DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

NEGOTIATED RULEMAKING PROGRAM INTEGRITY

AND INSTITUTIONAL QUALITY

SESSION 2, DAY 1, MORNING

FEBRUARY 5, 2024

On the 5th day of February, 2024, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MS. JEFFRIES: Good morning and welcome to session two, day one of the negotiated rulemaking on Program Integrity and Institutional Quality. I am Commissioner Cindy Jeffries, and I'll be facilitating the group this morning. It's my distinct pleasure to welcome all of you. And with that, unless there's any opening remarks at this point from the Department, we're going to move on to the roll call for record of the nonfederal negotiators. Seeing nothing. Let's go ahead and take our roll call. So, for business officers from institutions of higher education primarily is Joe Weglarz. Joe, are you present? Perhaps he'll join us in a bit. The alternate is Dom Wright.

MR. CHASE: Dom Chase, present.

MS. JEFFRIES: I don't know why this keeps putting that. I am so sorry, Dom. For some reason, my system likes that other name. Civil rights organization and consumer advocates, primary Carolyn Fast.

MS. FAST: Good morning.

MS. JEFFRIES: Good morning. And the alternate is Magin Sanchez.

MR. SANCHEZ: Good morning, everyone.

MS. JEFFRIES: Good morning. Financial

aid administrators, primary JoEllen Price, who was absent this morning but plans to attend this afternoon. So, in her place will be alternate, Zack Goodwin.

MR. GOODWIN: Good morning and happy Monday everyone.

MS. JEFFRIES: Good morning. Historically Black Colleges and Universities, tribal colleges and universities and minority serving institutions, institutions of higher education eligible to receive financial assistance under Title III, parts A and F, and Title V of the HEA, the primary is Charles Prince.

DR. PRINCE: President.

MS. JEFFRIES: Good morning. And the alternative is the D'Angelo Sands.

MR. SANDS: Present.

MS. JEFFRIES: Good morning. Institutional accrediting agencies recognized by the Secretary; primary is Jamie Studley.

MS. STUDLEY: Good morning.

MS. JEFFRIES: Good morning. And the alternate is Michale McComas.

MR. MCCOMIS: Good morning.

MS. JEFFRIES: Good morning. Legal assistance organizations, primary is Robin Smith. Robin, are you with us?

MS. LAING: Robin won't be joining today's session.

MS. JEFFRIES: Okay, great. Thank you. So, the alternate Sophie Laing will be sitting in in her place. Sophie, welcome.

MS. LAING: Good morning.

MS. JEFFRIES: Private nonprofit institutions of higher education, the primary is Erika Linden, who is also absent this morning but plans to attend this afternoon. So, in her place at the table will be the alternate, Scott Dolan.

MR. DOLAN: Good morning.

MS. JEFFRIES: Good morning. Programmatic accrediting agencies recognized by the Secretary to include state agencies recognized for approval of nurse education, the primary is Dr. Laura Rasar King.

DR. KING: Good morning.

MS. JEFFRIES: Good morning. And the alternate is Amy Ackerson.

MS. ACKERSON: Good morning.

MS. JEFFRIES: Good morning. Proprietary institutions of higher education, the primary is Jillian Klein.

MS. KLEIN: Hi, everybody.

MS. JEFFRIES: And the alternate is David Cohen.

MR. COHEN: Good morning.

MS. JEFFRIES: Welcome, both of you. Public four-year institutions of higher education, the primary is Jason Lorgan.

MR. LORGAN: Good morning.

MS. JEFFRIES: And the alternate is Alyssa Dobson.

MS. DOBSON: Good morning.

MS. JEFFRIES: Good morning, both of you. Public two-year institutions of higher education, the primary is Jo Alice Blondin.

MS. BLONDIN: Hi there.

MS. JEFFRIES: And the alternate is Michael Cioce.

MR. CIOCE: Good morning.

MS. JEFFRIES: Good morning, both of you. State attorneys general is Diana Hooley.

MS. HOOLEY: Good morning.

MS. JEFFRIES: And the alternate is vacant. Good morning, Diana. State officials, including state higher education executive officers, state authorizing agencies and state regulators of institutions of higher education. For primary we have John Ware.

MR. WARE: Good morning.

MS. JEFFRIES: Good morning. And alternate Robert Anderson.

MR. ANDERSON: Good morning, everyone.

MS. JEFFRIES: Good morning. Students or borrowers, including currently enrolled borrowers or groups representing them, primary is Jessica Morales. Jesse, are you with us?

MS. K. SMITH: She was here. I'll just check and see if she's having any issues.

MS. JEFFRIES: We'll move on to the alternate for that group is Emmett Blaney.

MR. BLANEY: Good morning.

MS. JEFFRIES: Good morning. U.S. military service members, veterans or groups representing them, the primary is Barmak Nassirian.

MR. NASSIRIAN: Good morning.

MS. JEFFRIES: Good morning. And the alternate is Ashlynne Haycock-Lohmann.

MS. HAYCOCK-LOHMANN: Good morning.

MS. JEFFRIES: Good morning. And next we have our Federal negotiator, Greg Martin.

MR. MARTIN: Good morning, everyone.

MS. JEFFRIES: Good morning. Alright.

Did I miss anyone in the group? If not, we'll move on to the non-voting participants from the Department. From the Office of General Counsel, we have Ms. Denise Morelli, for issues other than accreditation.

MS. MORELLI: Good morning.

MS. JEFFRIES: Good morning. Ms. Donna Mangold for accreditation from the Federal student aid office of policy implementation and oversight.

MS. MANGOLD: Good morning.

MS. JEFFRIES: Good morning. Mr. David Musser from the office of postsecondary education accreditation group, David?

MR. MUSSER: A couple of changes to the offices. I'm from the office of Federal student aid. Donna is from the office of general counsel.

MS. JEFFRIES: Oh, I must have had that backwards on the first one. I apologize for that.

MR. MUSSER: Good morning.

MS. JEFFRIES: Good morning. Mr. Herman Bounds.

MR. BOUNDS: Good morning. Good morning.

MS. JEFFRIES: Anyone else from the Department? Okay. So, thank you Department. I want to make a note that the Department has not included a TRIO

Subcommittee report out for session two, as the Subcommittee is not at a point of making a recommendation. They are actively considering options and would like to further their discussions on a final recommendation in their second session, which is this Friday, February 9th. You as committee members are welcome to watch the session on the public link. We will include a readout from the Subcommittee before consensus is taken by this committee during session three. Lastly, I want to introduce roll call. The rest of the FMCS facilitation team, Brady Roberts.

MR. ROBERTS: Good morning, everyone.

MS. JEFFRIES: John Weathers.

MR. WEATHERS: Good morning, everyone.

MS. JEFFRIES: Krystil Smith.

MS. K. SMITH: Good morning.

MS. JEFFRIES: And Kevin Wagner.

MR. WAGNER: Good morning.

MS. K. SMITH: And Cindy, Jessica Morales is on. She's having a little bit of issues with her audio, but she is on right now.

MS. JEFFRIES: Okay, great. Welcome, Jessica. At the end of each day this week the main committee meets with the exception of the final session day, we will reserve time for public comment. Next, we'll move on to the next agenda item. And I want to make note that during this session this week, each issue paper will be reviewed and discussed. We will be using what we call temperature checks on each issue paper. Temperature checks are not consensus and are utilized to get a reading on where the committee currently stands and the opportunity for those who are in dissent on an issue to add any additional comments other than what has already been stated as to what they would need to move them towards consensus. So, we will be conducting temperature checks today at the end of each paper. So, with that, unless there's any additional comments. Laura?

DR. KING: Thank you. I just had a clarifying question if that's okay. I just wondered if you could clarify the role of the proposals that come via email in between sessions as well as the chat? It seems- we're getting an overwhelming number of written comments in between sessions, and it seems different than other negotiated rulemakings that I've been a part of in the past. So, I just wanted to get a sense of what- to clarify the purpose of those and what we're expected, intended to do with them. And then also clarify the role of the chat that we use during the meeting.

MS. JEFFRIES: Okay. On the first portion of that Laura, I'm- the only thing that I'm aware of that you're receiving are the proposals that are being sent and or supporting documents that are being sent by various negotiators. Sending them to us, wanting them sent to the Department. And in transparency, we send everything that we send to you or to the Department, to everyone. So, I'm not sure if you're getting stuff outside of what an FMCS team member is sending. So, what you're receiving is, you know, documents or documents from various negotiators that are submitting either a proposal to the Department on one of the issue papers or supporting documents. And some of those, I think these are all on the website, but some of those maybe, are you referring to, like, the letters of support, the documentation letters, things like that?

DR. KING: I think I'm just more interested in knowing how they're being used. Because when we're sent those things, there's no opportunity to, I mean, I guess you could submit a counter proposal or something, but there's no opportunity to discuss. So how are they being used? It's an overwhelming amount of them.

MS. JEFFRIES: Yeah, there were quite a few. This topic generates a lot of ideas and suggestions. When the negotiators want them sent to the Department, the Department uses them in between the sessions to review and consider if any of those changes might be able to be incorporated in the round of regulatory text that they're preparing for the following session. Which is always the standard case. Now, Greg, I don't know if you want to add anything about what happens on your end when you receive those proposals.

