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OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING PROGRAM INTEGRITY
AND INSTITUTIONAL QUALITY
SESSION 3, DAY 2, AFTERNOON
MARCH 5, 2024

On the 5th day of March 2024, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m.

P R O C E E D I N G S

MR. ROBERTS: Good afternoon everyone. Just a really brief update from the FMCS team. It's going to be about another five or so more minutes before we have the full committee reconvened. So, expect us to go live and resume discussion on state authorization at about 1:20 Eastern. But we want to give you a quick update. We'll be back soon. Welcome back everyone. Sorry about that fakeout. We were back mere seconds after I posted that quick update. We are back. Thank you for your patience in that brief delay we are going to resume discussion on state authorization. My name is Brady Roberts with FMCS. And I will turn it right back over to the committee for any questions they have that they want to pick up our afternoon session with. Yeah, Rob, go ahead.

MR. ANDERSON: In the spirit of making some progress and issues we've discussed so far, I would like to recommend or ask for a- about a 15-minute caucus with the Education Department and a number of negotiators around applicable state laws and education specific laws, non-state actors on boards, as well as the exemption piece we discussed. Trying to make some progress there and believe a side conversation might be helpful.

MR. ROBERTS: You said about 15

minutes?

MR. ANDERSON: 15 would be great.

MR. MARTIN: Can I address that before we- the Department does intend to call it- a caucus very soon, but- along those lines. So if you just wait until we get to that- and that- and then we'll see if that suffices for your needs?

MR. ANDERSON: Sure.

MR. ROBERTS: Okay, great.

MR. MARTIN: Yeah. That'd be great.

MR. ROBERTS: Yeah. We can circle back to that. Anyone else have a question or a comment for the committee to kick us off?

MR. MARTIN: Let me just address, Brady, before we move on, the outstanding question of- hold on a second here. The outstanding question that we had before the break, which was with regards the removal of the language that was in (d)(1)(2) that was formerly I think it was romanette one. And that was the provide for a state-led process through which participating states can propose and collectively adopt, modify, or eliminate substantive policies of the agreement, including policies on state and institutional participation and the scope of reciprocity. Such a process, and such state adopted or modified policies cannot be overruled by any external

entity- entities that administer the agreement. And we had a question of why we- why we removed that text. So I want to respond to that. We did that in response to concerns we received about that text. And after consideration, we determined that we did not want the proposal to be specific to NC-SARA, we're codifying the process with respect to any organization where that might change. We also consider that removing that language and retaining what is in three, administered by an organization the governing body of such organization must consent- consist solely of representatives from state regulatory and licensing bodies, enforcement agencies, and attorneys general offices to be a middle ground between where we were asked to be from- you know, given what- the proposal we got from various negotiators. Thank you.

MR. ROBERTS: Thank you. Any reactions or additional questions for Greg on that subject? Rob, we'll turn it over to you first, keeping in mind your original request, did you still want to call that brief caucus?

MR. ANDERSON: Please, if we could, yes.

MR. MARTIN: Well, we will. Let me just- I'll start with the Department's request for caucus

and see- well, certainly we don't preclude anybody from doing anything else but the Department would like to call a caucus with the following individuals from the private not-for-profit sector, Erika Linden and Scott Dolan and from state reps. Rob Anderson and John Ware. So we would like to propose or call that caucus rather.

MR. ROBERTS: If it's- more than happy, and then Rob, following the results of that caucus, we can obviously call for more. And Greg, you say about how long? Same timeframe, 10 to 15?

MR. MARTIN: Give us 20 minutes.

MR. ROBERTS: 20? Okay. We'll check back in 20.

MR. MARTIN: [Inaudible] come back faster.

MR. ROBERTS: Alright, we can-

MS. MORELLI: Greg, that would include Dave and me as well.

MR. MARTIN: Oh, I'm sorry. Yeah. I also, want to include, yes, David Musser and Denise Morelli. My mistake.

MR. ROBERTS: Gotcha.

MR. MARTIN: Thank you, Denise.

MR. ROBERTS: Okay.

MR. MARTIN: Thank you very much.

MR. ROBERTS: I can set that up for you.

MR. MARTIN: Thank you.

MR. ROBERTS: Welcome back everyone, as we had that brief caucus. I'm going to turn it right over to the Department to Greg for a report-out.

MR. MARTIN: Thank you, Brady. And welcome back everybody. We did have a caucus with Erika Linden, Scott Dolan, John Ware, and Rob Anderson. And the purpose of that caucus was to see if there was any room for potential compromise here, which could lead us to consensus. So the Department has some proposed text that we discussed with those individuals. We want to put it in front of the entire committee and get people's responses to what we propose and people's reactions rather and then I'm going to have Vanessa put up on the screen that language so you can see the modifications there. But before we begin walking through it, I'm going to ask David Musser to just go over the- go over the concept briefly because I think it's important to know what the- the gist of what we're proposing here holistically before we actually walk through the language. So, David, do you want to give a brief overview of that?

MR. MUSSER: Yeah, absolutely. So we heard a number of concerns from negotiators about

eliminating the exemptions and the potential for that to be disruptive for states, for schools, for students, and potentially make it more challenging for schools to comply with various requirements. And the Department doesn't necessarily agree with that. However, acknowledging the concerns, we decided to offer some compromise language that we think strikes a balance between the Department's goal of ensuring that states oversee institutions with large presences in their states. And by that, I mean large enrollments in their states compared with other institutions, while eliminating much of the language that we had proposed around the- striking those- the opportunities for exemptions, both for physical- certain things at risk with respect to physical locations and nearly all of the things that we had proposed striking related to reciprocity. So that's the general approach. The idea would be that the Department- we are doing an analysis of NC-SARA data that is- actually goes down to the school level regarding how many students the schools enroll, the schools that are members of NC-SARA enrolls in each state. The Department's doing some analysis right now to determine what might be statistically valid thresholds to set in order to establish a threshold that addresses our concern about schools that have very large presences in

states where there is essentially a greater risk for the state and its students given that large presence, the possibility of closure, the quality of the instruction in that state, etc. In those cases, we would maintain the requirement that we currently have in the proposed text for schools that have students enrolled in a particular state over the threshold that we determine, we would require them to be directly authorized by the state as opposed to through reciprocity. But if they were authorized through reciprocity, it would mostly be status quo as to what- what's in the current regulations. So to make this a little clearer, we can go through the exact language that the Department has come up with so far. We did this somewhat quickly, so if there are things that you see in here that don't seem consistent with the approach that I just described, certainly we're open to feedback about that. But that's the general approach.

MR. MARTIN: Thanks, Dave. And here Vanessa has shown up on the screen here the proposed amendatory text changes. So this goes back to an institution described under 600.4, .5, or .6 as legally authorized in the state if the state requires the institution to comply with any applicable state authorization or licensure requirements, and all applicable state laws and regulations except as provided

under paragraph (d) (2) romanette two. And that's the reciprocity that we'll look at at the moment.

MR. MUSSER: Well, one second, though, I want to-

MR. MARTIN: We should make a clarification about the fact that- you want to make clarification about the brick and mortar part?

MR. MUSSER: Well, yeah, I just want to- every time- for each of these, I'd like to- I want to make sure that the intent is clear for what this change represents here. Here, we are essentially adding an exception to the general requirement that an institution comply with all applicable state authorization or licensure requirements. So anything that a state has determined applies will apply except as provided under paragraph (d) (2) romanette two, which is the reciprocity. So this means that if you are physically located in a state, you are required to comply with applicable state authorization or licensure requirements, or if you are directly authorized through [inaudible] for distance education either because you can't be covered by reciprocity or because you are above the threshold that we will set, you are also required to comply with any applicable state authorization or licensure requirements. The state could, of course, determine which things are

appropriate to require for schools that are offering distance education. I think we could scroll down now.

MR. MARTIN: And here we're under the reciprocity agreement. If an institution is authorized to offer distance education in another state under a state authorization reciprocity agreement as defined in 600.2, and you'll see the change here. Allow any member state of the agreement to enforce its own applicable general purpose state laws and regulations outside the initial approval for state authorization of distance education.

MR. MUSSER: And again, yeah, the intent here is to revert generally to status quo where the- if you- if a state is a member of a reciprocity agreement and a school is also participating in that reciprocity agreement, the state can agree as part of that agreement not to enforce certain laws and regulations, except for general purpose state laws and regulations. And then just some renumbering here. So here- sorry, not quite there. So here, as you can see, you know, we currently have 500 here. And we- our original thought was to look to other regulations where we set a threshold which, in fact, were the tier two requirements under cash management. We heard from negotiators that they were looking for a more substantive basis for a threshold if we were going to establish one.

The Department agrees with that, and that's- for that reason, we decided to go to the NC-SARA data and look to more supportable thresholds based on a statistical analysis that we're- that we're doing right now. So there may be a couple of options that we can put up here. We haven't landed on a specific number yet. Greg will explain the implications of that in just a second. But we wanted to walk through with all of you, the committee, at least the approach here before we actually do the digging to get into the actual number.

MR. MARTIN: So, yes, as Dave pointed out, we don't- our purpose here is to show the proposed language. We don't have a number established yet. We are working on coming up with one that has some statistical validity. Dave is working on that as we speak, they're looking into that, but we wanted to put this up as a- as- to at least explain the concept of where we hope to go with this. And before we- anything else we want to say about that, Dave? Because before we open this for discussion, I want to go back and look at the exemption- the changes we made to the exemption language as well.

MR. MUSSER: No, nothing. Nothing else on this.

MR. MARTIN: So. Alright. So let's just go back and look at some of the other changes we

proposed under (a) (3) as part of this compromise as well. And going back to- let's make sure. So here's some of the changes we made here. If- you can see here, if the institution under the exceptions we put in here, we've removed the sunset language and added as for the exceptions, is a public institution backed by the full faith and credit of the state or a charter or statute, constitutional provision, or other action issued by an appropriate state agency or state entity establishes the institution by name as an educational institution and that we still have- we left in the state action exempt institution based on the institution being in operation on or before November 8th of 1965 without undergoing a change of ownership. And we have put back in the accreditation language here, which is- or left that rather, state exempts the institution based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary, based on the institution's being in operation for at least 20 years, that we still have the expiration for that. So I think that covers all the changes that we proposed as part of this compromise. And we want to open the floor for discussion on this to get- and I think what I'd like to go with this is to get a feeling from people whether or not this is something that we think could ultimately lead

to compromise or- and consensus where you stand on this. Is this a nonstarter for you, or is this something you're amenable to now or could see yourself agreeing to with some changes? David, do you have anything else you want to say before we open the floor? Denise?

MR. MUSSER: Not for me.

MR. MARTIN: Okay, Brady, we can open the floor for discussion.

MR. ROBERTS: Alright, Greg. Yeah, any thoughts on the concept as it's been presented, obviously, having not seen the finalized language with the figures included? Barmak, go ahead.

MR. NASSIRIAN: So if we can put the text back up, if that's possible.

MR. MARTIN: Go ahead, Vanessa.
Thanks.

MR. NASSIRIAN: And go to the first change that Dave talked about. The very first edit. I think the highlighted like teal language there should be (d) Arabic 1, romanette two.

MR. MUSSER: Yeah, I saw that just a second ago. Thank you, Barmak. So that's one more numbering change.

MR. NASSIRIAN: I'm gonna- so that's constructive contribution. Now, my critical contribution.

