Yael Shavit State AG (A) to Everyone:

4 I believe Cindy circulated it. It was in Carolyn's
5 proposal on change of ownership

6 From Beverly Hogan Primary/MSI to Everyone:

7 Thanks. I got it.

8 From Johnson (P) Legal Aid to Everyone:

9 +1 Barmak

10 From Emmanuel Guillory (A-PNPs) to Everyone:

11 technically, not all publics are 501(c)(3)s

12 From David Socolow (A) State agencies to Everyone:

13 +1 to Barmak's point

14 From Barmak Nassirian (A) Servicemembers & Vets to
15 Everyone:

16 +1 on Brad: converted "publics" should be subject to

17 GE

18 From David Socolow (A) State agencies to Everyone:

19 +1 Brad re: converted public institutions covered by

20 GE

1 From Kelli Perry - (P) Private Non-Profit
2 Institutions to Everyone:

3 Emmanual is coming to the table for a question in
4 600.4

5 From Debbie Cochran (P), State agencies to
6 Everyone:

7 +1 to Barmak's point that these definitions can lead
8 to a race to the bottom. Will also add that this issue could
9 at least partially be addressed if the Department amended
10 600.9, state authorization rules.

11 From Yael Shavit State AG (A) to Everyone:

12 Adam is coming back for State AGs

13 From Ernest Ezeugo (P) Students and Loan Borrowers
14 to Everyone:

15 You left off at "no where to be found"