MR. MARTIN: Sure, I can address that. So, it is true that the number of proposals can seem overwhelming. There can be quite a few of them. This particular negotiated rulemaking session is no different than any other with respect to how we treat them. Cindy went over the protocols for them. We make certain that everybody sees what's been proposed. So, we do receive several proposals that come into us. We review every one of those as they come in. As far as the, you know, addressing the question of what as a negotiator you should be looking at, obviously you should, to the extent you have time, be looking at those proposals. What happens to those proposals? Well, we do review them at the Department and anything from those proposals that we have decided to include in our own proposal that is expressed to you in the issue papers and in the proposed regulatory text will be there. So, we did get several proposals from the first round of negotiated rulemaking. You can see that we have issue papers for what was round two of this negotiation and anything that we took from those proposals to include in our text will be reflected in that proposed text. So obviously we didn't take everything that was proposed. We analyzed them and looked at what we could and could not what we believe recently put in there. When we get to those sections, I'll indicate where those changes are made. And at that time, any negotiator, whether it's the person who proposed it or other negotiators can provide their opinions as to what they think about those changes. Whether either in support or whether they object and if they want to propose alternative text. They can do that. So, everything that we- the only- I'll say this, the only thing that will actually ever be voted on for consensus is what the Department ultimately proposes. And that's always going to be reflected in the papers that we give you. So, although there may have been a lot of proposals given to us, what we took of that or what we're going to discuss today, is included in these papers. So, I just want to point that out. There's nothing happening that the negotiators will not have an opportunity to discuss because it will be in here. So either you can say, yes, I support that, I don't support that. Or for those who proposed it, if they want to ask why, you know, we didn't include other aspects of the proposal. That's all on the table. As far as the chat goes, we do entertain questions in the chat. We also accept data requests. People can, you know, put forward data requests in the chat. So, it's used for that purpose. I also know it has- it's just- and it's also a forum for anybody on the committee to comment as they choose. But I want to make it very clear that nothing is being proposed to us that isn't disclosed to everybody. And I think that keys back to Cindy's point that, when those proposals come in that they are going to share them with everybody in the interest of full disclosure. So, it can seem like a lot. It's a lot to us. We had a lot to review in the intervening few weeks between the first session and this session. But just know that everything that we have included will be reflected in the text we're going to look at today. And you'll have an opportunity to discuss all of it as we go through each section. I hope that answers your question.

MS. JEFFRIES: Thanks, Greg. Okay. Seeing no other hands, I think we're going to move on to the first issue paper, which is cash management, and I will turn that over to Greg.

MR. MARTIN: That's me, I almost forgot. Yeah, that's- I'm on board. So. Right. She's right. We're going to be looking at cash management as our first issue paper and I want to say a little bit about, Vanessa's bringing that up, before we get into it, I'll say a little bit about the papers. What you have in front of you here and the process this week. As Cynthia noted, we will be going through each topic in the same order that we did, as we did rather the first round of negotiations. We will walk through each issue paper in order. And discussing each section as we go through. Taking temperature checks at the completion of each of those, or the conclusion of each of those sections after everybody has said what they want to say about those. So, I think the format we're going to use will be very much the same as last time. Before we go further, I want to make one overall announcement. And this is not so much for negotiators as it is for those who may be following these proceedings via the live stream. We have had, over the past couple of weeks, a number of requests come in to me and other Department employees, requests for meetings from members of the community about issues that are being discussed at these negotiations. And I want to make clear that while these negotiations are going on, the only venue for discussion of these issues is at these proceedings. So, in order to be negotiating in good faith, it has to be the case that we do not entertain requests for meetings, any other types of discussions, outside of these proceedings. For those individuals who may want to express their point of view that you have two avenues for that. The first would be to contact one of the members of the committee. Remember that this process, the way it works, is that the Department selects representatives from various constituencies. And those individuals who are at the table today represent those constituencies. So, you may contact any one of those people with suggestions you may have. The other avenue for you to express your opinion is through public comment. But I cannot respond to requests for other phone conversations or email discussions about anything going on during these negotiations. So, I just want to point that out as we move forward into issue paper one, cash management. I also want to say that as we go through the week, you'll see the same negotiators. I remain the Department's lead negotiator and I'm the voting member for the Department. However, I will be discussing cash management. I will be leading the discussion on state authorization. When we get to R2T4 that will be David Musser, a colleague from FSA. He will also lead the discussion on distance education. And, finally, with accreditation, that will be Mr. Herman Bounds from our accreditation group who will lead that discussion. So just letting you know how the week will progress. If we look at- before we get into issue paper one, cash management, there is a side note there, a note to the committee. I just want to go over this with everybody. That the changes made between session one and two are indicated with the yellow highlighting, black text with a strikethrough and highlight is current reg text that the Department is proposing to delete for session two. Blue text is any new language the Department proposed during session one and two. Blue text with a strike through it is language that the Department proposed in session one and is rescinding or amending for session two. And finally black text with a strike through it is current reg that the Department is proposing to delete. So, it gets a little confusing as we move forward, obviously, because we have a lot of things going on. You had original reg text that we may propose to change. And then, obviously we made some revisions to that based on proposals we've received. Also, other things the Department has considered. I'll try to go through that. As we go through each section, what I'll try to do is go over some of the proposals that were made. A little bit about what I had accepted. I can also talk a little bit about some of the data requests that were made. We have-some of them we are still in the process of complying with and we have not yet been able to fulfill those requests yet. But that's an ongoing process. And if I miss something because it's an awful lot, please feel free to ask as we go through. So, with that, I think what we'll do is move into 668.162, reimbursement payment method. A couple of notes here before we actually discuss that section, is that we did add new part five to establish a 180 day time frame within which institutions are subject to heightened cash management, and receiving funds under the reimbursement payment method must submit their final HCM2 requests. And if we look at that language there, primarily what we did differently if- let's look first at 162. You can see the language there that we've had. An institution that loses eligibility while on reimbursement payment method must submit its requests for funds within 180 days of the date of loss of eligibility. Institutions must comply with any additional reporting requirements or procedures specified by the Secretary in relation to that submission- to submission of their final request for funds after loss of eligibility. Failure to submit the final request for funds within the specified 180 day time frame may result in forfeiture of the requested funds. You will see here that we- that this section was added for reimbursement. The reimbursement method. Previously, we only had made reference to heightened cash management. It is the case that when we place schools on something other than advance pay, it's normally heightened cash management. We don't often use reimbursement. There's an additional level of documentation schools have to supply if they're placed on reimbursement. So, in the vast majority of cases, we place schools on heightened cash management. But reimbursement still does remain an option. So, we determined that we needed to revise those regulations and include the same language, pretty much the same language, for reimbursement payment method as there is for heightened cash management. And we already discussed that in the previous session, session one there's not a lot being changed here. Essentially, again, just adding the reimbursement payment method. I think we already discussed the Department's reasons for proposing this language. It's when a school loses eligibility we need to get these requests in as quickly as possible so that we can process them. It's a matter of our own procedures, sorting the funds properly, program integrity and also fairness to students in getting any monies out the students that they are deserving of. So, I will open the floor again for discussion of this if anybody has anything they would like to say before we move to a consensus, I'm sorry, not consensus, we move to a temperature check on this particular topic. So, with that we'll open the floor.

MS. JEFFRIES: Alright. Thank you,

Greg. Any questions or comments on that section 668.162?

MR. NASSIRIAN: Just a question, if I may?

MS. JEFFRIES: Sure.

MR. NASSIRIAN: Yeah. I remember we spoke, during the first round about the about my concern that institutions not be allowed to bill students. Institutions that that forfeit the funds because they are past the six month- because they're past 180 day period that they should not be allowed to bill students. And I was assured that that was the case. I asked that that point be somehow syncopated in this text. Is the forfeiture language intended to do that or is the Department certain that there is no likelihood that institutions could turn around and bill students?

MR. MARTIN: Yeah. We don't- we obviously, you know, don't want institutions, you know, billing students where they're unable to collect from the Department. There is, maybe Denise can respond to this, there is an issue of once these schools are no longer eligible, we have a limited amount of tools in our at our disposal to control what they do. As far as, if a school that's no longer participating, determined to not submit the request in a timely manner for this and bill students as to what action we could take. I'm not sure what that would be. Denise, do you have any comments you want to make on that?

MR. MUSSER: Can I make a note?

MR. MARTIN: Oh, go ahead, David. Yeah, go ahead.

MR. MUSSER: So last time, I think Barmak, we discussed, a provision that was published as part of new regulations in the fall last year, that prohibits institutions from taking any negative action against a student when that institution has made an error with respect to the administration of their aid. And I think the situation that you described would clearly be one of- would be considered an error that would fall under that provision, which would prevent them legally from assessing a charge to the student for the amount that the school did not receive as a result of the late request. So that as of July 1st, 2024, will prevent schools from doing that in any event, and including, if we were to publish these rules, if they failed to have their request in timely. Now, I don't want to speak to how we could cross reference that. Although it could be something that the Department explains in the preamble as well if that is not immediately clear, which I don't think it is yet in the text. So, we can certainly think about how to communicate that connection when we draft the final rule.

MR. MARTIN: That's a good point. Thanks, Dave. We can certainly take that back. And it may be possible, Barmak, for us to cross reference that in the [inaudible]. Would you be- would you- is that what you would be suggesting that we do?

MR. NASSIRIAN: Yeah. First of all, I appreciate the explanation. My only concern is that that rule may no longer have any legal application to an institution that is no longer a participating institution. So, to whatever extent, and I don't have a solution here, but to whatever extent the Department can somehow tighten the requirements so that it sort of applies prospectively. Because the student- because the potential liability was incurred at a time when the school was participating. That would be welcome. I'm just worried that past the point of departure, you may have no control over the institution's behavior.

MR. MARTIN: That's a great- that's an excellent point. And it's true. After school does cease to participate, there is a limited amount of control we have. However, I will say that schools that cease participation in our programs are required to provide a closeout audit to us. In any period of time for which this institution participates must be audited so they have to do that. Obviously, anything that comes of that, if the institution chooses simply not to comply, some do, you're right, there's not a lot we can do. However, it does, as Dave said, it is a legal requirement that's out there if students want to take action on their own, if there's some kind of a class action. There's also- it also when schools fail to live up to their obligations, has ramifications for trying to come back into the programs, things like that. So, there are some- I agree wholeheartedly with you that it's limited, but there are some hooks that we have that we can apply. I don't know what else beyond that. David, do you want to go further than that?