Obviously, this is a retreat from adequate protection for students. Again, I think students who are online are at greater risk than students who are in person. Exposing even a small number of students in a state to a greater risk from out-of-state institutions when everybody who's attending in person, the safer option arguably, gets greater protection is just inherently intellectually problematic for me. Having said that, obviously the number you pick will have a lot to do, and I'll be cynical here and say that I understand that whatever we do, institutions are very likely to co-opt it for their convenience. And therefore, if the number is really tiny, if the footprint of the institution is really tiny, I'm kind of ready to resign myself to it on the assumption that, you know, fraud and predatory behavior really only works at volume. You really aren't going to go defraud two people here, five people there and call it a business. Fraud works on steroids. So the number matters to me enormously. But I'm very uncomfortable with this construct, quite candidly. So that's one comment. The other change you made to the exemption language. You want to make sure that- I'm not certain that community colleges are necessarily covered by this. Now, I don't want to go as far as using the financial responsibility language the Department took this from, but you've edited

out, like local government agency. Some of these institutions are public, and they may be backed by the full faith and credit of a local government, not just the state. So that's just something to consider. I'm hopeful that the community college reps here are going to give us a good solution, but just speaking on their behalf in this case, I just want to make sure that we don't inadvertently exclude them from this exemption. And then on the issue of the privates, again, the concern has been expressed to me by some privates that that language of based on implies a- kind of a causal requirement but in the state that the state cites the higher ed act as the reason they're exempting, and it should be based on years of operation if the institution has been in continuous operation on or before November 8th. I can put that in the chat just for you to consider. It's just a somewhat attenuated way of saying the same thing without basing it on the causality of the state having to cite the- HEA as the reason or the date as the reason. So those are my preliminary comments. Thank you.

MR. ROBERTS: Okay. Thank you, Barmak. Carolyn, we'll go to you next.

MS. FAST: Yes. Thank you for thinking through this proposal. This doesn't seem to be at a place where I could consider supporting this particular

compromise, however, and I just want to put that out there. My main concern is that losing all of the progress in protecting consumers in the language reciprocity agreements without even knowing what the number is going to be, is just- in terms of the threshold, gives me no reassurance that we've solved the problem. It's possible that the threshold could be anything and therefore entirely meaningless as a way of protecting consumers at schools that, you know, have a footprint in states. So this is sort of like that unknown makes it impossible to- for me to understand whether this would provide any protection that we're looking for students at a scale that- you know, that would be helpful and meaningful. So unfortunately, I don't see a way that I could support this proposal at all.

MR. ROBERTS: Okay. Thank you, Carolyn. Robyn.

MS. R. SMITH: Yeah, I agree with Carolyn and Barmak. And I wanted to make a comment on specific language. I'm wondering if you could put up the section where you talk about outside of the initial approval for state authorization, I don't remember where it was. Sorry. Oh, that's it, that's it. Actually, that was it. You can roll back up. Sorry. Okay. So it's subsection- I think it's now little I. You say allow any

member of the state of the- member state of the agreement to enforce its own applicable general purpose state laws and regulations outside of the initial approval for state authorization. The problem with the initial approval, that last part of the sentence, is that states shouldn't have to be required to approve schools through a state authorization reciprocity agreement if, for example, the general purpose laws are violated, if they're engaging in some kind of fraud in violation of their UDAAP laws, they shouldn't still have to approve them. So I have a problem with that language and the way it's worded. The other part is that there are other types of non-general purpose laws that can apply to institutions that this would allow reciprocity agreements to waive. For example, there are new laws regarding private student loans and how they may be collected and when. And more and more institutions are making these private loans and arranging them. So I think the Department needs to be really careful about going down the path of just requiring only compliance with general purpose laws. And finally- and so yeah, I also cannot at this point, consent without more information.

MR. ROBERTS: Thank you, Robyn. John, you're next.

MR. WARE: Yeah. I appreciate Department coming forward with this proposal. I think it

makes- from a state regulatory perspective, it makes a lot more sense because, you know, the biggest risk is obviously going to be the larger institutions. And I could envision a you know, an authorization process at the state level for those type of institutions where you know, states calculate the risk in terms of authorization, where we could say, we'll authorize you, you know, as long as your state has the following protections in place for consumers. If not, if it doesn't have bonds, tuition funds, or whatever consumer protections you deem important, then the state could put those in place on the larger institutions, I think again, I think that makes a lot more sense to me. And I appreciate the Department putting that proposal forward.

MR. ROBERTS: Thank you, John.

Jillian.

MS. KLEIN: Thanks. I have several comments, so I'll try and get through them and hop back in line if I need to. The first is I want to ask a question back to Dave about the comment that you made as the setup here, and I would like to understand the data that you're using to sort of justify this approach. So I tried to jot down what you said. I think what you said was the Department has concerns about schools that have very large presence in states where there is, quote, a

greater risk for the state given the large presence, the possibility of closure, and the quality of the instruction in that state. So can you provide the Department's data that they're using to indicate that online providers of education are providing low-quality instruction?

MR. MUSSER: So the data is essentially coming directly from NC-SARA. It's their data on- that are reported by members. So it's specifically about institutions that are members of NC-SARA and the number of students in each state. And we- excluding, at least in our analysis, excluding the students in the home state since that's not really an issue here. And yeah, I think if we could send it- send around the data that we were looking at for this and just to be sure people understand it.

MS. KLEIN: So NC-SARA has data that indicates that online providers are providing education that consists of lower quality instruction? That's what I'm asking because that was what your comment was, Dave. And so I'm trying to understand that comment as a rationale for this proposal.

MR. MUSSER: What we're saying is states should have the ability, if they choose, to focus attention on schools where they are- where they've

identified problems. And I may have spoken a little bit- without enough care there. But the range of things that the Department is concerned about include academic quality, among many other things. The specific kinds of, for example, tuition refund policies the school may have and that is a direct- have a direct impact on students from a consumer protection perspective. The idea here is that we didn't- we left the language intact that would require a school to comply with all applicable state requirements if they are directly authorized by the state. So if the state believes that schools with large presences in their state that are operating in their state at scale want to apply for example a fee or a tuition recovery fund to protect their students and ensure that they have a little bit more oversight over schools, the states can do that, and schools will have to be subject to those requirements if they exceed- if their enrollment exceeds that threshold. So it's not- academic quality is one of the many, many things that the state might want to consider when it- when it's considering whether to take other action against the school, what requirements it might want to set for all the schools that exceed this threshold, etc.

MS. KLEIN: Okay. So I guess my follow-up comment would just be- so you guys, I'm not

opposed to the idea of coming up with the right triggers to require an institution to have to apply for, I guess, what we're calling direct authorization. I think the number- any number threshold is arbitrary, and I don't think it gets at where real risk lies. And let me give you an example. So- and these are illustrative numbers, right. But for example, pretend Capella University enrolled for the last ten years, 2,000 students in Texas without any problems, as opposed to an institution that is enrolling 50 students in Texas and gets into all sorts of trouble and has just started enrolling students there. I just think there is a way to be sort of more precise in how we get at the risk here in a way that creates the least amount of work for state authorizers who are going to have to do this work and also protects in the right way students and taxpayer funds. And so I would suggest the Department- and I think this is hard, right, to my comment yesterday, like we're running out of time and I'm happy to put something in writing as a proposal and come back again. I don't know if we're extending the state authorization topic beyond today. But ways to think about, you know, is there like a plus or minus enrollment percentage within a state that would count as a trigger for when a student or when an institution would have to apply for direct authorization, for example, in that

state, or something else that makes more sense from sort of a risk perspective that could maybe help us get to consensus, or we could look at some of the sort of closure triggers in general that I think have been widely accepted by this Department and others in terms of like composite scores- please, i know there are negotiators that hate that, or adverse actions or actions by a state or Federal agency against an institution that could instead be used as triggers for direct authorization, instead, again, of pointing to a number. And here's where I'll agree with Barmak and Carolyn and everybody else that like, it's very hard for us as negotiators to respond to this proposal when there's no actual- like we don't know what we're responding to because there's not an actual number that's in there. And I think that sort of points to the arbitrary nature of it. So I guess it would be helpful for people to come back with a different proposal or what's sort of- how do we think about the end game here in general?

MR. MARTIN: Well, it is true that we are getting- you know, we are getting to the end, close to the end and the time for any additional proposals is fading away, obviously. I mean, the concept of a number-

MS. MORELLI: I think if- Jillian, if- I think if you have a suggestion, you should come back

with it because I don't think we contemplated a consensus vote until we came up with the number proposal anyway. So if there's members that want to come up with some language, we are under time constraint though. I mean, we're talking has to be like probably tomorrow so that we can- a vote can be done on Thursday if that's where we push it off to. But I think we have to know there's going to be some kind of proposals coming in to push the- you know, in addition to the number.

MR. MARTIN: You know, can I ask, are you amenable to any number, Jillian? Or is it the concept itself of having a threshold, is that a nonstarter for you?

MS. KLEIN: Well, I think to my comment, I don't view- I understand everybody's perspective, so no disrespect meant at all. But I think if you're going to use a number which feels a bit arbitrary, there are better ways to use it. For example, a sort of plus or minus enrollment within a state-

MS. MORELLI: What do you mean by that?

MS. KLEIN: Like did the- if the institution increased or decreased enrollment of students in that state by 15% in a year, that they would be subject to direct authorization, or at the point where an

institution crossed a threshold, whether that's 500 or 1,000 or 100 or whatever number you come up with that that, for the first time, that that institution would be subject to direct authorization for, I don't know, three years, five years, I'm not sure, but I'm just trying to.

MS. MORELLI: Well, I'm-

MS. KLEIN: I recognize that there are instances where institutions have been enrolling larger number of students in a particular state for literally, literally decades now without any issues. And so trying to be more specific about how we get at the risk conversation without casting this really broad net that is- I think is unnecessary in some ways.

MS. MORELLI: I just think that you should put forward whatever you think we should consider.

MR. ROBERTS: And I would just say briefly, just based on the conversation that I'm overhearing, it's- it probably makes the most sense to delay a consensus check until- I mean, at least until tomorrow, if not until Thursday. And so I guess I would just say, you know, any negotiators that are hearing the conversation or submitting questions or offering feedback, and they're not quite comfortable with the concept as it's being proposed, and they think that they might be able to offer a different one, if you're able to

commit that to writing and send that around or send that to us so we can send it around. I think we hopefully will still have time to consider everything before taking that consensus check if that- and that's to the entire negotiating committee. Obviously, hearing today that there's at least one concept that has a little bit more refining that needs to take place vis a vis the figures that are, you know, still to be determined. Okay on that? Okay. Diana.

MS. HOOLEY: Thank you. Yes, I mean, I agree with the concerns that were raised by Carolyn and Barmak and Robyn. I would be very- it would be very difficult for me to- you know, for us to be able to support a proposal that doesn't include the states being able to enforce applicable state laws. I think that I don't know that there is a number that would give me the comfort that this- I'm not saying that there isn't, I just don't know what it would be. And I think the example of, you know, if it's 50 students, you know, that's enough students, you know, that if there's fraud going on, you know, that we should be able to you know, act on that. So I don't know what that minimum number is. And again, I think that we did make a lot of progress on the proposal leading up to this. And it looked- you know, it looked like we would be able to, you know, support some

of the earlier language. But as it's written right now, the- with or- you know, certainly without the number, I wouldn't be able to support it. And with the number, I don't know that it would make sense. So I- you know, we'll see what gets proposed. But again, our concern here is if there is fraud going on in our states, we should be able to investigate that and enforce it. Thank you.

MR. ROBERTS: Thank you, Diana. The last hand that I see up at least for now, is Jamie's. If it's okay with everyone, let's take Jamie's comment, and then we can move to cash management to at least begin that discussion today. So, Jamie, take it away.

MS. STUDLEY: My question goes to the exemptions that the Department is or is not willing to revise about. I really appreciate your sending around the state authorization response document three that we just received. And in the flurry of papers, I went to the very last line. The question was, what are the problems the Department is trying to solve that were not resolved after the 2010 version of 600.9? And- which I believe goes to the exemptions for the 20 years and accrediting agencies. The Department said, the Department has seen examples of abuses, such as misrepresentation that should fall under state authority and enforcement, but do not. To my mind, these are two different things. One, the

authorization slash exemption is the entry point. It's the beginning of the relationship with the institution or the recognition of a long-standing relationship. The fact- the continuing monitoring by both the state and the accrediting agency, once an institution is in operation and in this case authorized by a state, remains in effect. So, to my mind, issues like misrepresentation that are covered by general consumer protection laws remain the authority of the state to enforce. They also- within the scope of the accrediting authority, we have a role to play there as well. So the Department's- what seems like the main reason not to allow the exemption, I think is just not accurate. It's not what happens. Authorization- the exemption is the starting point of the connection and then the state, thank you attorneys general, and consumer protection agencies then continue to have all the responsibility and authority to deal with misrepresentations that might happen. I think anybody's trying to duck that, it's a continuing requirement to satisfy the laws and the accrediting standards. So to my mind, if that's the Department's reason, it would be very logical to go back and look at that exemption. Same thing for the 20 years. It doesn't mean, and now you're home free. It means okay, you start, you're in, and now we monitor you under whatever set of laws we- the Department

ends up promulgating and allowing the states to enforce. That's a separate question. The consumer protection laws would always apply, and therefore you don't have to- that's not the place to worry about it. It's the continuing monitoring responsibility that we all have.

MR. ROBERTS: Thank you, Jamie.

Alright, Erika, do you want to be the super last final comment on-? Okay, and then we will move to cash management, okay.

MS. LINDEN: Yes. And I'll be quick. Can you share what that proposed language is for us to have tangibly to look at?

MR. ROBERTS: This is the Department you're asking for this from?

MS. LINDEN: Yes.

MR. ROBERTS: Yeah.

MS. LINDEN: The things that you had up on the screen for this last would be great. Thank you.

MR. MARTIN: Yes, we'll share that.

MR. ROBERTS: Alright. Greg, do you want to take a- just a quick five just to get everything set?

MR. MARTIN: Yeah, we're going to take a- let's take a break till 2:30 if that's seems okay.

MR. ROBERTS: 2:30? Okay.

MR. MARTIN: Yeah.

MR. ROBERTS: We will take a break and then we'll have an hour discussion on cash management and then move right along to public comment.

MR. MARTIN: Thank you.

MR. ROBERTS: Alright. Welcome back everyone as we transition the discussion over to cash management. Just to tee us off, Greg, I'll turn it right over to you to introduce the issue.

MR. MARTIN: I see Emmett has his hand up. So you might want to-

MR. ROBERTS: Oh yeah, Emmett, go ahead.

MR. BLANEY: Yeah, I was just hoping to ask for a brief caucus with just myself, my primary Jessica, and the Department for, like, five to seven minutes.

MR. ROBERTS: Five to seven minutes. Do you know who from the Department you'll be requesting?

MR. BLANEY: Let's see who's here. Looks like Greg and Denise and Dave. I don't know if anyone else is on, but if-

MS. MORELLI: What is the topic, Emmett? Is it cash management?

MR. BLANEY: It is cash management.

MS. MORELLI: Then that's the three of us.

MR. MARTIN: Okay. That's us.

MR. BLANEY: So, you three.

MR. ROBERTS: Alright, so seven minutes. I'll check in in about five. Alright, sounds good. I will create that room right now. Alright. Welcome back, everyone from that brief caucus. Emmett, I'll turn it right over to you for a report-out.

MR. BLANEY: Yeah. Just wanted to make sure that the Department kind of understood the context behind one of the cash management proposals that myself and Jessi had submitted previously. Nothing to report out other than, you know, looking forward to contributing to the discussion on cash management. So, thanks.

MR. ROBERTS: Alright. Thank you so much. I want to just briefly note that we're about 45 minutes from public comment. So, folks, if you do have an assigned slot, please feel free to log on about 15 minutes beforehand. Sophie is at the table for legal aid organizations, and DC is at the table on behalf of HBCUs. So, Greg, I'll turn it over to you.

MR. MARTIN: Thank you, Brady, and welcome back everybody. Let's- we're going to move into a discussion of cash management, which we'll spend the rest

of the day on today and then pick up- pick back up again with tomorrow. So I'll have Vanessa pull the documents up and we'll start right from the beginning. We will walk through this section by section with, for the most part, discussion on each section, except for the first one here, just kind of a pro forma change. So, if you can just arrow down a little bit here, Vanessa, to the change in- right there, (g) (4), and this has to do with student eligibility. So you can see here the general [inaudible 01:49:09] students are eligible to receive Title IV HEA program assistance if the student either meets all of the requirements in paragraph A through M. That's student eligibility collectively of this section or meets the requirements of paragraph N of this section as follows. And you- we see here that we have made a modification here; is not liable for a grant or Federal Perkins loan overpayment for which the student has not made satisfactory repayment arrangements with the school or the Department. The student receives a grant or federal Perkins Loan overpayment if the student received a grant or Federal loan, or Federal Perkins Loan payments that exceeded the amount that he or she would be able to receive. Of course, no one is receiving any Federal loan payments anymore. Or if the student withdraws that exceeded the amount he or she was entitled to receive for

non-institutional charges. So this is just a conforming change. We will be discussing overpayments when we get to the end of this paper, which is in what we've changed that text in 668 167. So I- if anybody wants to say anything about this here, they're welcome to do so, although we'll be discussing this topic at the end of the paper when we do overpayments in general and repayments. But I don't want to preclude any comments if there are any.

MR. ROBERTS: Any specific feedback on this section or Greg and team move on? Not seeing anything immediately, Greg, I would say keep going.

MR. MARTIN: Okay. And just want to point out again that we will be discussing this topic just not at this point, but that could change if necessary. So the first, the next thing I want to go to then is, I believe in 164, 668.164, crediting a student's account. And we are in (c), crediting a student's ledger account. And you can see here that we have- I'm just going back to the basics here. The institution may credit the student's ledger account with Title IV HEA program funds to pay for allowable charges that are associated with the current payment period. And will be given what those allowable charges are, tuition fees institutionally provided food and housing, conforming to the new statute,

getting rid of an old favorite of mine, room and board. Assess the student for the payment period or as provided in paragraph (c) of this section, the prorated amount of those charges if the institution's debts- debits rather the student's ledger account for more than the charges associated with the payment period. So to change here going back to what we had done earlier, an institution may only include the costs of books and supplies as part of tuition and fees if the student is confined- is a confined or incarcerated individual, as defined in 34 CFR 600.2, where we have that definition. So essentially removing the we had retained that the institution may demonstrate that there was a compelling health or safety reason. We had eliminated that. And we are putting back in that that the student is a- is confined or incarcerated. We don't believe with respect to the health or safety reasons that it's necessary to retain that. We haven't seen all that many instances where that's occurred. And in thinking about that provision, we see it more as providing an opportunity for a loophole than it would be addressing any real concerns. We have seen instances where some schools would try to, as a matter of health and safety, say, for instance, that, you know, it's a matter- as a matter of health and safety, you need to have a particular brand of something or could use this

provision to unnecessarily constrain students in what they can purchase. So we again, have eliminated that. Let's move on to the next change. Yes, which is the cash value of meals. This is under (b), any funds. Allocated for cash value meal plans for recipients of Title IV program funds must be fully utilized for the benefit of respective students. And here is the change. No institution may retain any unused cash value meal plan, and any remaining balance at the end of the payment period must be returned to the student as soon as possible, but no later than 14 days after the end of the payment period. School may not be- is not required to pay a remaining balance that is less than \$1. So we see here when a student- with a student's written authorization under 668.165 (b) (1) romanette 2B, which is under authorizations, the institution may retain the unused cash value of the meal plan through the earlier of the end of the academic year, or 14 days after the end of the payment period in which the student ceases enrollment at the institution or apply any unused cash value meal plan funds to unpaid allowable charges. I want to stop there with the meal plans and open it up for discussion on that portion, please.

MR. ROBERTS: Alright. I saw a few hands go up and then come down. I do just want to note,

and I neglected to mention this earlier. Dom Chase is in on behalf of business officers. So apologies for missing you Dom, but welcome. Barmak, go ahead.

MR. NASSIRIAN: The question on- let's see, it's 164, 164(c)(1) romanette 1A. The text reads, an institution may only include costs of books and supplies. Do you mean the verb include? Or do you mean auto bill? Because if- you know, if an institution wants to charge, I don't know, \$5,000 tuition and give away books, is the Department going to get into the details of how they came up with that tuition amount, and then judge whether the books may or may not be included? I think what you really want to do is change this to automatically bill the cost of books and supplies, not including tuition, because the institution have the right to give stuff away for free as part of their tuition, I would hope.

MR. MARTIN: Yes. An institution does have that- they can certainly give things away for free, although I think it is a legitimate question. You know, it- we do- well, we do expect that it wouldn't be used to game, you know- saying that giving away things for free as far as like as gaming the provision in order to fold the costs, to actually fold the costs of books and supplies into tuition. When we say include in tuition and fees, that's the current- the current structure allows

schools to- I wouldn't know if I call it automatically bill, but certainly because the student, even under the current rules, does have an opt-out provision. So I don't know if- but it does allow for a school to bill tuition and fees and build those books and supplies charges all at once as part of the program cost. But this- what this essentially does is eliminate that. The school would still be allowed to offer books and supplies under- even under inclusive access for that. But as a matter of it being just included in tuition and fees for which the institution does not need to seek the student's authorization for tuition fees and for room and board charges- I'm sorry, meals and housing charges, that are- those can be- those are institutional charges for which the school does not have to seek authorization from the student. So what we're doing here is taking away that authority for books and supplies they cannot be part of tuition fees. And now making it such that the student has to- would have to give his or her authorization in order to do that. David, did you want to make a- David or Denise, do you want to make a comment here?

MS. MORELLI: I just want to ask. I think Barmak's just suggest- you're not arguing about the principle. I think you're suggesting that we need a language change to get to what we want. And you're

suggesting auto-bill? That's kind of a weird-

MR. MARTIN: I'm not sure we have the concept of auto-bill, though. I don't- I'm not sure that's going to work.

MR. NASSIRIAN: Bill- to bill students for the cost of books and supplies. I think include is a problematic construct here, candidly. You don't want to get into an analysis of components of tuition here.

MS. MORELLI: I understand.

MR. NASSIRIAN: Yeah.

MR. MARTIN: How about this? Barmak, the language that- Dave Musser's got some text he sent me. An institution may not require students to pay for institutionally provided books and supplies, including as part of tuition and fees. Would that be-?

MR. NASSIRIAN: Yeah.

MR. MARTIN: Sways your concerns?

MR. NASSIRIAN: Yes. Thank you.

MR. ROBERTS: And thank all of you.

Alyssa Dobson's coming in for public four-year institutions. But first Jillian, you're up.

MS. KLEIN: Yeah, sorry for the dumb question, and I swear I must have missed this, but so the addition or change to the student is a confined or incarcerated individual. Can you- I don't understand why-

can you just talk about that change and the rationale behind it? I'm sorry.

MR. MUSSER: Yeah, we-

MR. MARTIN: Yeah. Well, confined- those students have no- those students really have no option to purchase elsewhere. Dave, did you want to make a-?

MR. ROBERTS: I can put a little bit more context behind this one. We had a great comment last time that the approach that we were creating was actually inconsistent with requirements that we had included in the regulations for confined or incarcerated individuals, which essentially says that we- that schools have to include books and supplies in those students' tuition and fees because there's generally no way for them to obtain those materials on their own. And even if there were, there are some distinct and unique risks to allowing them to do that in that setting. And therefore we are- we require schools to- you know, they could charge them separately, but they ultimately- the school has to be the one that charges them and directly for the materials. So we are essentially just accommodating that here.

MS. KLEIN: Got it, thanks. The context is super helpful.

MR. ROBERTS: Alright. Thank you.

Magin is in on behalf of civil rights organizations and consumer advocates. But first, Dom, go ahead.