MR. MUSSER: Well, I think I agree with everything you said, Greg. But the only other thing I would say is if you remember Barmak, in the earlier session, we pointed out that this is setting a time limit on when the school submits its request. But we also provided some flexibility for the Secretary to approve the request or part of the request. If even if the school is late on this. So, if- they actually do have an incentive to, number one, ultimately report this and number two, to report it accurately and to comply with all of our requirements, because if they don't, we may still end up withholding the funds from them that they feel that they're entitled to. Now, once you get to the point where the school is out of our programs, they know they're not going to get any more of our money. And there's really nothing else that the Department has in terms of leverage, it does become extremely difficult for us to compel them to do anything in particularly outside of a court setting. If Denise has any other thoughts, I'm interested, but there is at least that part of it that encourages them to get, number one, get the request in on time, but number two, comply with all of our requirements if they want us to allow them to get any of that money at the end of the process.

MS. JEFFRIES: Okay. Thank you.

MR. MARTIN: I would also add, I think it's obviously a possibility schools won't comply with this or request the money. In most cases, I think that schools do want the money. You know, I mean, they're strapped, one of the reasons they closed maybe, they are going to request the funds. And ultimately, they usually always do. The purpose here is to get them to do that in a timely manner. I think Denise indicated before that she's seen it go as long as a year, two years, that's just absurd. And we're hoping that, you know, with this rule, it lights a fire under these schools to make the requests in a much more timely way. So that's really where we're going here.

MS. JEFFRIES: Barmak?

MR. NASSIRIAN: So very quickly. First of all, I appreciate the explanation and I realize there are limitations to what the Department can do beyond a certain point. It would perhaps give me a little bit more assurance if at the very end of that sentence, the Department could consider adding some language to the effect of, I mean, you know, the forfeiture of the requested funds, which the institution shall be prohibited from attempting to collect from students. At least- at the very least, it creates a kind of rule that somebody can point to very specifically. You know, I'm not sure whether it has an enforcement difference in terms of the ability of the Department, but it may enable students who may be targeted, you know, sometimes by a receiver. It's not even the institution. Somebody's very, very, diligently attempting to collect on behalf of creditors could go after students and the Department would be unable to do much. It would be nice to have some explicit language, but I understand the explanation and I appreciate it. Thank you.

MR. MARTIN: We'll take that back, Barmak. We will consider whether we can put that language in there. So, we'll certainly make a note of that and see what we can do for the next round. I'm totally with you on the not wanting to see students harmed in that way. It's certainly- the Department certainly takes that position as well. So, we'll see what we can do there. Thank you.

MS. JEFFRIES: Alright. Thank you. I'm not seeing any more hands, so let's quickly review the process for the temperature checks. A thumbs up means you are 100% on board and can support that language in- and we're talking about 668.162 at this point. A sideways thumb means you're not quite at that 100% part, but you are at least 70% in favor of it and would not object to it. A thumbs down means you object to the language. If you are a thumbs down, we will ask you to explain what your concerns are. We ask that you limit those comments during that period to things that hadn't already been expressed as well and offer some type of explanation and or concept language of what would help move you to a consensus on that piece. Any questions? Okay with that, let's go ahead and take our temperature check on 668.162 reimbursement payment methods. Can I see your thumbs, please? Okay. Jesse, I can't see yours.

MS. MORELLI: I'm so sorry. I'm breaking in and out, so.

MS. JEFFRIES: Okay. Alright. It looks

like we don't have any thumbs down on that. Correct? Alright. So, your temperature check on that is complete. Greg, do you want to move to the next section?

MR. MARTIN: Sure. And I want to thank everybody for the discussion of that topic and providing an indication of support in that temperature check. The next thing we're going to go to is the discussion of 668.164. This is crediting a student's ledger account. We have a couple of issues in here. Before we get into the actual discussion of 668.164, we'll go over a few of the things we did in this section. So first, I would apologize for the sirens in the background. I live very close to the road. The first thing we did was edit room and board to food and housing. This is simply a pro forma change to conform the more antiquated terms of room and board to the more modern term of food and housing that is used in the Simplification Act. So that's where we are going. So, every time we have we use the terms room and board, we will now be moving to food and housing. A little bit difficult for some of us who've been around a while and are used to room and board. But I think it does make more sense, it's certainly more descriptive. Under meal plans, we added clarifying language to specify that the funds allocated for cash value meal plans. That's flex dollars are what institutions must return, not the portion of a meal plan that's associated with a given number of meals. We also added language that says an institution is not to return a balance that is less than $1, which conforms to our general guidance for credit balance, in terms of credit balances to students. We added language clarifying that an institution to carry over that- that institution rather needs authorization to carry over a remaining balance through an academic year so that the student can use the funds in the next semester. We were asked to do that in the last round, and we were also asked whether or not institutions could apply any unused meal plan funds for any unpaid allowable charges. The student has again, that would be with the student's authorization. So, we incorporated both of those aspects. Under textbooks, we removed the provision allowing institutions to automatically include the cost of books and supplies as part of tuition and fees for instances in which materials are only available through the institution. So that was removed. We moved the provision related to including costs and tuition and fees for health and safety reasons in 164 (c)(1) romanette (1)(a). We added language in 164 (c) romanette (2) to clarify that institutions can credit student ledger accounts with Title IV funds to pay for books and supplies, provided the institution discloses those costs prior to any authorization being signed and the student chooses to purchase books and supplies, and the institution makes those books and supplies available to students at or below market rates. And I will stop there and we're going to get into those actual sections in 164. And we'll be looking at the actual changes now in the regulation. And we'll start with crediting a student's ledger account in 164 (c). So, I'll wait for that to come up on the screen. And we have it there. So, we'll start there. And I think what I'll do is try to break this up a little bit so that we have discussion as we go and not necessarily wait till the end when it's just too much for people to remember. So, try to 164- there's a lot in 164, right? So, I'll try to break that up as we go through.

So, we can see here that crediting student's ledger account. We start with, an institution may credit a student's ledger account with Title IV, HEA program funds to pay for allowable charges associated with the current payment period and we give what those allowable charges are. And you can see there that we have changed room and board to food and housing. Just a conforming change. And then other changes here, an institution may only include costs of books and supplies as part of tuition and fees if the institution demonstrates that there is a compelling health or safety reason to do so. So, to make everybody aware that that now is the only reason for which an institution can include the cost of books and supplies in tuition and fees. Moving down to (B). We made a change there, so, whereas previously you can see it was, any Title IV HEA program funds that's been stricken. So, any funds allocated for cash value meal plans for recipients of Title IV, HEA program funds must be fully utilized for the benefit of the respective student. And you can see there 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. And some added text there for a de minimis amount. A school is not required to pay the remaining balance that is less than $1. With the student's authorization, under 668.165 (b)(1) romanette 2 (B), an institution may retain the unused cash value meal plan funds 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 or apply unused meal plan funds to unpaid allowable charges. So, most of what I just talked about there was with respect to the meal plan. So, what I'd like to do now is open the discussion to what we propose with respect to the meal plans, and then maybe we'll deal with books and supplies later. So, I'd like right now to limit the discussion to meal plans and open the floor.

MS. JEFFRIES: Okay, first of all, I want to announce that Magin Sanchez, civil rights consumer advocacy groups, is going to be joining the conversation for a comment in this. So, with that, Barmak, you had your hand up, you put it down. Okay. Jason Lorgan.

MR. LORGAN: Thank you. So first, I'd like to start by thanking the Department for taking some of our recommendations to allow the funds to roll for an academic year with student authorization. But I wanted to bring up a point that - and while this conforms well to the way my own institution does this, and speaking to other public four-year institutions, I have learned that there are institutions whose entire meal plans are flex dollars, so it's 100% flex dollars. And so, those are for their housing students. And so, there's a considerable amount of concern that these mandatory meal plans now become optional. And I want to make a point about why that's such a concern. Right. So typically, states do not provide funding for things other than classrooms and laboratories. So, things like dining facilities. Right. And so, the way that we go and get a bond to build a dining facility, is to show just like an individual would show that they have income verification to get a mortgage, we have to show that we have a stable source of income to support the bond. And so, there's considerable concern that these 100% flex dollar meal plans that are available at some public institutions will basically become optional and it will pose challenges towards paying off the bonds that were assigned with that fee in mind. Thank you.

MS. JEFFRIES: Thank you, Jason. Magin Sanchez.

MR. SANCHEZ: Again, I want to thank the Department for their proposals, particularly on the flex dollars. I think ultimately this is the student's money, and I think ultimately the students should have the right to be able to use their money as need be. I think in particular, I'm still a bit concerned about the focus on just the flex dollars, not necessarily on the meal swipes. I was reading a New York Times article recently, it's a couple of years old at this point, but they were looking at NYU in particular, and they did a survey about 523 students. And what they found was, I think the number is 45,399 swipes were left over. And if, you know, let's estimate, you know, between $5 to $12 a swipe at retail value. Right. So, we're talking about per student, the cost of those unused swipes is around $120 to as much as almost $1,000. So, this is a sizable chunk of money, right, that these students are losing if they don't have- if these swipes are so gobbled up right by the institution. And so, I think it's really important that the Department still considers including these meal swipes as part of the money that the students are refunded. In particular, at the very least, if not the full retail value, at least the cost value of these swipes to the institution. This is a sizable amount of money for students, not just from the flex perspective, but also on the swipes perspective. That can make a big difference in being able to be able to afford, you know, not just, you know, your general education expenses, but living expenses as well, and can make a really big difference for these lower income students. Thank you.

MS. JEFFRIES: Thank you, Magin. Next is Dom Chase.

MR. CHASE: Thank you. A couple of points about the language. I won't reiterate previous points, but I do think this language will have some unintended consequences of either reduction in this service, the availability of this service to students on a large scale, or it will have to be subsidized by other revenue sources like tuition. So could drive up the costs of other things related to, not related to this in order to support, food service operations. So, this is one of those that it's not the same as a profitable business and selecting location. It is constrained by the geography of the campus itself in order to offer this service. So, in order for it to be revenue greater than expenses, participation is important or it will result in potential closures or a subsidy of some other kind. Thank you.

MS. JEFFRIES: Thank you, Dom. Jillian Klein.