MR. CHASE: Yeah. Thank you, Greg. Greg, I think the encouragement of it being a part of tuition is inflationary on pricing in nature as it becomes a component of something else. And I think that the separate discrete fee is what- what is an advantage of the programs as the language currently allows. One of the things we've been talking about here is the procurement of Microsoft Office Suite licenses for our students, which certainly an individual consumer could go out and get a license for access to Microsoft Office, Word, Outlook, etc. as an individual, but the institution, to ensure that the students have- are equipped with the right tools in order to be successful, purchases those at volume on behalf of the students so they're able to be successful from the first day of class. The health and safety is a significant issue for us. We have welding programs where students need oxygen tanks and our PPE, as we saw during the pandemic, PPE is not the same across the board. Some are certified and effective and some are not. As for the current regulations, they were adopted in fall of 2015 and took effect in July of 2016. Over the last eight years, the regulations have benefited students in multiple ways, but

most notably in two respects; leveraging the volume purchasing power of institutions to lower the actual cost to students for books and supplies, and ensuring that students have books and supplies on the first day of class, which study after study has shown to improve academic achievement. The Department and others have expressed concern throughout this process regarding transparency of costs, the ease for students to opt out, and ensuring students who opt out receive those funds. Without explanation, the Department has rejected reasonable proposals from the entire institutional community. The institutional community's proposals would both preserve the benefits of the current regulations, while also enhancing protections to students through clearer pricing disclosures, more frequent and accessible opt-out processes, and ensuring that students who opt out from inclusive access programs receive monetary credit. The Department has doubled down on its position over the course of this negotiation, and proposes to address reported bad acts by dismantling the entirety of the regulations in lieu of ensuring compliance with the existing regulations. The very predictable result will be fewer students participating in inclusive access programs to the extent they remain viable at all. That means lessening the purchasing power of institutions to get

below market pricing for books and supplies, thereby increasing costs for students and fewer students being fully prepared with books and supplies on day one of their courses.

MR. MARTIN: So I can address some of those. But before I do that, I'd like to put up- Vanessa, could you put the rule back- the applicable language back up, please? And I would like to look at one more section I think we need to look at before to look at this- to discuss this under romanette two, the amount incurred by the student. Could you go there? There it is. Thank you, Vanessa. So other allowable charges here, the amount of- incurred by the student for the payment period for purchasing books, supplies, and other educationally-related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under 668.165(b), provided that for each payment period, the institution individually discloses the cost of such books, supplies, and other educationally-related goods and services to the student prior to any authorization being signed, and the student or parent chooses to purchase those books- those materials provided by the institution, and the institution makes those books or supplies available to students at or below competitive market rates. And I

think the salient language for me is where we say that where the institution or parent chooses to purchase those materials provided by the institution. In composing these rules, I would counter that the Department has not in any way precluded schools from offering books and supplies to students. And I would argue that if the- if what the institution is providing is obviously head and shoulders above what students may be able to obtain on the open market, that most students would opt for taking that- taking what the school is offering. So in proposing this, we are simply making it such that the student has to agree to purchase those books and materials from the institution. As far as the provision on health and safety goes, we- although we've removed that exception, it's still possible for schools to- in determining what books and supplies students must have, using your example of welding- welding supplies, it's possible for the school to mandate the quality of materials the institution must have. I mean, the student must have, must purchase, such that the student would not be able to- would not be allowed to use inferior grade materials in the class. I understand that institutions would like to, for the sake of ease, include this in tuition and fees and have students have this- it's certainly- how do I want to say it? Faster for the school to do this or than this- than

the other way. But we believe that there's a compelling need to give the students choice, and I don't accept that we are precluding anything in offering these rules.

MR. ROBERTS: Alright. Thank you both. Alyssa, we'll turn to you next.

MS. DOBSON: Hi. So it seems like we're talking about two different sections, and I'm going to comment briefly on both of those. The cash value of meal plans and then the book issue. But I think it's important to introduce the concept that some institutions actually bundle their meal swipes with the- what we- most of us would call flex plans, which would be the cash value component, meaning that those dollars don't necessarily equate to the a dollar for dollar directly, meaning the student's benefit. So like a contemporary example would be, you know, you bundle your home and your auto insurance and you save money. So these students actually- are actually receiving higher flex amounts because they're bundled with the swipes. So I think an unintended consequence of changing this, where we have to then refund those in any dollar-per-dollar world where they're not necessarily mathematically the same would mean that we would all change. Students would lose out on that benefit. Essentially meal plans would become more expensive. And I was glad to see that you did introduce a

de minimis amount. I do think a dollar is not necessarily enough. The burden of issuing checks for between \$1 and, say, \$5 and then chasing that money around is not necessarily worth the dollar that it is to even a very poor student for- I'm not sure that they would even cash the checks. And then we have the obligation of refunding those to a different source. And finally, with regard to the inclusive access regulations you know, from the- the students and other folks that we've heard from have clearly indicated that when they're being unfairly charged or charged more than they could be in the private market, that they're dealing with an institution who is not conforming to regulation now, meaning they're out of compliance currently. And so I just- it's kind of a rhetorical question, but what makes you think if you change the regulation that they're going to follow it later if they're not following it now? There are lots and lots of students who benefit greatly from inclusive access programs, including at my institution and others in the four-year public sphere. And, you know, changing the regulation to combat bad actors generally isn't going to work. I would maybe suggest putting something in the audit guide, the audit book that would require evaluation of inclusive access programs while leaving the regulation as it was in hopes to target the bad actors and not

everybody, including the students who also benefit from those programs. Thank you.

MR. ROBERTS: Thank you, Alyssa.

MR. MARTIN: I want to address the meal plan. I'll address the meal plan issue, you know, in saying that our, you know, the impetus for doing this has, you know, with the cash value of meal plan is that- and I- certainly where there's cash value but the school offers more in the way of the student can purchase than the actual cash value, I would applaud that. But I think we have to go back to the reason why we proposed this to begin with, which is that when there is actual cash remaining on a student's account, it's- I think one hard-pressed to suggest that it's- that it is in any way a good or positive thing for an institution to really be able to sweep that money back. That is- you know, there's- I can't view that in any other way than that is actual cash value money that that is student money that is there that, you know- and I can see that it may require some accounting and changes of schools. It may present some inconvenience to institutions. But I, we see it as pretty clear-cut. That is, you know, that is- and we have made a distinction here between meal swipes the students have paid for in advance and actual cash value, that where that exists is simply- is not- it's just-

simply is not acceptable from our perspective to go in at the end of the semester or whatever and just sweep that money back. So that's I guess, where we are with that. As far as inclusive access goes, again, I reiterate that we're not precluding any of these plans. I still ask the question that if what the institution is offering is obviously a great benefit to students, why then students wouldn't want to provide their authorization for the school to provide this? We've made that- we've made provision for that in the regulation where with the authorization so we can go ahead and do that. Okay, thank you.

MR. ROBERTS: Thank you. Magin, go ahead.

MS. SANCHEZ: I want to talk about textbooks, but just quickly on the meal plans, I think, again, it's a reminder that it's the student's money. And I think that point goes to, you know, not to beat a dead horse, but the important of- the importance of including the value of the meal plans, the meals themselves, right? Outside of that, also, in terms of the incarcerated student provisions, I did want to emphasize [inaudible] something was brought up by constituents on this, the importance to offer guidance in terms of- for institutions to offer transparency in terms of billing

that takes place, right. Even if that's the only option for institutions to provide for textbooks, there should still be some type of clarity in how those institutions make those decisions. Oftentimes, students are left in the dark in terms of how their Pell grants are used. So I'm not sure that necessarily would be in the regulation itself, but for the Department to keep that in mind.

MR. ROBERTS: Thank you, Magin.

Jillian, go ahead.

MS. KLEIN: Thanks. So I want to raise again the issue that I raised in February. And I know Jamie had an example of this as well, and I think surprised everybody, Barmak even sort of agreed with what we were saying. Which is, I have concerns about the continued elimination of the language. It's on page three or it was on page three, number two, romanette one, which says the institution documents on- or it said, the institution documents on a current basis that the bookstore supplies, including digital or electronic materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided by- provided or authorized by the institution. And I am hearing loud and clear that if something is available more cheaply through an institution, students should be willing to go that route.

And I understand that. But that doesn't work with the examples that I provided and Jamie provided in terms of what this looks like in institutions in real life. So I provided the example of my institutions curating content from across several different books or publishers or resources and sort of pulling them into one book or resource for our students so that they don't have to buy 12 different books, they just buy one that contains all of the chapters or competencies that we would expect them to be able to master for a particular course that they're enrolled in. I think Jamie gave the example of faculty members who sometimes create their own content and bundle it together and provide it to students in support of a class that they're offering. And in both of those examples, there is no way for me to use the language that you are proposing that would require me to demonstrate that I'm offering it to a student below market price, because there's no- the thing that I'm talking about doesn't exist anywhere. So I guess I would like to hear from the Department. I think I've sent a couple of proposals that reinstate that language. I- how can I- how can we have a conversation about this, or what can we do to be helpful in this way? Because I do think that the way that it's used by institutions is actually an advantage to students in terms of not having to buy 12

books if an institution can sort of bundle them together in a way that's more efficient for students, but would love to hear from the Department, sort of where we can go on this.

MR. MARTIN: Yeah, I can understand that, you know, institutions, professors, instructors in designing their course materials have integrated articles, excerpts from books, you know, whatever into materials that they want to include in the- you know, for the course. And I think, you know, we always- you have to balance that off against, again, giving students- what this does is give students the choice to either authorize that or not to. It is a- I do concede that under the current regulations, there is an opt-out provision for students to opt out of doing it. And every student has to be given that option. But the way we are viewing it here is that, you know, for students to spend their money on these course materials, they should agree to opt into that decision. As far as the fare, where we say the institution must make books and supplies available to students at below or competitive market rates, I think, and maybe I'll ask Dave to opine here, but where the school- if it- if it's material that clearly has no equivalency, you know, out there in the market, you're right, there might not be something which has an

equivalent to it. I think where possible you need to do this. And even where that material is very specific to your school, I- we still argue that the student would have to make the choice to opt into that. But David, do you want to make a comment here?

MR. MUSSER: Yeah, I think the Department actually does recognize that this is a kind of a tricky part of the rules. You know, I think one of our goals is to allow institutions to provide materials to students that the institution obtained at little to no cost. For example, open educational resources. If a professor goes into their own textbooks and pulls out things that they want to pull together for the student, again, they didn't spend a dollar on any of the- of those books, but they- that they are still pulling it all together to provide to the student for virtually nothing. I think the Department would be interested in suggestions from negotiators. And if I'm remembering correctly, this was something that- this was where Barmak was in agreement last time that these kinds of materials-

MS. KLEIN: Say it again, everybody needs to hear it again.

MR. MUSSER: Well, this is my recollection, so Barmak, correct me if you think I'm wrong here, but these kinds of materials where there

really isn't a cost to the institution, I think if you- so going back to the Department's concern here, you know, the- one of the things that's difficult with this, with the existing reg is that the transparency- and this is something that you guys have all brought up as well, is non-existent currently. And I know negotiators for schools have offered options to show- to give more transparency toward, you know, the amount that the books actually cost them and that they're costing students. But even then, the ultimate question, I think, is how much did it cost the institution to get the materials? And if it cost the institution almost nothing, I think the Department is open, and I'll look to my colleagues here, open to language that will- allows the school to then transfer those non-cost materials to students in a seamless way. And that may not be represented in the current regulatory language. And we've just- it's something that we've been thinking about and that I haven't quite seen how to get to. So if folks have suggestions about that, I think we would be open to them. But it is something that, you know, our main concern are cases where, you know, the institution is providing materials to students. Yes, there's a requirement that it be at or below market rates. How do we know that that's really true, how- what is the institution's analysis for

doing that, etc.? But when it's- when the institution gets it for nothing, well, there's no analysis to do because there's nothing to compare it to. And we know that it's- they're getting it for the lowest possible price. So I guess if you guys do have options on that front, we'd be interested.

MS. KLEIN: So, I guess I'll say I think there's a couple. So I've only provided two examples. One of them, obviously was Jamie's. My example is slightly different than that, which is the scenario where we are curating chapters or yeah, chapters from particular- from a lot of different books, from 12 different books and bringing them together as we build, for example, our competency-based education courses, though I don't believe this is specific just to CBE in a way that creates a brand new, not available anywhere else material for students that we obviously are paying for as we're putting together a compilation of 12 chapters. So it doesn't fit into what you're saying, but also there is no way for me to price match or price compare because this book doesn't exist anywhere else. So I don't know, that's where I'm looking for either. I'm happy- I mean, I can come back to you again and resubmit what we already submitted. I want this exercise to be fruitful, though, if the Department is serious about trying to figure out a

way to solve- or legitimate concerns like this one. But I guess I'm struggling a bit with this example, and I think there are probably a lot of other ones that are similar to, but not exactly the same as this one, and how the Department would suggest that institutions would be able to adhere to this requirement that we compare to the price on the market when there is actually no- there is no way to do that.

MR. MARTIN: Well, I think there has to be. I mean, we say here the institution makes those books and supplies available to students at or below competitive market rates. So where you- what you've just discussed, you know, would, under these rules obviously still require the students- the authorization. As far as the competitive market rates goes, you would be required to make it. I think an effort to look for that- if there is no- if there's nothing- if there truly is not- if there's nothing to compare it to, then I don't- then I would ask my colleagues to weigh in. If there truly is nothing to compare it to, then I think that you've done your job. However, I- we do have to point out that- and I not for a moment suggested that you would do this at all, Jillian, but I don't want to go too far in saying- in offering people an option to game it by saying, well, you know clearly what I have here, there's no comparable-

there's nothing comparable on the market, therefore I can I can charge whatever I want. But in the instance you pointed out where, you know, you've bundled those particular materials into one thing and specific to that class, yes, I would concede that it might not be something out there you can directly compare it to. And maybe we can address that in the preamble language.

MS. KLEIN: No, please don't address it in the preamble. Please address it in actual regulatory text. That's a terrible idea.

MR. MARTIN: Well, I don't know that I can offer- I mean, I don't know that I can offer- we can offer, you know, what you want there, you know, as far as the regulatory text.

MS. MORELLI: I-

MR. ROBERTS: Denise, did you want to weigh in?

MS. MORELLI: Well, I want to ask Jillian a clarifying question or the other negotiators. How widespread is this? Because you're talking about your competency-based, which is your institutions, your chain of institutions does that. But how widespread is it in terms of institutions across the Title IV realm, that they pull from a bunch of different books and put into a book that's not available? I think we need- the

Department would like to know that or need to know that in terms of crafting any kind of additions to this. I'm not saying we're open to that, but I think we need to know what we're talking about, what we're dealing with out there. I don't know, Alyssa, maybe your constituency can tell me this. Is it- and different- this is different than when one professor has, you know.

MS. DOBSON: No, yes, we do that in the Pennsylvania State system of higher ed. I won't say it's every class, but it's not uncommon to, you know, usually from the same publisher but a few different chapters from different books, bundle that and price it reasonably like, for instance, at my institution it would be somewhere around \$25 or \$30. It's not- which is unheard of in the realm of textbooks. But yes, we do that. Maybe not anymore. We do that currently.

MR. ROBERTS: Anyone else want to weigh in on this particular element? Alyssa, your hand is up next, so I would turn it over to you. I do just want to briefly remind the folks that have signed up for public comment to please start logging on so we can transition to that part of our day in a timely fashion. But, Alyssa, please go ahead.

MS. DOBSON: Yeah. So I just think a little bit more elaboration on this whole opting in

versus opting out. You know, we have a pretty fairly robust inclusive access program here at Slippery Rock and within the state system in Pennsylvania and some of my neighboring states as well. Opt-in won't work out because opting out doesn't necessarily work either. So I see most and I mean most- the last time I ran statistics was, granted, a few years ago, but 98% of my students ended up fully in the inclusive access program, and those who did opt out ended up very quickly once they realized that they couldn't find those materials elsewhere at a lower price, trying to opt back in. And then I do think it's important to introduce the concept, you know, kits and other equipment is not necessarily just a proprietary exercise. So the largest school in my system has found a way to purchase- this is such a strange example, but I think it helps frame the issue, clay at a much reduced price, and then they can offer that to their art students annually at half of what it would cost them to go to the cheapest outlet store, which they don't want them to use outlet anyway. But if we had to do an opt-in for that, students don't understand and they just see this charge that they can opt out of, and it's very tempting and easy to opt out of that charge. And then when the class starts, now it's too late for them to opt into that program. Opt-out still works. Most of the reputable

schools who operate within this realm have at least a two-week period for the student to opt out, so if they find that the book or the supplies or whatever it may be are not meeting their needs or were too expensive, they can still opt out even after they've had the chance to utilize the material or review the material. The reason that we can offer it at such a low price is because we have the opt-out versus opt-in scenario that helps the inclusive access program work.

MR. ROBERTS: Okay. Thank you, Alyssa. Emmett, go ahead.

MR. BLANEY: Yeah, thank you. I think it's a little- it paints students in a naive light to say that we're going to just immediately opt out of something because there's a button that says opt out. So I just wanted to respond to that and also say that, again, in that scenario, I would encourage folks who have schools that have opt-in to encourage students to opt in. That seems a little repetitive, but yeah, the opt-in/opt-out, neither working feels a little confusing for me, but if it- if the prices are truly better for a student to opt in to a school's program, like we are going to do it- and so I find it funny to say that opt-in won't work at the same time as you're saying, but it's saving students so much money to have this inclusive access program. Then I

would- like I will be lining up for your inclusive access program, opting into it if it is truly saving so much money. And then I just wanted to call attention to a letter. We had it sent out to all the negotiators today. The Department had already received it. Hundreds of students and student organizations have signed on to the letter, you know, detailing the actual data behind inclusive access programs. And the last thing I'll say on that is I think someone said in the chat, Barmak maybe, that comparing book prices to market rates is not effective, because even as some of folks, who on the other end of the spectrum of this argument have pointed out, you know, textbook prices have been steadily increasing market rates, and it's because textbook publishing companies can increase their prices. And so if we're comparing them to the market price, it doesn't quite make sense, because if they can artificially inflate the price, that means they can artificially create savings. So sorry if that was a little off the cuff, but just wanted to reiterate that again, if- I hear the argument being but this saves students money, this saves students money, this saves students money, and I appreciate the Department saying it is students money. So I would put those two things forward and say that if it does save students money, we will opt into it. I guess

that's my comment.

MR. ROBERTS: Thank you, Emmett. Joe, who's back for business officers, please go ahead.

MR. WEGLARZ: Good afternoon everyone. So my discussion is regarding the meal plans. So I guess I'm just trying to figure out the history of how this whole topic got to where we are today with it. So I don't know if folks in the Department, do you have data to what dollar amount is being lost on the students' behalf? Because I know at Marist, and we're a traditional four-year private school with an enrollment of around 6,000 students, this issue never comes up. Alright? So, it could be maybe, you know, we're a unique institution, which I really don't think we are regarding this meal plan policy. You know, we do offer six or seven meal plans. So the students are not being forced into a meal plan that they cannot take full advantage of throughout the semester or throughout the year. And then the second part of my discussion is if this does go into play, where we need to refund dollar amounts for unused meal plan usage, I mean, what do you folks- I mean, the- unfortunately, the vendors, alright, the dining services vendors, I'm sure they include some of these dollars as part of their revenue projection. So what are they going to do? They're just going to increase future costs for

the institution, which will pass it off to the students. And we're just sort of doing, I think, around the circle here. So I would be very interested, though, in, you know, what has brought this up for negotiated rulemaking, this subject matter.

MR. MARTIN: Well, I can say that we don't retain data on, you know, on the amount of cash value meal plans that exists in institutions. So we don't have that. We are generally aware that the practice exists of sweeping, you know, sweeping dollars back to the institution. And I think that, you know, even if it is not- and currently there's nothing that prohibits it, so I wouldn't I wouldn't say it's a- an area of a- necessarily an area of abuse because there's no lobbying rule being abused right now. However, conceptually, we have a problem with it. I- and I- where I can- I can accept your point where I purchased- you know, I purchased a certain number of meal swipes on the traditional, you know, meal plans, such as I had in 1980s, where you purchase a certain number of swipes and there's a certain number of meals where, you know, obviously, I- the cafeteria or the- at that time, that was all it was, it was cafeteria has to prepare to make that number of meals because that is the potential being purchased. But where there's- just whether it's cash on-

you know, whether it's true cash sitting there, it's student cash and you know, and it may have come- and it may be the result of money that students have borrowed that they're going to have to repay. The idea that I just- I guess I'm having a difficult time seeing how it's in any way defensible or irrespective of what the prevalence of this is, how it's in any way defensible to say that, well, just the money exists there, it belongs to the student. It would have been optimal if they'd spent it on these other services that are offered, but they didn't. So we're just going to take it back. I just, I- I'm having a difficult time grasping how that's something that can be- that we can think could be a good thing that we shouldn't address. So-

MR. WEGLARZ: I think part of that is, you know, educating the student, right? So, you know, it's getting them ready for the real world when it comes to managing their personal finances. Now, I know I'm going out of the scope a little here, but they know at any time to what availability they have on their meal plan. So it's not like the institutions are hiding this from them. So I think it's- you know, some of the responsibility. I'm not saying all of it, alright, goes into students' behalf, but it also goes on the institution educating the students to how they manage

their meal plans.

MR. MARTIN: Yes. And I can see that students do have to learn- you know, do have to learn responsibility. I think everybody would agree with that. However, I still think that we're- you know, and it's Department's position that where there's value there, where there's cash value, that, you know, giving that back to the student is the right thing to do, even if it does involve some degree of administrative burden on schools. I don't know that I would accept the idea that, well, you know, you put this money down here. You know, you should be aware of the fact if you don't spend it, you lose it. I don't- that to me is not- doesn't go in the realm of responsibility. I mean responsibility, I can understand if you say, you know, the school, I'm enrolling for a semester and I'm paying for that semester. And I understand that if I decide to withdraw I may get some of it back, but, you know, but there are costs of school entailed. I will not get all of it back. That's the- I agree with you there. That's part of learning to be an adult. However, with this, I just- we just see it as, you know, cash value sitting there. If you're not going- if it's not going to be used, then it should be returned. I'll leave it at that.

MR. ROBERTS: Thank you. Thank you

both. If it's okay, Scott, Jason, and Emmett, we're gonna- I don't think we're gonna have time for a full debrief with your comments. So we'll pick back up the three of you as we resume the cash management discussion tomorrow. We are seeing some folks in the waiting room for public comment. So, again, if folks did receive a confirmation email, please start logging in with the name that you registered under. And as we mentioned today, feel free to keep submitting language obviously as quickly as possible so that we can have a chance to distribute it and consider it as we eventually move to consensus checks tomorrow and Thursday. Denise?

MS. MORELLI: I just wanted to say that Donna Mangold is going to be replacing me for the public comment-

MR. ROBERTS: Oh great.

MS. MORELLI: -period.

MR. ROBERTS: Okay, we'll see you tomorrow. Thank you. Alright, I believe- Greg, anything from you?

MR. MARTIN: No. I think we can move right to public comment.

MR. ROBERTS: Alright, Krystil, who are we hearing from first?

MS. K. SMITH: So our first speaker is

James Caras, who is from Catalyst Education. And James, if you can turn on your camera or unmute. James? It- alright, he's-

MR. ROBERTS: [Inaudible 02:35:33]

MR. CARAS: Thank you.

MR. ROBERTS: There we go. Welcome to public comment. If you're comfortable, feel free to turn on your camera so that we can see you. You'll have three minutes to address the committee, and you'll be given a 30-second heads up when your time is about to expire, and you may begin.