MS. KLEIN: Good morning, everybody. I just have a question. I don't have a dog in this fight at all. I don't- we don't have any of this at our institution, but I'd just like to hear from the Department, if you can clarify, because I think what I'm reading in terms of the change between the last session and this session and correct me if I'm wrong, but it reads as though now this language would apply to any dollars that a Title IV student puts towards a meal plan. Is that right? As opposed- because I think in the first session, I read this as being specific to Title IV dollars. But now as I read what you've given us this session, it reads like any recipients of Title IV, even if they're not using Title IV dollars to pay for their meal plan would be subject to this. And I'd just like to understand that change and also just the Department's authority to make that change. Thanks.

MR. MARTIN: Yeah, I can address that. So, if we go back and look at the language. So, you're right, Jillian, that the original language was any- once we reread that, it's stricken out here, but any Title IV HEA funds allocated for cash value meal plans for- so that's been taken out. So, it now reads, any funds allocated for cash value meal plans for recipients of Title IV funds. So, our authority to do this case to the fact that these are students who have received Title IV funds. The reason for the change is- sort of aligns with what we did with credit balances. At a certain point, it becomes, if students received funds from different sources, we don't have any order of posting rules associated with Title IV funds. So, where a student has received Title IV funds and other funds, it becomes nearly impossible to determine which funds paid for what. They sort of lose their identity at that point. So, if and what we did here was to make clear that these are for recipients of Title IV HEA funds. So, for a student who didn't receive any Title IV HEA funds, this would not be applicable at all. So, in the only instance in which you can guarantee that no Title IV funds -or what for this would probably be where a student was not a recipient. So, in order to not have to be parsing, well, was it Title IV funds that paid for it or was it funds from another source. If the student did receive Title IV funds within the rules applicable. So that's our rationale for it.

MS. KLEIN: But presumably. So, thanks. Sorry just to follow up. Presumably, so the Department already is assuming, and I understand this obviously having done R2T4s forever, right? Like where a student gets a small amount of Title IV, the Department presumes that it's covering tuition, which is why we do an R2T4 that includes Title IV funds and R2T4 calculation. And that student may not have used any Title IV dollars to pay for, what are we calling it, food and housing?

MR. MARTIN: Food and housing. We have to get used to that.

MS. KLEIN: So I don't know, I just raise the question because I'm confused I think about, how the Department- and I understand you tried to answer my question, but I'll just restate that I'm confused about how the Department believes that they have authority over this, when there can be clear cases where the Department is assuming that Title IV dollars are paying tuition, we're calculating R2T4 based on those dollars falling in a tuition bucket. And then the Department is sort of stating that they have this authority. So, I just would push on the Department a bit on that. Thanks.

MR. MARTIN: Thank you.

MS. JEFFRIES: Thank you both. Zach Goodwin.

MR. GOODWIN: Thank you. I'm sorry that I have not entirely thought this through yet because I literally thought of it two minutes ago. But I do- this is not something we do at our institution. I also don't have a lot of skin in the game here, in the sense that we don't do a lot of flex dollar programs for dining. But I do know many institutions who do allow their students who may have paid for such plans to donate the plans to someone else if they are not going to use them. But there might be another student in need, and this is now fairly commonplace for institutions to do this. And I'm curious if any thought might have been given to that kind of scenario and to whom the credit balance would belong in those cases. Because there is not necessarily an actual account transaction occurring. So, the Title IV funds would be credited to the initial recipient of the funds. I mean, it's not like they're moving the funds to someone else's account, for example. So, it's all happening behind the scenes.

MR. MARTIN: You know, Zach, we never

considered that. That does not come up in any of our discussions and I never even realized that was a possibility at schools, at certain schools. It's an interesting thing. It's sort of like, I don't know where I work at the Department and you can donate unused, you can donate your, you know, unused annual leave at the end of the year for people who are ill or have circumstances and certainly, you know, certainly that would be something. I don't have any problem with this idea. I think it's actually a very humanitarian good thing to do for people who have funds they can do this. I don't- I would say that much as we allow the school to care to do other things with the student authorization, I would think that we would be okay with offering that allowing such a thing with, of course, with that student's authorization. I will take it back and make certain that I'm not speaking out of turn, and I think that's a good- I think the Department's, you know, obviously about anything we can do to promote humanitarian uses of funds and, you know, where people who don't need that money and would rather just donate it, that's a fantastic thing. I don't think we want to get in the way of how we facilitate that, whether it's just a matter of guidance to say yes, that generally fits under here and would be allowed or whether we need to put it- and perhaps what we can do, Zach, is put it in the preamble discussion that would be something that we would find acceptable as a student authorization with respect to this. So, I can say that. So, what I will do is say that I don't believe the Department has any objections at this point. How we incorporate it, I don't know, I think I would probably right now be in favor of using the maybe the preamble. But I noticed that my colleague David has something he wants to say, so I will invite him to speak.

MR. MUSSER: Yeah, actually, you said it, I think, Greg. I believe at least looking at the language as it's currently written that we could consider funds that were transferred to another individual to have been used under the way that this is written. And we could probably clarify that in the preamble, but we will- I think we'll look at it and see and make sure that that's a potential use.

MR. GOODWIN: Thank you so much.

MR. MARTIN: Thank you, Dave.

MS. JEFFRIES: Thank you. I want to note that Carolyn Fast has come back to the table for civil rights organizations and consumer advocates. Next up is DC.

DR. PRINCE: Thanks. Just a time check. How much longer do we have on this topic before we need to move on?

MS. JEFFRIES: Well, we have a couple more hands and then we will then take a temperature check.

DR. PRINCE: Just want to make sure. So, the question I have is particularly on the message of, no institution may retain unused meal plan funds less than a dollar, right? This, I think this is an arbitrary number that may have been put out there, whether it's from the negotiation or from the Department. And my question, my first question is, is there an opportunity in our revisions to increase that dollar amount for what can be retained without a student's authorization?

MR. MARTIN: Well, I, let's be honest, any time you're talking about a de minimis amount, which is basically what this is, there's a certain degree of deciding upon a, let's not use the word arbitrary, but there is, I just used it, there's a certain amount of, you know, what is appropriate. I think here the reasoning here is that much as with the credit balance, that a school should return the entirety of the credit balance to the student. It's not the same thing as where a student owes an overpayment and we're building in a building a tolerance. This isn't tolerance. This is student- we're talking here about student money. Again, I sound like a broken record with that, but I think it's very important that we're talking about money which belongs to students. So, if we say, you know, $10, somebody else might say $20, somebody might argue $15. So, what we did was just keyed to our guidance on returning credit balances which we've instructed schools that- so that they don't have to worry about, you know, it's really about not worrying about cents that you can simply return the dollar amount over, you know, over a dollar. And just giving schools from administrative purposes, you're not returning, you know, $0.68 to a student. That's really all it's about. And that's why we settled on $1. It does key to the current practice. So that's our rationale for it. I mean, certainly if people have other things they want to suggest, we would take a look at it. I can say that we would be probably disinclined at this moment to go in any direction that would involve students not getting everything that they're owed back.

DR. PRINCE: No and thank you for that. I definitely understand. I don't think we- I just want to be clear, I don't think we always share the same definition of it's the student's money. So, excuse me if I don't agree with at least that piece. I'm trying to understand, you know, this particular process. But then the other question becomes for us is how for me and the group that I've talked to about this, is how is this consistent with the other regulations that the Department has? Because one thing that I noticed in other discussions is that that dollar amount, whether it's authorization or it can be returned, is very flexible. And so, you're saying a dollar here. But if I remember correctly, there were other regulations where that regulation was either $50 or $25. There was a higher threshold. And so where is the level of consistency? And I question that level of consistency because I've seen it different in different places. And so, I'm wondering is the Department going to review its consistency and the use of this in other regulations?

MR. MARTIN: Yeah. So first of all, I mean, I think as I tried to and maybe didn't do such a good job before, this is different than those $50 $100 amounts. Those are largely tied to statutory provisions. And they deal with- what's the word I'm looking for? They are tolerances for students being liable to return money. So obviously that's a whole different area. What we're talking about is what students have to return to the Department in cases where there was an overpayment, for instance, or if there's no repayment as a result of R2T4. Yes, there are built in tolerances there. That's money that comes back to the Department. Here, this is simply a de minimis amount. And there's a discussion in volume four of the handbook, on this as it relates to credit balances. And really, since this is a credit balance, this is kind of a- this really is very similar to a credit balance. You've got unused actual cash on an account, and it involves Title IV funds. So, we're sort of applying the same principles which is that we believe the entirety of it ought to be returned. So, what we're really saying here is the entirety has to be returned. It's just we're applying a de minimis amount for administrative and procedural reasons. I don't know if I have any better explanation of it than that, but I invite my colleagues, David or Denise, to opine if they have more they want to add.

DR. PRINCE: Thank you.

MS. JEFFRIES: Alright. Thank you. Emmett Blaney.

MR. BLANEY: Thanks. Yeah. I would just like to echo, first, that it feels like we're all feeling amenable to the humanitarian use of funds as far as the meal donation programs. And I think that my understanding is allowing students to donate unused flex dollars would also not inhibit their ability to then be refunded, either after they donated a portion of those flex dollars or if they chose not to donate. It also is a humanitarian use of funds to return the funding to the student who needs it. So, I want to make sure that both of those things are viewed as humanitarian. And then also my other understanding is that this would not make a meal plan optional. As was said before, I feel that and correct me, I guess, if I'm wrong, but you could still have a mandatory meal program that would just then, at the end of the program, require refunding the student's money. So, I just wanted to respond to those two things.

MR. MARTIN: Yeah, a couple of things. First of all, with respect to the donation, I think the way I had and the way David Musser described, I think it's very good way, if we can view it as that donation actually involves the funds having been used- so that funds are used. If it was a partial situation where part of it was donated, then the remaining portion would have to be refunded to the students to whom those funds belong. So, I think that's the way it would work under the way David sort of explained it. I don't want to put words in his mouth. I think that's what would happen. With respect to what schools can require, we're not getting- we're not in any way regulating what types of meal plan schools can require if they want to do all of it, if they want it to be 100% flex. That's up to them.

If they want to do the swipes, that's up to them as well. So, the Department's not in any way regulating schools with respect to what meal plans they have or require.

MR. BLANEY: Awesome. Thank you so much.

MS. JEFFRIES: Okay. Thank you. Next, we have David Cohen, who has come to the table for proprietary students as the alternate.

MR. COHEN: I just, thank you. Look, everybody is interested in consumer protection, and I agree with that. We want students to have, you know, a good experience and to get a fair return on their dollar. I think students really like flex plans. I think flex plans are a relatively recent innovation in meal plans. But I think that allowing students to opt out, which I really do believe this would allow, is going to force colleges to rethink flex plans. Instead, I think that they will go for the swipe plans instead, because colleges aren't restaurants, they have to run food plans all the time. I was on campus last night, we had five students in the dining hall, but sometimes there could be a hundred students in the dining hall, so you don't really know. But you have to be prepared and so allow students to opt out will definitely make colleges rethink whether the flex plan is really workable. And so, I think at the end of the day, we're trying to be consumer centric. But I think at the end of the day, you're not going to achieve that. I think you'll find that colleges will say, you know what? We can't afford to take the risk, we can't afford to do it at times when there's lack of demand, so we're going to implement a swipe plan. And that doesn't really serve students very well. So, I think that this could really, really hurt that. In terms of consumer, you know, sentiment and I agree with it, but not every student chooses to live on campus. At our campus, if a student doesn't like the meal plan or they don't like the housing charges, they move off campus, you know, but making them, you know, change the meal plan, I really think it's a big mistake. The alternative would be, of course, that colleges would just say, look, you know, 10% of students are not really using the meal plan. We have to make these refunds, but we still have fixed costs. So, what happens? It's inflationary. I really think it's the Government putting their hand on something that will cause prices to go up, and ultimately a reduction in the quality of service that students are entitled to. And so, I think that, you know, we should let the marketplace decide on this. If the students don't want the meal plan, they move off campus. It happens all the time. But I think that requiring the colleges to make the mandatory meal plan on the flex plan option.

MR. WEATHERS: 30 seconds remain.

MR. COHEN: Thank you. I think we'll find that colleges will just move in a different direction. And I don't think you'll achieve the objectives that you are really seeking. Thank you.

MR. MARTIN: I do want to clarify, you know, everybody has opinions about this and all very valid. But what the Department is doing here is not requiring schools to do anything with their meal plans. I mean, we're not, you know, whether a school allows an opt-in or opt-out is entirely up to the school. The entire function of this regulation, where it's limited to, is simply acknowledging that with a flex plan, there is cash value, actual cash value is actual cash is on an account. That cash if it's inclusive of Title IV funds, if it's not used and schools are sweeping it, then they are taking back cash which is, as I said before, is student money. If schools choose to, as a result of the rule not offer that that is their prerogative to do that. If they want to give students a chance to opt in or opt out of any meal plan they've got, that's also their prerogative. I just want to make it clear that the Department, irrespective of how anybody feels about this proposal, is not dictating to institutions what types of meal plans they're to offer.

MS. JEFFRIES: Okay. Thank you. Next up is, Magin Sanchez, civil rights organizations. Who is back at the table in place of Carolyn Fast. Magin?

MR. SANCHEZ: Thank you. And 100% agree with David's point in terms of, specifically in terms of the concern that schools might turn towards swipe-only plans and flex dollars. I think that's, again, why it's so important to include returning at least the cost value of these swipes to students to avoid a loophole in that sense, that institutions may take part in. But on another note, in terms of the humanitarian, you know, the idea of the donations of flex or [inaudible] or what have you. I know, you know, personally speaking as someone who on both sides of the coin in terms of, you know, food banks, in terms of someone who during the pandemic, when my parents were laid off, had to go to a food bank for food. And about a year later, when I was in student council as a vice president of student council, I ran a food bank there, I oversaw one. I do want to say, on that note, it's a bit, you know, from the dignity of the person, a bit difficult to hope and pray, right, that someone will be willing to give their [inaudible] for you so you're able to receive that food or necessity covered. I think the most basic humanitarian thing that we can do is return the money for these students, particularly for these low-income students, right. You know, it's great, for over 200 campuses already have some type of swipe donation swipe system in place. It's great that institutions do that, right. But I think that doesn't solve the problem, right. The problem is, you know, these are decent amounts of money, right, that these students that go and use- that these students could use for basic necessities, and they shouldn't be relying on maybe someone donate swipes or whatnot.

MS. JEFFRIES: Okay. Thank you. Denise.

MS. MORELLI: I just wanted to note to everybody, again, in terms of the authority for the Department, you know, we're exercising our authority over the Title IV funds. And I want to remind everybody that in addition to tuition and fees, the students are entitled to funds for living expenses. And as Greg pointed out, we don't have any dictating on when the funds are applied. So, in order to make this comprehensive and apply to all students, we want to make sure that we were covering that where it is a, you know, living expense money. They might be getting money from other sources. So, in order to make sure that and not require schools to completely track, this is exactly Title IV, and this is the other funds. We wanted to make sure it was comprehensive enough so that if the student received Title IV aid, that they had the benefit of this provision.

MS. JEFFRIES: Okay. Thank you. David?

MR. MUSSER: And just one final point. Just following up on what Denise said. You know, one of the reasons that the Department is focusing on cash value meal plans is that, in our view, there is another method that is often viable for schools to obtain cash for meals. And that's simply using a credit card or a debit card or cash itself. Which in our view reduces the potential economic impact to institutions of no longer sweeping the funds that are in cash value meal plans. Now, that does not quite work. That same logic would not necessarily apply to meal plans that rely on vouchers, that rely on a certain number of meals per semester, etc. It isn't really a 1-to-1 equivalency. So that is part of the reason that we continue to focus on cash value meal plans and not voucher plans.

MS. JEFFRIES: Thanks, Dave. Zach Goodwin?

MR. GOODWIN: Thank you. I'll be quick. And as much as I, really support the donation idea, I actually would really support the Department's standpoint here in the sense that if you're an institution who has a swipe plan, that is not in any way to prevent you from donating swipes, and a lot of schools do that. It just doesn't have an equivalent cash value. And it might be very challenging to get into this realm of saying, okay, you bought a plan that was 14 swipes a week or whatever it is, let's say, 14, and then you get to the end of the semester and there are 12 swipes left over and having a cash value of those swipes and giving it back to the student because your dining services had to make those meals, whether someone came to eat them or not. What's a little different with a cash value situation is that this is actual cash. The student can take often to a number of different places, not just a dining hall. That's why it's flexible. So, it puts the school in an odd position to be able to do that. But those meal plan swipes could certainly still be donated to others and frequently are.

MS. JEFFRIES: Okay. Thank you, Zach. Seeing no other hands. Greg, are you ready to take a temperature check on 668.164 (c)?

MR. MARTIN: Sure.

MS. JEFFRIES: Okay. Do we have a show of thumbs on that section, and that Section only 668.164

(c), creating a student's ledger account?

MR. MARTIN: I want to make one clarification. This is only- we're only doing this as it applies to the meal plan, to the Department’s proposal on the meal plan. Let's make that clear.

MS. JEFFRIES: Okay. Thank you. Okay. Thumbs. Not seeing any thumbs, oops, one thumb down. Dom Chase. Anything, outside of what you've already stated or some contextual language that you could share and or put in the chat that would move you closer?

MR. CHASE: Yeah. Aside from the institutional decisions, I think I'm worried about the student behavior impacts from this in terms of forgoing meals for the duration of the term. I think a compromise in the middle ground that helps support the ongoing viability of these operations and also achieves a return of unused funds to students, would be allowing them to roll over during the full undergraduate academic career and then be returned once upon graduation or separation from the institution in another way.

MS. JEFFRIES: Would you- could you kindly put that concept in the chat so that it's not lost sight of for consideration in between sessions? Appreciate that. Alright, Greg, back to you.

MR. MARTIN: Thank you, Cindy, and I

want to thank everybody for that good discussion we had on this topic of meal plans. Next, I want to take up books and supplies. So, let's look at the relevant areas of 668.164 (c) there. So, I'll wait for that to come back on the screen. And again, let's start with (a), a lot to discuss here, but we'll just start while we're viewing (a) again. An institution may only include costs of books and supplies as part of tuition and fees if the institution demonstrates there is a compelling health or safety reason to do so. And we see here that we continue with books and if we go down to romanette 2, again, we're talking about allowable charges are, and then in romanette 2, the amount incurred by the student for the payment period for purchasing books, supplies, and other related goods and services provided by the institution for which the institution of chains the students or parents authorization under 668.165 (b) that remember that all of our authorizations are contained in 165, not in 164. Provided that for each payment period, the institution individually discloses the cost of such books, supplies, and other educational related goods and services to the student prior to any authorization being signed and the student or parent chooses to purchase those materials provided by the institution. And (b) the institution makes those books and supplies available to students at or below competitive market rates. And so that is where we, in consideration of proposals and what was said at the last negotiation session, where the Department has come back on with respect to books and supplies. So, with that, I will open the floor for discussion.

MS. JEFFRIES: Thanks, Greg. Jillian Klein.

MS. KLEIN: Thanks. I think just to get started, I have two questions. Just on the drafting. One is, can you, be more specific about the cadence of the required authorization and the cadence of the required disclosure? I see what I think I understand is that the disclosure is by payment period, but I don't see something specific about the cadence on the authorization. So, can you answer that? And then I have a second question.

MR. MARTIN: Sure. So, what we have here is that- so let's read that again. For each payment period, the student- the individual- the institution individually discloses the cost of books and supplies to the student prior to the institution- prior to authorization being signed and the student or parent chooses to purchase those materials. So, we'll get into the authorization. But the authorization for this would be required with each payment period, because that's when the schools, I'm sorry, that's when the institute- the students would be opting to purchase those books and supplies through the institution.

MS. KLEIN: So, by term it would be the disclosure and?

MR. MARTIN: Right. Yes, yes.

MS. KLEIN: I'd say it's not super clear in here. So just as a feedback to the drafter. My second question is can you talk about- I noticed the deletion of the provision that had allowed institutions to take advantage of this flexibility if the supplies- books or supplies were not available elsewhere. And I just am wondering if you can talk about why you removed that? And then depending on your answer, I might have a comment on that.