MR. CARAS: Thank you. I am James Caras, the CEO of Catalyst Education. I recently submitted a letter signed by a coalition of 10 digital courseware entrepreneurs voicing support of this negotiating rulemaking process and united in opposition to inclusive access and equitable access programs as they exist today. At a minimum, we are strongly in favor of changing these programs to opt-in. The higher education market is shifting to digital learning and courseware. The courseware IA & EA program simply increases the overall cost of students, deprive the market of the transparency needed to fairly assess the value of digital learning solutions, force students into an expensive middleman retailer, and stifle the innovation needed to

help our learners compete in the 21st century. I'd like to provide some specifics. After adoption by faculty, the bookstore is often notified and contacts us about the university's IA & EA program. We give them our typical \$40 product price, and they tell us the price students will pay after the 30 to 40% bookstore markup, plus the 10% markup for the EA and IA program for typical markup of 40 to 50%. Because of this, the instructor often wants to bypass the bookstore, but is told that we will be unable to integrate with the university learning management system if we do not enroll in the program. This is a key requirement for most faculty. We are therefore forced to provide our product through a single, expensive monopoly on campus at a higher cost to the student. We always have provided codes to bookstores for them to sell, left to their own purchasing power and decisions. Eighty-five percent of the students that buy our products purchased directly from us to avoid the bookstore market. However, with the mandatory enrollment and opt-out policies of the EA & IA programs, purchasing behavior is flipped, with over 90% of students essentially driven into making a bookstore purchase at a much higher cost. In this case, students are paying for an unnecessary fee with no benefit to them. Cloud-based digital learning products do not need to be shipped,

stored, put on shelves or distributed by a physical store. For those that espouse, day one access is a significant benefit of these programs. Note that innovative ad tech providers invented this concept, have been providing it for over a decade, with the bookstores and publishers just now catching up. I'd be happy to document specific examples of the aforementioned cost markup and shift in buying behavior. Just this week, an instructor at the University of Ohio adopted our platform at a \$50 student price. This led to a cascade of communication demands from the bookstore that increased that price 56% to \$78 because of these programs.

MR. WAGNER: You have 30 seconds remaining.

MR. CARAS: The faculty, under pressure from the university and bookstore, and a desire to have grades flow easily into the university's LMS, relented. That's a perfect example. Thank you for your time.

MR. ROBERTS: Thank you for your comment, James. We appreciate it. Alright, Krystil, I think we can welcome our next speaker.

MS. K. SMITH: Next, we have Jude Kiah, who is from Texas Christian University. And Jude is in the room.

MR. ROBERTS: Good afternoon, Jude, can you hear me? If you just want to come off mute. Excellent. Welcome to public comment. You'll have three minutes to address the committee with a 30-second heads-up. Feel free to take it away.

DR. KIAH: My name is Dr. Jude Kiah. I'm assistant vice chancellor at Texas Christian University of Student Affairs, and I have built three inclusive access- we called it something different when we did it at three different universities. Having been a first-generation student, very poor, I could not afford books. That's what drove me to want to build these programs. In every one of the cases, it was at least a 50% reduction in cost. And there was something I listened to earlier that I decided to spend the rest of my time trying to help you understand. The difference between opt-in and opt-out has nothing to do with consumer choice. It has to do with the content provider. Content provider for publishers that control over 95% of the market. They have decided to push the cost of books because of their perceived inelastic nature, meaning that students are forced to buy them just from them. They are currently violating Federal policy by going directly to faculty and getting them to go beyond the bookstore. And- but we allow them to do that because of the inactivity.

What I would tell you is that in an opt-out process, it allows- it forces the providers to remove the premium that they have added into the books in order to make up the difference that they have lost over the last 15 or 20 years to disintermediation. This has been true at every one of the places I have built it, and in every one of the cases, it's been a 50% reduction in cost. I specifically spoke to one of the major- not even a week ago, and they told me specifically that they would not participate in these programs as opt-in, only as opt-out. So it's not about the student and it's not about the faculty. It's about speaking to the purveyors of the content that an opt-out program is serious and does allow the reduction in cost that is necessary. To give you one example, I negotiated one book that was going to be given to all of our freshmen, 1,800 of them at the school I was at. The retail cost of that book was \$81. We negotiated it down to \$47. Why? Because those 1,800 were in an opt-out situation. I agree with the committee, and to the speaker earlier who talked about the difference between the responsibility and how we want, you know, opt-in to be more- or opt-out to be more responsible, I agree that there's a clear and better way to handle the opt-in and opt-out. But I want to be incredibly clear that the difference is not about the consumer perception. It's

entirely about the purveyors, which are the four major publishers that control most of the market.

MR. WAGNER: You have 30 seconds remaining.

DR. KIAH: I'm good.

MR. ROBERTS: Great. Thank you, Dr. Kiah, we appreciate your comment. Have a good rest of your day. Krystil, who can we welcome next?

MS. K. SMITH: Our next speaker is Laurie Murdoch from Pikens Technical College. Laurie should be in the room.

MS. MURDOCH: I am.

MR. ROBERTS: Welcome, Laurie, hi.

MS. MURDOCH: Hi.

MR. ROBERTS: Welcome to public comment. You have three minutes to address the committee with a 30-second heads-up and the floor is yours.

MS. MURDOCH: Thank you so much for having me. Hello, everyone. My name is Laurie Murdoch. I'm the assistant director of cosmetology occupations at a public technical college in Aurora, Colorado. Throughout my career in various states, I've had the opportunity to witness the impact of different education systems on our students. And I'm here today to address the Department's proposal to remove asynchronous distance

education. In 2021, the guidance on distance education was clear and effective. However, the recent decision to question the effectiveness of distance education on trade programs in 2024 is kind of concerning. Distance education has proven to be highly effective for modern students, whether they are studying cosmetology, welding, nursing, commercial diving, or many of the other programs. It allows our students to learn at their own pace, leverage the learning methodologies that they are familiar with. I feel it's really crucial to understand that distance education is typically part of a hybrid program, where students combine on-site learning with theoretical components that they study online, and this flexibility is really essential for our many nontraditional students who juggle many, many responsibilities. So instead of eliminating this valuable educational method, I urge the Department to explore alternative solutions. Schools should be allowed to showcase their monitoring mechanisms for student progress. Please do not remove this definition merely to ease regulation burdens. We need to find effective ways to regulate while ensuring students have access to opportunities for career development. So my ask is that we all work together to support our students in accessing promising career paths that can enhance their lives.

Thank you so much for your time, I appreciate it.

MR. ROBERTS: Thank you, Laurie. We appreciate your comment.

MS. K. SMITH: Alright. Our next speaker is Karen McClellan from Purdue University. And Karen is in the room.

MR. ROBERTS: Welcome, Karen. Good afternoon. Welcome to public comment. You'll have three minutes to address the committee with a 30-second heads-up, and the floor is all yours.

MS. MCCLELLAN: Alright. Thank you. My name is Karen McClellan. I'm a senior lecturer at Purdue University Fort Wayne. Purdue Fort Wayne is a regional campus of Purdue University in the city of Fort Wayne, serving the Northeast Indiana region. We have approximately 10,000 students. I've taught over 30 years in the Department of Biology. I teach allied health and nursing students, and a majority of my students are nontraditional students that juggle work, school, and family. Many of my students are also first-generation college students. I'm here today to share my support for the affordable access programs, like ones that have benefited our students at Purdue Fort Wayne. Before these access programs, many of my students could not afford their textbooks and would wait many weeks into the

semester before they were able to have the financial capacity to purchase their textbooks. They'd be waiting for that next paycheck. Many students attempted to complete coursework without using a textbook. I've used access program for nearly ten years. I've seen an increase in the success of students because of having day one access to their course materials. Students have been supportive of the ease of access to their textbook and the lower prices of textbooks when using these access programs. I am concerned that the regulation under consideration could make it harder for my students to afford their books, and it would also impact our students' retention and completion of not only their coursework, but of their degree. The Department's proposed regulations would take away the option for Purdue University Fort Wayne or any school to implement an opt-out program. Opt-out still preserves student choice, but at the same time, it decreases prices because it permits bulk buying that we do not think will occur if student- if schools are restricted to an opt-in only program. That's why it's critical to preserve for universities the option of implementing opt-out programs. It's my understanding that compromise language has been offered to ensure transparency and disclosure, but any such proposal has not been reflected on the Department's

latest text. The DOE continues to reject opt-out despite the impact that it will have on prices. I strongly encourage you to vote no on the Department's proposed language and to work to keep affordable access programs. These programs can continue to help keep textbook prices low and help ensure students like mine have the materials they need to be successful on the first day of class. Thank you.

MR. ROBERTS: Thank you, Karen.

Krystil, you're on mute, but who are we welcoming next?

MS. K. SMITH: Sorry. Our next speaker is Jessi Stafford from Texas Appleseed. And Jessi should be in the room, yes.

MS. STAFFORD: Yes. Hello. My name is Jessi Stafford, and I'm a senior research analyst at Texas Appleseed, a public policy organization based in Austin. I authored the report, *Withholding Higher Education How Current Transcript Policies at Texas Colleges Derail Educational Aspirations and Job Opportunities for Texans to determine the impact of withholding college transcripts on current and former students*. Today, I want to discuss how the findings of my research relate to return to Title IV. When a student withdraws in the institution, initiates a return to Title IV, they are faced with consequences beyond simply owing

a debt. In my research, I sampled 12 higher education institutions across the state, half of which were community colleges and the other half public universities. The sample included schools with high and low enrollment and ensured diversity in the geographical location. First, I encountered issues in obtaining clear and consistent data. All universities were excluded from the report due to issues with data quality. Therefore, the report focused on the six community colleges. Even among the data we obtained, it was inconsistent and in most cases the request was only partially fulfilled. This highlights the need for data collection to be a priority. I found that most debts belong to individuals no longer enrolled in the institution, transcript withholding policies disproportionately harmed Black students, and most debts are more than five years old. Across the six colleges, there were nearly 55,000 debts, totaling nearly \$32 million. Individuals no longer enrolled in the institution held 83% of debt, preventing them from accessing the transcript, meaning they can't claim credit for completed courses if they wish to return to school. I requested data related to the category of these debts, and one college reported that 11% of debt is due to return to Title IV. We speculate this might be inaccurate as the college reported tuition as the leading debt

causing a transcript hold. Institutional policies require students to pay tuition before enrolling, suggesting these funds were subject to return to Title IV and individual was left owing the institution a tuition debt. As the committee negotiates rules around R2T4, I urge the committee to consider additional consequences students face after accruing these debts and put safeguards in place to ensure an unpaid balance has no further consequences beyond repayment, such as transcript withholding. New rules adopted by the Department will prevent institutions from withholding transcripts for terms in which the student received Title IV funds and the balance of the terms was paid in full go into effect on July 1st. This is not a total ban on the practice and does not ensure students can access transcripts following a R2T4. In the report, we provide the following recommendations. Ban institutions from withholding college transcripts for unpaid debt. Require consistent data reporting, particularly regarding which debts resulted from a R2T4. [30 seconds] As you consider rules regarding return to Title IV, ensure that consequences such as transcript withholding cannot further burden borrowers.

MR. ROBERTS: Great. Thank you so much for your comment, Jessi.

MS. K. SMITH: Alright. Our next speaker is Amanda Sacoto-Dunbar. Amanda is representing herself, and Amanda is in the room.

MR. ROBERTS: Good afternoon, Amanda, can you hear me? You might need to come off of mute.

MS. K. SMITH: Yeah, you're on mute now, Amanda.

MS. SACOTO-DUNBAR: Can you hear me now?

MR. ROBERTS: We can. Yes, welcome.