MR. MARTIN: Yes. So, in looking at that we, you know, we determined that the only exclusion here should be for health and safety purposes. That we don't- we believe that with the current availability of materials, books, etc., you know, via the web, via other measures, other means, that it's not really a consideration that those supplies are simply not available anywhere else. Obviously, the school obtains them from a source that that source would- there are sources available for students to do that. It was a proposal that we received that we eliminate that particular, call it flexibility, and we- our position is that we do believe that it would be that materials would be available through some other source. Obviously, if the student- if a school, you know, our position here is if a student- if a school is offering these supplies and it really is at the best price available, that students will certainly opt to receive it from the school. But, in as many instances as possible that there should be the option for the student to go elsewhere if the student chooses to do that without being compelled by it being linked to tuition and fees to have to pay for those books and supplies as part of paying for tuition fees.

MS. KLEIN: Yeah. So, I'm happy to provide an example from my own institution, Capella, which is a competency-based education institution. The way that we create our programs is building our courses from the competency up. And often that means that it is- it does not make sense from our perspective for students to buy a full book when we are only pointing potentially to like one chapter in that book. And so, I think a real-life example. And by the way, I don't think this is specific just to CD institutions, but obviously resonates for us, where we try and make it as cost effective for students as possible by taking individual chapters out of specific books and bundling them together to provide them to students at a cost that's much lower than what it would be if the student bought individual- all those like six individual books, right? So, it's like the example of the eight hot dogs and 12 hot dog buns. Like, it doesn't make sense for the student to buy 12 hot dog buns if we can provide it to them in a way that is just aggregating from the portions of the content that we have used to design our CD programs or other programs. So, I don't know if that is an example that you all thought through, but I think this happens a lot in institutions that are building programs, that are really aligned to sort of competencies or skills where institutions want to make sure that they aren't forcing students- or students aren't in a position where they're having to buy materials that they don't otherwise need. So, I would encourage you to put it back in. I'm happy to share some language. I think it belongs under the first part of this, where you talk about scuba equipment, and happy to provide whatever you need. Thanks.

MR. MARTIN: And I think people always go back to the scuba when they go remember from these procedures, scuba equipment. Which I've never- I did, you know, it's funny, I did try at one time, I'm not a very good I don't feel really comfortable under water, but my uncle had it and I went underwater to try to breathe with that apparatus. And then they told me that if you don't breathe properly with it, if you like, hold your breath. It's really bad something could happen to you. So, I just forego it. At that point it was no more scuba for me, so I never got beyond the pool aspect of scuba equipment. Any scuba equipment is dangerous in my hands. So, but to the point, yeah, and I want to make it clear that what you're- what you're talking about, Jillian, we don't- we're not proposing to disallow. Certainly, schools can include these materials if they want to and offer them to students. The only difference here is that it can't be done, whereas in the current rules, it can be done rather automatically unless a student exercises an opt-out. What we're doing here is saying you can certainly do that. And we encourage schools to offer to students, you know, materials, books and supplies that are, you know, the best option for students monetarily and educationally. It's just that in this case, what we're saying is you have to have the students, you know, authorization to do that. The student has to opt into that process. We believe that if what the school is offering is good and at the best price, the students will do that, but that they deserve the option to choose to do that and not have it done automatically. And that's really what this rule is about.

MS. JEFFRIES: Okay. Thank you. Dave Musser, you had your hand up. Now. Okay. Everything's covered? Okay, thanks. Zach Goodwin.

MR. GOODWIN: Thank you, Cindy. Moving on a little bit to the stipulation that we can no longer be including, except for health and safety reasons, the cost of books and supplies and tuition and fees. This does appear possibly to conflict with the Department's Q&A for prison education programs. Do you mind me reading something?

MS. JEFFRIES: Go ahead. You have three minutes, so.

MR. GOODWIN: Okay. Fortunately, it's only a couple of sentences. This is under the [inaudible] Q&A number nine. To avoid situations where allowable costs are not included in the cost of attendance, schools must include books, materials, equipment, and supplies as part of institutional charges, and neither provide those materials directly to the individual or include the cost of books and supplies in the individual's tuition and fees. And this was largely, I think, to avoid incurring credit balances on behalf of these students. Sorry, that was it.

MS. JEFFRIES: Okay. Alright. Great. Thank you. Jason Lorgan.

MR. MUSSER: Sorry. Cindy, could I respond to Zach?

MS. JEFFRIES: Sure. I'm sorry. Yeah.

MR. MUSSER: No worries. So, Zach, I think that is a good point that we will think about. However, the Department's definition for institutional charges includes books and supplies that are charged to students for which they have no real and reasonable opportunity to obtain elsewhere. So, if the school charged for books and supplies, and obviously the student in these cases does not have an opportunity to retain those things elsewhere, or at least in the vast majority of cases that I'm familiar with. So, the Q&A would still permit the student- the school to do it in that way. It would require an authorization by the student, which I do think we want to look at. I'm not sure that that was our intent. Because it seems a little odd to require them to take that extra step for prison education programs, but I do appreciate the comment.

MS. JEFFRIES: Thanks, Dave. Alright. Now Jason Lorgan.

MR. LORGAN: Thank you. So, again, I'd like to start by thanking the Department for taking one of our recommendations to increase disclosure requirements. But in talking to other public four-year institutions, there seems to be a lot of confusion about what some of this language means. So, I'd like to ask a few questions about it. So first, you know, typically, financial aid students are allowed to charge books and supplies to their student account primarily because they don't have access to credit cards, as some other students may. And so, it's an attempt to even the playing field and make sure that everything is equal. So, I wanted to ask a question about that. So, can a student still go into the bookstore and charge books and supplies to their campus account or not? And if they can charge supplies because I totally understand the disclosure of individual book prices based on a student's schedule. But does that require us to disclose the price of every notebook, of every pen, of every thumb drive, of every supply that a student might choose to purchase? And I'll pause for an answer.

MR. MARTIN: So let me address that and I'll invite Dave to maybe offer some of his own thoughts if he has more. We're not changing that process. I mean, you're talking about the very common situation, especially, you know, two and four-year institutions, both public and private, where there's a bookstore, the school allows a student to go into the bookstore, purchase books and supplies, and goes on the students account and can Title IV cover that. Yes. That falls under general authorizations, which we've had for, I think, since 1994, maybe even before that. Where a student- you get a general authorization from a student to use Title IV funds to pay for charges other than tuition and fees, and room and board if it's offered by the institution and that particular authorization can be maintained throughout the student's entire matriculation unless the student chooses to rescind it at some point in time. So, we're not changing anything with respect to that. Remember, it's different than what we're talking about here. In those cases, the students- the authorization is not an authorization required except up front, but it's every time the student goes to purchase the books, the student is taking the- student is choosing to go in. Okay, I need this book for biology 101. And to use the way it was when I was in school, you actually purchased a big book. You go into the store, and I purchase that book. That's a positive action on my part to do, right? I picked the book, I take it to the counter, I charge it. I've given my authorization to school that can use Title IV funds to pay for that. We're not proposing to change that in any way or add any additional, anything additional there. What's happening here is we're talking about programs where currently, you know, the institution saying, you know, for example, you're taking biology 101 again, to select something that was never any good at. But there's a, you know, let's just say that the course materials, including any electronic book and maybe the homework is also bundled into that. Right? So currently it's a charge that when you take biology 101, it's part of the tuition fee charge, which is not the case in the student walks in to buy books. Right. So, it's part of the tuition fee charge. And what we're saying now is that the school can still do that. They can still offer that bundled package, you know, that you get the tuition, the key to the book and to the homework. Except the only thing being now is that, with these rules, the student would have to actually provide their authorization for you to do that. So, I think that it's actually two separate things we're talking about here. And I don't know. David, do you have anything else you want to add about that is a clarification or?

MR. MUSSER: I think that covers it. The intent here. And you said Greg, you said included intuition. It would have to be broken out as a books and supplies charge in under this approach. But so long as the school disclosed the amounts of the charges for the books and the student agreed to pay that amount, in each term, the school could then charge their account directly, and the student could obtain the books that way. And I agree with Greg about everything that he said regarding the bookstore purchases. Essentially, the bookstore is providing the student with the charges for the books that they're obtaining. And the student is making an affirmative choice to purchase the books in those cases. So at least, you know, at first glance that is fulfilling the spirit of this. I think we were really focusing on cases where the school was providing bundles or fund- the books directly to the students without that interaction with directly with a bookstore and the book prices that the student would have in a traditional experience.

MR. LORGAN: Okay. Thank you. That's helpful. My second question is so and I think I understand it better based on the first answer, but in terms of individually disclosing the cost of. So that is simply the items that you just described that we're going to include on the tuition and fee bill. So, things that are- that students are going to authorize us. So those are the only things we have to disclose. Is that correct?

MR. MARTIN: Yeah. That's correct. To

go back to the proposed rule again. For each payment period, the institution individually discloses the cost of such books, supplies, education related goods and services to the student prior to that authorization. Let's go back to the point Dave made. There's that affirmative, it's not really an authorization, but it's implicit when a student goes to the bookstore, I see they cost the book, I know what the cost of the book is, I choose to buy. Here it's included, currently, schools are included in that as part of tuition and fees. We're no longer allowing it to be treated that way. It has to be broken out. But it can still be- the material can still be offered in that manner. Which is to say the school just provides it, but because the student is not going to a bookstore to affirmatively choose this, you need to disclose what those costs are going to be. And that's what this is about.

MS. JEFFRIES: Currently, we have 1-2-3-4-5-6 more hands up on this topic. And then I think, in lieu of time, because we have a significant amount of this text to go through yet throughout the rest of the day, I'd like to do the temperature check at that point. So, the last speaker on this would be Scott Dolan. Next up though, we have Dom Chase.

MR. CHASE: Thank you. I think it's

important to kind of talk about why the language was changed previously to allow for these programs. And really the primary too was the cost and ensuring that the course materials were available on the first day of class. And I think prior to that, we have to think about what will happen under this type of language. And really there will be- the behavior should return to previous before this language, which means a lot of students will wait until that first week of class or even beyond. Some, many, many students on a large scale don't even enroll particularly at the community college I represent until very close to that first week of class or that first week of class. And so very similar to the Affordable Care Act in 2010. I'd like to draw a comparison about the individual responsibility provision that that ensured the large-scale participation in the program. The participation is important to drive down the cost for each individual. And it's simply the more volume we drive through, the per unit cost should go down. But the participation is important. And I think I'm highly concerned about, previously, many businesses popping up, that take advantage of students in these secondary markets where they offer certain dollars for course materials, perhaps in times of very significant need and it's simply buy low, sell high. You mark that up with a significant margin and resell it to someone else. And that was a very significant contributing factor to course materials exceeding CPI for a very long period of time. So, if the intent was about transparency in changing the language, which as it was stated in the initial documents, I think the challenge with the way it was worded now is that some institutions have included this as part of tuition, but the opt-out does not result in any kind of monetary return to the student when they do. There is a process for opting out, but because it is part of tuition is zero. And I do think that's extremely concerning and not the intent that the Department had when they changed this language. But if the goal is transparency and for there to be a monetary refund if a student opts out, then the alternate proposal of a separate discrete fee requirement should achieve those objectives, which was proposed and still allow for these programs to drive the volume needed to benefit all and drive the per unit cost down. Thank you.

MS. JEFFRIES: Thank you, Dom. Barmak Nassirian. You are next.

MR. NASSIRIAN: Thank you. A couple of comments. First one, on romanette 1, with regard to health and safety supplies. Language is fine. The regulatory language is fine. It would help in the preamble for the Department to clarify that this cannot be like brand specific requirements. It can't be just the only health and safety equipment I will accept will be the one that I myself sell. There should be pegged to specifications as opposed to brands or particular, you know, types. So that's one comment. On Jillian's comment about institutional attempts to drive the cost of textbooks down by selectively incorporating different chapters of various books. That's wonderful when it's done voluntarily and in the interest of the student. But we're not writing regulations for people who want to do the right thing voluntarily. We have to be mindful of the other possibility, which is institutions that may have an interest in maximizing revenues. And to the extent that institutions do offer compelling value compared to alternatives. You have to, you know, this mindset of in loco parentis that somehow these are kindergarten kids we're dealing with. These are adults in most cases. They make choices for themselves. And we have to respect the fact that this is their money and that they defer to that judgment. I appreciate the instinct to act in their best interest as a benevolent, sort of decision maker. But I think the best decision maker is the person whose money is being spent, this being the student. So, I think it's important to focus on providing value. Dom's comments about secondary markets. The secondary market is de facto nonexistent at this point. With the move to digital, there is very little secondary market out there. The challenge we face with textbooks is the challenge of- we don't have consumer price sensitivity driving down costs. The faculty adopt the book, they decide what is required. The consumer really has a choice of at great risk not obtaining the book or looking for other alternatives. And the concern with institutions auto billing for this stuff is that, you know, one party to this transaction seems to hold all the cards. So, I strongly support the Department's language. It is the right approach. So, hopefully it'll retain the language and hang in there. Thank you.

MS. JEFFRIES: Thanks, Barmak. Next is Carolyn Fast.

MS. FAST: Yes, I also wanted to indicate my strong support for the Department's proposal. And I just wanted to take a minute to just amplify the voice of one particular student who wrote about this in an [inaudible] for the Hill publication, which I will drop into the chat. This is a student named Katie Wagman who's at UCLA, and she talks about the need for an opt-in program. And she notes that, if the kinds of options that are being offered by schools are actually offering savings to students, then students will certainly opt in and you will be able to get the benefit of participation and volume, which is important to be able to keep costs down. So, I think that student choice is very important here. And this is- what the Department has proposed will address this problem of students being charged. And in some cases, it seems overcharged through these programs that do not give them a choice about how they're going to get their materials. So, I wanted to offer her- amplify her voice and indicate support.

MS. JEFFRIES: Thank you, Carolyn. Next Emmett Blaney.

MR. BLANEY: Thanks. I'd also like to echo what Carolyn just mentioned with calling back to- I sent out a memo last session that had some pretty significant or pretty relevant stats for this issue. In that, 88% of students engage in cost avoidance strategies already. So, following off what Carolyn said, if going through an institution is really what is going to save students money, then 88% of them would still do it. So, I would just like to say that if it truly would save students money, we would be sticking with whatever option the institution is providing. We know that it's not saving students money. It's very clear. I also wanted to point out that 42% of publishers who had these contracts with institutions limited how institutions could even disclose their partnership to students. So, it's like it's the cost. It's that almost half of them are preventing students from even knowing that there's a partnership between institutions and publishers. That's also an issue. So, I just want to respond by providing some more stats. And if you'd like to take another look at the memos that we sent out last session, I think they're pretty illuminating on the actual motivations of inclusive access programs.

MS. JEFFRIES: Thank you, Emmett. I appreciate it. Next, Jamie Studley.

MS. STUDLEY: I have some operational and technical questions. I understand the Department's and advocates motivation for making changes, but I'm trying to think about how an institution would actually do some of these. There's a different definition in little- romanette (1)(a) that says books and supplies, and then in (2)(a), it says, and other educationally related materials or whatever those words are. I'm picturing maybe this is slightly old fashioned. Most materials that are tailored by the professor instructor, are probably electronic. But if the school decides to provide at its own copying cost at no extra charge a unique package of materials for Barmak's class-philosophy 101 class, which we're all registered for here, apparently, and you get a package of Xerox, what's the correct word, right, duplicated materials, this sounds as though I as a school would not be able to do that as part of the tuition charge. I wouldn't be able to fold in the production of something that only that professor can provide. It's not available anywhere else. If the point is making clear that people understand what tuition is- what they're really going to have to pay for this program, you would think that would serve that purpose. They know that they're going to enroll for that course, and this is what is covered and this is what is being given to them. They may even be told there's no other book charge. So, I just want you to think about whether that would stifle something that is not intended to be covered here. And then on the (2)(b), the institution makes those available at or below competitive market rates. I'm wondering whether institutions think that that would be a lot of work for them to determine, given that we have- that there is a requirement beforehand that the student has to opt in to purchase those if they want to. And that the determination about the competitive marketplace may be very hard for the institution to do. As those change, people can find discounted materials and so forth. I wonder whether that's necessary in an environment in which there is disclosure and the student has to authorize whether they want to buy them through the institution. Just some practical issues.

MR. MARTIN: Okay, I'll try to deal with those. And, maybe David might have some comments as well. I with respect and, you know, you make a good point about using Barmak's social philosophy class, he had me with the Hegelian dialectic one last time. I had to go back to Google to brush up on that. It had been a long time. But, so, yes, there is the, I think you're saying is there's always the possibility that he, you know, just as a matter of course, maybe he chooses not to use a textbook. And he includes all of his assignments, whatever, maybe references to articles in something which, you know, students, an electronic key or something, students have access to that throughout the course. I don't think we have any problem with that. If it's and again, there's going to be a bit of a I think a judgment call there if it's if it truly is being offered at no expense, obviously when you pay tuition you for any course, you're paying for the instruction, you know, the presence of the professor or the facility being used, all of those things. And it might be that- I do recall even back in the dark ages when I was in school, it certainly wasn't electronic, but sometimes professors did provide us with a packet of, you know, materials that they put together. Right. This would just be electronic. We're not trying to inhibit that. And there could be a fine line between what involves offering something essentially at no additional cost. And to what extent is that already built into tuition fees as opposed to there being additional costs. Obviously, when it comes to books and actual supplies, it's a little bit of an easier delineation than it would be a professor design materials. Right. But if it truly is no cost to it, I think the Department would be encouraging, you know, that type of thing where it would be offered that way. To your other point about the below market rates. I take your point that it can sometimes be difficult to determine, you know, is this below market rate? And again, there's some art to that, I suppose. What we're truly- I can tell you what we're truly trying to prevent here is markups. That is something I think we can really identify. And so, it would definitely preclude the practice. And it is fairly common, I think, Denise Morelli could attest to that because she's seen it a lot where schools are providing the student with something that is, in fact, readily available through other means, and they are marking it up at a significant rate for the students. And even though students may have an opt-out, there is, I think, for a lot of students when a school offers something, there's that, you know, the people in authority, which would be the school, are offering this and they just automatically accept it, as opposed to the school actually having to make certain that it is being offered at below market rates. So, I think that's the- but I do accept your point that that might not be always a completely scientific determination but that schools are obligated to look at that to examine whether they are offering it at below market rates. And not marking up those products. I invite my colleagues to say anything more if they want to at this point.

MS. JEFFRIES: Okay. Thank you. Okay. Scott Dolan.

MR. DOLAN: Yeah. Thanks. In our first session, I think, the Department shared that its primary concern was with the lack of disclosure, and the transparency about costs associated with equitable access models. And particularly, how disclosure and transparency limited students' ability from being informed about whether they were being provided the most affordable option. Since session one, there have been numerous proposals that have recommended changes to the language that would address both the transparency concerns and the disclosure concerns from the Department. So, I think it would be helpful to maybe take a step back and hear a little bit more about what exactly was lacking from those proposals. What is the primary concern here? Is it really disclosure and transparency? Or is it something else? Is it affordability? Let's have maybe a conversation there. Is it markup? Let's have maybe a bit of a conversation there and talk about language that might address these issues rather than, where we are right now, which is eliminating the opportunity to offer equitable access programs which have, in many cases, proven to drive the cost, of course, materials down for students and give them access to that material on the first day, which we think is essential and have shown, is important to, supporting, student success. So, I think, you know, being clear about exactly where the concerns are might help negotiators better address the concerns that the Department might have.