MS. SACOTO-DUNBAR: I apologize. It's been a day. No. Hello? Okay. I'll just quickly jump into it. Hello. My name is Amanda Sacoto-Dunbar. While I was in the Army, I decided to go to school. I completed a bachelor's and a master's degree while I was just getting out of the military, all in criminal justice, without any issues. I knew what a good education was. In 2020, during the dawn of COVID-19 pandemic, I decided to go back to school for nursing. I enrolled at Herzing University and planned to attend through the VA's VRAP program, which paid for veterans like me to go back to school. However, I ended up leaving after a short time because the school was clearly subpar compared to my past experiences in higher education. From the start, there were many red flags. Herzing misled me at first about which campus I

could use the VRAP benefits at, so I was not able to use the benefits and actually ended up in \$4,000 of debt to them. I applied to the Tampa campus as that is where I live, in Tampa. The school told me I could only use it at the Orlando campus at the time, but they said if I enrolled in the Orlando campus, I could then transfer to the Tampa campus and keep utilizing the VRAP benefits. I followed the school's guidance, and they were wrong. I was not able to use the VRAP benefits at the Tampa campus. The school told me I would need to pay out of pocket at that point. Things from there- that was just a big- the beginning of it. Things went from bad to worse when I started my next semester in person on campus, one of my teachers was a complete disaster. Her classes often ended only within 30 minutes, even though the classes were allotted at least a two-hour slot. Once, after I had missed one of the important labs, a cardiovascular lab, because of a health emergency, I asked the teacher to make it up for the prep materials before conducting the makeup lab. She refused to meet with me, give me any guidance, any readings, videos, or any resources to that matter. During the semester, many students left, and eventually only ten remained in the class out of the beginning 40. Several other students and I filed complaints with the administration, but the dean and the

advisors that we complained to either ignored us or sent us to dead ends. This experience was the last straw for me at that point, and I decided to withdraw. I am now in debt of \$4,000 because of Herzing, and to Herzing. I'm here today to make sure that this experience does not happen to another veteran or student. Thank you for your time and listening to me.

MR. ROBERTS: Of course. Thank you so much for your comment, Amanda, and have a great rest of your day.

MS. SACOTO-DUNBAR: You too.

MS. K. SMITH: Alright. Our next speaker is David Thibodeau. David is representing himself. David should be in the room.

MR. THIBODEAU: Good afternoon. Yeah, my name is Dave Thibodeau, and in 2008, a few years after my service in the Army National Guard, I enrolled in DeVry University in the Game and Simulation Programming online program. I saw advertisements that made it look like a good school and a good program, and I couldn't have been more wrong. I graduated from DeVry after five years, and in all that time, I never had a real-time conversation or interaction with a single teacher. Not in a group or one-on-one. The way the courses were taught was totally ineffective. We would be assigned a bunch of

stuff to read, and we were required to provide just two comments per week on an online discussion board. Occasionally we were given assignments to complete, but the teachers never gave us valid feedback on the assignments. While I did graduate and get my degree, it has not helped me at all. If anything, it's had the opposite effect. I've had potential employers kind of scoff at a degree from DeVry. I currently work in IT customer support, which is what I did before attending DeVry. No job I ever had, including the job I have now requires a college degree. Unfortunately, I used up all of my GI Bill and have \$86,000 in student loans, including interest for my degree. The low quality of the education I experienced should not have been possible. It was not worth almost \$100,000 in debt in my GI Bill. Please consider rules that ensure that this won't happen to other people. Thank you.

MR. ROBERTS: Thank you for your comment, David. We appreciate it.

MS. K. SMITH: So our next speaker is Michael Brophy. He is from Hilbert College, and Michael is in the room.

MR. ROBERTS: Welcome, Michael. Welcome to public comment. You'll have three minutes to address the committee. You'll be given a 30-second heads-

up. And the floor is yours.

MR. BROPHY: Thank you. It's great to be with all of you today, and good afternoon. I'm Michael Brophy. I have the honor and privilege of serving as the president of Hilbert College, which is located in the Southtowns of Buffalo, New York. Our enrollment is a significant number of Pell recipients students, both urban poor and rural poor as well, given our location. And so over the years, we noticed they had a real need to be provided upfront before the first day of class with both textbooks and laptops. We finally were able to put together a digital equity program for them. And what happens then essentially is, you know, before the first day of class maybe Sunday night, if we're lucky, they open those laptops, they open up those course sections, and their textbooks come right in. About 85% of the students choose digital textbooks over hard copies. Probably no surprise to folks. But the real difference is we're no longer waiting till October around midterms, when people start scurrying around campus trying to find extra copies of books and things like that. So this is the program that we have, providing access to students within their tuition and fees. We package them within the tuition and fee structure, and they really have no concern at all going into that first day of class. We

would just- certainly the college is concerned that the regulation under consideration could make it harder for our students to afford their books and would also impact our students' retention and completion. So again, I'll close with saying we've had an- just unequivocal success. We're in our third year now with this digital access program which provides equity for students from all backgrounds. And we certainly hope that you can support us in this work going forward. Thank you very much.

MR. ROBERTS: Thank you for your comment, Michael, we appreciate it.

MR. BROPHY: Take care now.

MR. ROBERTS: You as well. Krystil, who are we hearing from next?

MS. K. SMITH: Next we have Rosalind Goldman. From CALPIRG.

MR. ROBERTS: Welcome, Rosalind, can you hear me?

MS. GOLDMAN: Yes.

MR. ROBERTS: Excellent.

MS. GOLDMAN: Hello.

MR. ROBERTS: Go right ahead.

MS. GOLDMAN: Hello. My name is Rosalind Goldman. I am a first-year student at UCLA studying political science. I chose political science

because I'm passionate about social issues, and I feel driven to advocate for them in government, which is one of the reasons that I'm really excited to be talking to you today. So thank you for giving me the opportunity to speak. I'm here to express my support for the Department's proposal to shift automatic textbook billing models from opt-out to opt-in. Even if the inclusive access program reduces the cost of a particular book from the original price, most students attempt to access their textbooks at no cost, either through online PDFs or libraries. Inclusive access automatically bills them and removes the chance to find alternative, cheaper access to their course materials unless they opt out by a certain deadline. I experienced this firsthand a couple of months ago. Over winter break, I received an email that my political science course was using inclusive access. I had never heard of it before, but the professor or- but the email told me that it would make the textbook cheaper, so I noted it and then moved on. My professor didn't mention anything, but a few weeks later, I received an email reminder that the opt-out deadline was approaching. Included in the email was the price of the textbook, which was \$60. Immediately, I thought that \$60 didn't seem like a very significantly reduced price, and was disappointed that I would have to pay that in

addition to my tuition for the quarter. I chose not to opt out because I didn't know where else to access the textbook, and I had already been doing the weekly readings from it for two weeks. Then, about a month ago, I noticed a \$75 charge on my term bill. I checked and there was a \$60 charge for the textbook and also a \$15 charge for earthquake materials. I'm taking a class about earthquakes, so I recognized it was related to that, but I was and remain confused about why the charge was there. The professor never mentioned an additional digital resource, and I never got an email about inclusive access for this class, so I didn't even know that I needed to opt out of it. Finals are in two weeks, and I still have never used this additional material for the class, mostly because I don't even know where to access it. Neither my professor nor my TA seem to even know we were charged for this. A shift to an opt-in program would be beneficial for students across the country, because they would no longer be automatically charged for material that they may not even have access to, simply because they forgot to check their email. It would allow students to default to free textbooks that they can find online instead. There are also alternatives to inclusive access opt-out that would save students money. Particularly, transferring to open educational resources would ensure

high-quality and free textbooks to students. Recently, 54 student governments and student organizations and 350 individual students signed a letter urging the Department to continue its efforts to make inclusive access opt-in. That's because my experience is not unique. Students across the country have found that despite its name, inclusive access isn't inclusive at all. Truly inclusive and equitable access to education requires policies that support transparency, affordability, and choice in how students acquire their materials, not practices that obscure the true cost of education and limit students' options. Thank you for your time.

MR. ROBERTS: Thank you for your comment Rosalind, we appreciate it. Alright, Krystil.

MS. K. SMITH: Next, we have Luke Becker, who is representing himself, and Luke is in the room.

MR. ROBERTS: Welcome, Luke. Can you hear me?

MR. BECKER: Yeah. Oh wait, shoot. There we go.

MR. ROBERTS: I was gonna say. There we go.

MR. BECKER: Lighting's pretty bad. I'm not gonna lie.

MR. ROBERTS: That's alright. You'll find all sorts of states of readiness in this room. Welcome to public comment. You have three minutes to address the committee with a 30-second heads-up and the floor is yours.

MR. BECKER: Sounds good. Good afternoon, guys. My name is Luke Becker, and I'm a sophomore at the University of Missouri studying health and wellness. Thank you for allowing me to speak today. I recently heard from one of my instructors that Mizzou might have to stop offering their auto-access program. Auto-access makes sure that all students automatically have access to their course materials within canvas on the first day of class at the lowest price. I was told that the Department was trying to get rid of these programs, because they had been told by certain students that these programs did not provide enough choice. I don't see how that can be. At Mizzou, we are notified well before the semester begins, what courses are in auto-access and how much the materials will cost, and how much- or- and if we can opt-out if we would rather get books a different way. This gives us weeks to shop around for other options. How is this not a choice? It has been a hassle to get course materials for some of my courses that are not in auto-access. Specifically. Last year for

my biology course, I had to purchase access to an online lab directly from its website. It required that I have a credit card to pay the \$60, but I did not have a credit card to use. Luckily, I was able to call my parents and use one of their credit cards, but this was still a pain. What do students do that don't have a credit card or a parent card to use? To me, that is not having a choice. At least if this was- if this course was part of auto-access, all students would have been given access to the lab, and then they could have decided if they wanted to opt out or not. I'm urging the Department to reconsider what student choice really means. Is it taking colleges' ability away to make sure all students have access to pay their course materials on the first day of class, at the lowest price, removing a choice? Thank you for your time.

MR. ROBERTS: Thank you Luke, we appreciate your comment.

MR. BECKER: Thank you. Have a good day.

MR. ROBERTS: You as well. Krystil, I think that we probably have time for one more comment, if that's alright with everyone. There's a few folks on the waiting list.

MS. K. SMITH: Our next speaker is Stacia Moroski-Rigney from Michigan State University, and

Stacia is in the room.

MR. ROBERTS: Welcome, Stacia. Can you hear me?

MS. MOROSKI-RIGNEY: I can, thank you.

MR. ROBERTS: Excellent. Welcome.

You'll have three minutes to address the committee. You'll be given a 30-second heads up and the floor is all yours.

MS. MOROSKI-RIGNEY: Thank you. So, good afternoon. My name is Stacia Moroski-Rigney, and I'm the director of accreditation, assessment, curriculum, and compliance at Michigan State University. I'm only representing my unit, AACC, to make a comment today about the proposed rules. We who do the work of state authorization and who greatly appreciate the state authorization reciprocity agreement, object to some of the language in the current draft. We, of course, agree that we must protect our students and appropriately regulate distance learning. However, SARA member institutions must comply with state laws regarding the delivery of distance education. States have autonomy over whether they allow out-of-state schools to place students in enrolled courses or programs, particularly those that lead or may lead to professional licensure or certification. As a reminder, participation in SARA is

voluntary, yet currently, more than 2,200 institutions in 49 member states participate. When states voluntarily joined SARA, they agree to follow a uniform set of policies for participation and for ensuring ongoing compliance. In many states, SARA's policies provide even greater consumer protection than home state protections may provide. As a matter of fact, SARA offers many protections that go beyond what seems to be implied by the proposed rules. Two important protections are provided by the state entity portals and the NC-SARA State Authorization Guide. First, each state member state- each SARA member state must designate a state portal entity to oversee SARA-participating institutions. These entities employ experienced staff members who conduct oversight of institutions to help ensure their ongoing compliance with key consumer protection. They oversee SARA-related student complaints and serve as a resource for students who have questions or concerns. The State Portal entity is also the liaison between institutions, regional compacts, other SARA member states, students, and other stakeholders. Secondly, the NC-SARA State Authorization Guide provides pertinent information supplied by each member state territory and the District of Columbia that includes a state's important agency information. Things such as tuition

refunds, surety bonds, and student complaint processes are included in this already-existing guide. If the proposed changes in state reciprocity are intended to protect consumers from predatory institutions, and are based on the impression that any college or university can or could join SARA with the intent to avoid oversight and accountability, that's simply not accurate. States are already involved with the regulation of predatory institutions, and it's not likely any SARA Portal entity would ever improve an application submitted by a university or college with a questionable track record that cannot provide the required qualifying, supporting credentials and documentation. Thank you.

MR. ROBERTS: Thank you very much for your comments, Stacia. We appreciate it.

MS. MOROSKI-RIGNEY: Thank you.

MR. ROBERTS: Alright, well, that will conclude day two of session three of this negotiated rulemaking. We will pick up tomorrow and resume our conversation on cash management with the three hands that we had left over this afternoon. But until then, thank you all for your hard work today. And we will see you tomorrow.

Zoom Chat Transcript

Program Integrity and Institutional Quality- Session 3, Day 2, Afternoon, March 5, 2024

***Chat was copied as presented, as a result minor typos or grammatical errors may be present.**

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "To follow up on sect..." with 👍

From A-Michale McComis, Inst. Accrediting Agencies to Everyone:

🍷 Diplomacy 🍷

From Charles Prince to Everyone:

Alternate will comem on, as I have to step away for a few unexpectedly

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

JoEllen is now returning as Primary.

From P-Jessi Morales, Students/Borrowers to Everyone:

Sorry what page is this?

From A, Michael Cioce, 2 Year Colleges to Everyone:

page 3

From P. Jo Blondin, Community Colleges to Everyone:

Community colleges appreciate the full faith language included. Thank you.

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "Community colleges a..." with 🙏

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

at risk to what specifically still needs to be clarified from your perspective Barmak?

From A, Michael Cioce, 2 Year Colleges to Everyone:

Reacted to "Community colleges a..." with 👍

From A-David Cohen, Proprietary Institutions to Everyone:

Does the Department have data regarding the number of fully online institutions or programs that have failed or closed, and if it does, does it have data on the size of those institutions

and their online footprint at the time of closure? Perhaps that might provide some guidance as to the size. It would seem that the overwhelming number of institutions operating online are not and have not closed or failed.

From P - Barmak Nassirian, Veterans & Military Students to Everyone:


(ii) A State action that exempts a private institution based on years of operation if the institution has been in continuous operation on or before November 8, 1965 without undergoing a change of ownership; or

(iii) A state or local governmental action that establishes a public institution that is locally controlled by a governmental entity within a State.

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Closures are not the only circumstances where the Department must discharge debts and that results in large losses to taxpayers. Fraud committed by institutions that do not close - including misleading recruiting tactics, failure to provide promised services, etc., also lead to high levels of student loan defaults, as well as borrower defense applications.


From P-Jessi Morales, Students/Borrowers to Everyone:

Reacted to "Closures are not the..." with 


From P - Barmak Nassirian, Veterans & Military Students to Everyone:

I think ED's logic is that the larger the institutional footprint, the more adverse impact any misconduct would have on its residents

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Reacted to "Closures are not the..." with 


From A, Emmett Blaney, Students/Borrowers to Everyone:

Reacted to "Closures are not the..." with 

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Removed a  reaction from "Closures are not the..."

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Reacted to "Closures are not the..." with 

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Removed a  reaction from "Closures are not the..."

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

is this current proposal able to be shared, knowing that additional language would be coming.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

i think this does make a lot of sense

From A, Magin Sanchez, Civil Rights/Consumers to Everyone:

Reacted to "Closures are not the..." with 👍

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Agree with Diana, there is no number that would be sufficient as protection, if states can't enforce their consumer protection laws. If there is predatory behavior, states must be able to enforce their laws.

From P., Diana Hooley, State Attorneys General to Everyone:

Reacted to "Agree with Diana, th..." with 👍

From A, Magin Sanchez, Civil Rights/Consumers to Everyone:

Reacted to "Agree with Diana, th..." with 👍

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Reacted to "Agree with Diana, th..." with 👍

From Joe Weglarz (P) NACUBO to Everyone:

Dom Chase will be joining the Cash Management discussion.

From P, John Ware, State Regulator to Everyone:

As has been mentioned previously, States are free to enforce there own laws at any point by dropping out of the reciprocity agreement. Also, general fraud laws can be enforced under the current reciprocity agreement.

From P-Jessi Morales, Students/Borrowers to Everyone:

Emmet will be joining the discussion when we come back

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

I also wanted to record my concern and disappointment with the asynchronous clock hours

proposal that was circulated earlier today. Judging the hour-by-hour quality of asynchronously delivered content to accreditors strikes me a procedural gesture with no likelihood that any accreditor would be able to carry out the complex tasks involved. I also don't understand the hands-on/hands-off distinction, and the comparability language is, at best, a post-facto requirement that can only be conscientiously implemented after the fact. I strongly urge the Department to correct the Devos-era change on synchronous clock hours and revert to status quo ante.

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "As has been mentio..." with 👍

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

I would note that just because no action has been taken by an attorney general or state does not mean there are not problems with a school. Here is a list of schools who have pending borrower defense applications that will be granted pursuant to the Sweet class action settlement: <https://www.highereddive.com/news/heres-a-list-of-the-colleges-in-the-sweet-v-cardona-settlement-agreement/629283/>

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Following up on Robyn's point above, the Sweet class action settlement resulted in relief to more than 200,000 borrowers enrolled in more than 150 institutions, many of which offered online programs.

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

+1 to Barmak and Carolyn.

From Charles Prince to Everyone:

P for HBCUs is returning

From P-Robyn Smith, Legal Aid Orgs. to Everyone:

Sophie will be coming in for me during cash management discussion.

From Joe Weglarz (P) NACUBO to Everyone:

Dom Chase has joined the group

From P, Jason Lorgan, Public 4-years to Everyone:

Alyssa Dobson will be coming to the table to comment for Public 4-years

From P-Jamie Studley, Institutional Accreditors to Everyone:

agree with Barmak! I was just formulating a question about schools including in tuition things like art supplies, test tubes, safety aprons in a lab, etc as long as tuition and fees are properly noticed/disclosed

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Magin Sanchez is joining for Civil Rights/Consumer.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

significantly discounted.

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

+1 on Greg's explanation of ED's rationale

From A, Emmett Blaney, Students/Borrowers to Everyone:

+1 If the school truly offers better rates, then we will all keep opting in. 😊 There would be no worries for either constituency.

From A, Michael Cioce, 2 Year Colleges to Everyone:

For the department:

From A, Michael Cioce, 2 Year Colleges to Everyone:

To the department -How do you see that the elimination of course material access and affordability programs increases choice for students?

These programs can no longer exist in an opt in manner because its not possible to give all students access on day 1, nor will the volume based pricing be available.

From P-Jessi Morales, Students/Borrowers to Everyone:

I would cash any check with any amount of money.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

we have heard from many of these students throughout the public comment period too.

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

Yes, literally all students defending "inclusive access" were a certain publisher's "brand ambassadors"

From A, Emmett Blaney, Students/Borrowers to Everyone:

Reacted to "Yes, literally all s..." with 


From P-Jessi Morales, Students/Borrowers to Everyone:

Emmett joining the conversation


From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Could the authorization not be required every single payment period? In other words, it would be required and remain in effect until and unless the student opts out.

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "Could the authoriz..." with 

From A, Michael Cioce, 2 Year Colleges to Everyone:

Reacted to "Could the authorizat..." with 

From P-Jamie Studley, Institutional Accreditors to Everyone:

my example was that this is within the tuition, it's unique and not available any other way, and the tuition amount is properly noticed

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

The problem with "not available elsewhere" is that it would be just as easy to create a unique product and price-gouge as it would be to create a product and provide it at a discount.

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Replying to "To the department -H..."

Wondering why it would not be possible to offer volume-based pricing with an opt-in model. Assuming it was offered at a competitive price, students would opt in at similar rates, and therefore would lead to similar volume of students enrolling. if students don't enroll at a similar rate, it seems it would signal that the price was not competitive.


From P - Barmak Nassirian, Veterans & Military Students to Everyone:

The "below-market" construct doesn't work either, because if schools work in cahoots with publishers, the latter could just jack up the price and create illusory discounts

From P-Jamie Studley, Institutional Accreditors to Everyone:

to Barmak's point: that would make the tuition high, which would be clear -- tuition is the most evident item for comparison and student awareness. //To Dave: this is stuff the school prints itself. What if institution bought expensive test tubes and again those lab aprons, and includes them "seamlessly" in tuition -- and full discloses its tuition?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "to Barmak's point: t..." with 


From P - Barmak Nassirian, Veterans & Military Students to Everyone:

Why wouldn't the student purchase a content packet that is vastly less expensive than buying 12 books? Why do institutions need more of an incentive than a reasonable price AS DECIDED BY THE PERSON PICKING UP THE TAB?

From P, Laura Rasar King, Specialized Accreditors to Everyone:

I had resources like this during MY undergraduate program in the early 1990s.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "I had resources like..." with 

From P, Laura Rasar King, Specialized Accreditors to Everyone:

What Jillian describes is common.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "What Jillian describ..." with 

From A-David Cohen, Proprietary Institutions to Everyone:

To Denise's and Jillian's point, using partial books is not uncommon. Instead of requiring a student to buy multiple books, some publishers allow a faculty member to create a specialized book that includes portions from more than one book. This does same students money.

From P-Jamie Studley, Institutional Accreditors to Everyone:

can't speak to how widespread but I believe it is a practice that lets faculty tailor and create materials.

From P, Laura Rasar King, Specialized Accreditors to Everyone:

Reacted to "To Denise's and Jill..." with 

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Scott Dolan is back for nonprofits

From A, Michael Cioce, 2 Year Colleges to Everyone:

Replying to "To the department -H..."

There's the ALL schools approach and the "My school" approach. I'm obviously better versed at the latter- what I offer directly impacts what the text needs are which in turn is tied to the volume price. It's competitive and saves students NOT only money but provides access on day one. the opt-in is the bigger issue for me

From P - JoEllen Price, Financial Aid Administrators to Everyone:

Replying to "To the department -H..."



From P - Barmak Nassirian, Veterans & Military Students to Everyone:

NYT and WaPo would also love to force their subscriptions on everyone, with opt-outs, but we don't allow businesses to do that. I also take exception with characterization of students as unable to make their own decisions.

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

+1 to Barmak's comment above.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

agreed with alyssa. the volume difference matters as does the availability on first day

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Reacted to "agreed with alyssa. ..." with

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

+1 to Emmett's comments. If it saves students money, they will opt in.

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

Beware of doing others massive favors . . . with their own money

From P - JoEllen Price, Financial Aid Administrators to Everyone:

Reacted to "agreed with alyssa. ..." with 

From A- Alyssa Dobson: 4 Yr. Public Institutions to Everyone:

In order for the program to work, we need to rely on the utilization of the entire class. Many students will opt out upon first exposure to the idea of the automatic charge - hundreds of them will do this - and then come back to the program. Students should be able to rely on the institution to follow the rules and opt in should not be necessary.

From A- Alyssa Dobson: 4 Yr. Public Institutions to Everyone:

Also you can't regulate bad players out of the system. Unfortunately.


From A, Sophie Laing, Legal Aid to Everyone:

Reacted to "+1 to Emmett's comme..." with 

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

If regulations don't make a difference, what are we doing here?

From A, Emmett Blaney, Students/Borrowers to Everyone:

Reacted to "If regulations don't..." with 

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "If regulations don't..." with 

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

not sure why my hand went down

From A- Alyssa Dobson: 4 Yr. Public Institutions to Everyone:

They make a difference when they are enforced. In this case we are changing a regulation because it isn't being enforced... that is what won't work.

From P-Jessi Morales, Students/Borrowers to Everyone:

Lets not assume all students we are talking about are coming straight from high school.

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "Lets not assume al..." with 