MR. MARTIN: I can say that- in response to that, that certainly, transparency is a huge concern of ours. But in addition to that, we also have- when you look at our regs it's obvious that it goes beyond that to a matter of student choice. And that's really what we're talking about here as well. That the equitable access model where it's included in tuition and fees is an automatic, although the opt-out did exist, that there's an automatic aspect to that which is just simply charged. I will concede the point that in some cases, in many cases, maybe, that doing that can serve as a model for reducing costs perhaps. But it can also be the opposite. I mean, [inaudible] will not- I don't think the Department's ever going to see that, I certainly won't, that in every case when schools offer these, it's always the most altruistic best thing in the interest of the students. There are cases where bad actors have used this to inflate the cost of materials. This- we may not be able to address that entirely, but this proposal does grant that choice to students. And we think that in giving that in giving students that choice meaning that, schools can still offer these equitable access models. We're not stepping in and saying you can't do this anymore. We're simply saying that in order for you to do it no longer is considered tuition and fees. It's an additional charge. And you have to get the students to opt into that model. That's all we're saying here. So, it isn't just a matter, to be clear, it isn't just a matter of transparency. Although that's a huge concern. It does go beyond that choice.

MR. DOLAN: I guess much like Barmak, I agree that we're often dealing with adult consumers here who make informed choices, and I think one of the choices they make is to choose an institution. And part of that would be factoring in the total cost of attendance, which as long as that's the closed on the front end, the student is making an informed choice about attending an institution that packages these things together. And I think even the more recent proposals are saying institutions are willing to take extra steps to remind students about how that's being charged, what the cost of that might be, and even disclosing that on a more frequent basis. So, to me, it's- we talk a little bit out of both sides of our mouths here when we're talking about consumers and the power that they have to make informed choices. So, I think it's just, you know, I like the Department, I, and others here, consumer advocates, other constituencies, I would love to address the issue around affordability rather than punishing good actors, for well-intentioned and well-designed programs that have worked to the benefit of students, especially disadvantaged students. So some more consideration around some of the more recent proposals might be helpful as we move forward.

MS. JEFFRIES: Thank you, Scott. And the final speaker on this for this morning will be Michael Cioce.

MR. CIOCE: Thank you, Cindy. And, thanks, Joe, for letting me speak on this. So, in an attempt to not repeat or duplicate stuff that's been submitted. I guess my question specifically on (a) for each payment period. We tend to treat everything else in an academic year, right? So, the FAFSA is good for the year. The expectation is that the majority of students are coming for the year. So why are we- and again, if a student comes fall, winter, spring, summer, those are theoretically four separate payment periods. So why are we deviating into payment period as opposed to some sort of academic year? That's question one. Question two, there's particularly in the two-year sector and I'll speak for my own, they're students that don't do their FAFSA until August 29th and let alone, ever respond to an email during sort of, you know, critical timelines. So that's another sort of reason, just from a population perspective, that multiple opt-ins and multiple opt-outs, I think, to the last comment on the transparency. No one's arguing and anything that I've put my name to is opposed to that. But it's something to think about because there's staffs downstream that have to be the ones to build this into all of the timelines. But then three, or my third question is on (b), institution makes those books or supplies available to all students at below competitive market rates. I guess as defined by who and where, right? So where are we pointing back to as far as this is the market rate? Because lists can shift, pricing can be increased. I mean, if you try to buy a ticket for a Taylor Swift concert you can see that there's surge pricing. If you use Uber, there's surge pricing. So, I don't know who's going to be the keeper of pricing when it comes to what the definition of competitive means. I think the bundling comment is definitely that's where things get shady, right? But currently we listed out, and whether it's through your bookstore partner or through your ERP where students register, there's myriad ways for this stuff to be posted, I guess, in concept, but I'm curious as to where the competitive sort of chalkboard is going to be housed. Thank you.

MR. MARTIN: I'll try to- I see Dave has his hand up. I'll make a- I'll say a few comments and turn it over to him. First of all, the payment period aspect of this has to do with the fact that- has to do with the way in which these materials are generally being provided. So, if we're talking about a course which is in most cases going to be over the course of a semester, a term, a trimester, a quarter, right. So, it's the- that's the payment period aspect of it. So that if I'm taking, you know, use the biology example again, 101 this semester and the materials being offered by the school as part of a bundle, you'd have to obtain my authorization to charge me for that course. And then come spring semester, I might be taking Chemistry 101, and it could be a similar situation. So that's why the per payment period aspect of this and at traditional schools, the payment period conforms to the terms. The other question about the practices of students getting the materials to students and some students not applying until later. I admit that often is the case. I can see the impetus to want to make certain students have all this material. But again, we see the necessity to give the students choice as an overriding factor there. And, the last question, I forgot what it was. Could you reiterate that just briefly, just to recap that?

MR. MUSSER: Greg, I think it was about.

MR. MARTIN: Thanks, Dave. Go ahead.

MR. MUSSER: Who is responsible for performing the analysis of market rates and sort of where is that expected to reside? And actually, if you want Greg, I can take it a little bit on that point.

MR. MARTIN: Yeah. Go ahead and address that.

MR. MUSSER: Well, I want to address- first, I want to address that which actually I think is an extremely good point, especially as it pertains to one of the questions, I noticed in the chat about the Department's data on any potential compliance violations or other concerns that we have, about the current practices. When you talk about the evaluation of market rates, the Department has found that that is an extremely difficult provision to enforce. For some reasons that I think the negotiator was alluding to, it's difficult for the Department to point at an analysis and say this is a flawed analysis because X, Y, and Z. It could happen if the Department, state, or a student or a group was able to show that the school was sort of systematically charging more for the books and supplies that it was providing through tuition and fees, than it was for the books in and of themselves. But not only does the Department currently not have the information about what proportion of tuition that the tuition and fees actually comprise, but we also don't have a clear sense of what steps the school was actually taking in many cases. Even the most basic steps, the school could point to that and say, we did a market analysis, and the Department would be hard pressed to say this is inadequate because X, Y, or Z, given the difficulty and the insight that we don't have into exactly how all of those things came together. So, I think when you talk about the market analysis, there's always going to be some discretion provided to schools when we talk about a market analysis, regarding what they do and how they do it. It would be near impossible for the Department to go in and actually say this market analysis was bad because you didn't do X, Y, or Z unless there was evidence that the full market analysis was overcharging students systematically and by probably by a significant amount. So that's really what the Department would be looking for if we were to find that a school had violated the provision under the proposed regulatory language here. And I would also say, we have noticed that some schools don't comply with the requirement for providing funds back to a student when they opt out. And that was something that one of the other negotiators noted earlier is that some schools are not doing that. The Department, as far as I know, doesn't have audit findings on this point because I don't know that auditors are looking closely for this. But we have gotten questions about it. We have answered schools that this is something that they need to do. We believe it is a point of confusion at many institutions. So hopefully that goes at least some way toward answering your question.

MS. JEFFRIES: Great. Thank you, Dave. I appreciate it. I appreciate you all on this robust discussion on this Section. I think we'll go ahead and take the temperature check now. And then a couple closing remarks before lunch. So, I do want to note that Erika Linden has been able to join us now. And so, she is back at the table as primary. So welcome, Erika. So, let's go ahead and see a show of thumbs on the language in 668.164 on books and supplies. Bear with me here a minute. So, I'm showing a number of thumbs down. I'm showing Jason Lorgan, Jo Blondin, Jillian Klein, Dom Chase, and Erika Linden. Did I miss anyone on that?

MR. ROBERTS: I have DC as having his thumb down as well.

MS. JEFFRIES: Okay. His kind of blends in with this background. It gets in the trees I can't see it very well. Thank you for pointing that out. Okay. Alright. So, there were multiple people that have indicated dissent. Hopefully you've all had a chance to be clear on what your concerns are. And please put any contextual ideas, thoughts, proposals in the chat that would help you move towards consensus that hasn't already been stated during this discussion. Okay? Greg, you got something? Oh, I thought you were moving closer.

MR. MARTIN: No, no. I'm fine. I'm

just adjusting myself here.

MS. JEFFRIES: Okay, great. So, one announcement before we break for lunch is that there is a different link to sign in for the public viewing session this afternoon. Different than what was used this morning. So, we encourage the people who are utilizing the public viewing site to please go to the Department's website unless you've already received the link for this afternoon and make sure that you obtain that link. Because this one from this morning, it's my understanding, will no longer work. So, you need to log in on the new one. With that, we'll go ahead and break for lunch. We ask that you be back maybe about ten minutes before one so we can start promptly at one, because you have a significant amount of this issue paper to go through yet this afternoon. Okay? Have a great lunch.

Zoom Chat Transcript

Program Integrity and Institutional Quality- Session 2, Day 1, Morning, February 5, 2024

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

From P Jamie Studley, Institutional Accreditors to Everyone:
Where the Department has made changes in this round it would be very helpful for it to explain its reasoning for substantive changes made in this round (not just to dive into the new/yellow) language.

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:
Magin Sanchez, Civil Rights/Consumer, is going to be joining the conversation to comment.

From P, Jason Lorgan, Public 4-year to Everyone:
I agree with Zack. As a strategy to address basic needs, campuses do allow students to donate food funds to others and hopefully this can be preserved

From P, Jillian Klein, Proprietary Instit to Everyone:
My alternate, David Cohen, will come to the table to speak on this topic.

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:
Magin Sanchez, Civil Rights/Consumer is returning to the conversation to comment.

From P, Jillian Klein, Proprietary Instit to Everyone:
Just want to emphasize again that Greg's response to David's comments was "if it includes Title IV funds," which is not what this language currently says.

From A, Emmett Blaney, Students/Borrowers to Everyone:
I agree with Magin. To avoid the loophole of schools switching to meal swipes plans to avoid returning students’ money, the proposal should apply to swipe plans as well.

From A, Sophie Laing, Legal Aid to Everyone:
Seconding Magin's point about expanding this swipes too, so that low income students can get their money back and use as they need

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:
Also agree with Magin's point about expanding this to swipes too.

From A, Emmett Blaney, Students/Borrowers to Everyone:
Replying to "Just want to emphasi..."

I believe this is because it a a sub-bullet under (c) (1) which specifies T IV. Someone else let me know if that’s incorrect!

From P, Jillian Klein, Proprietary Instit to Everyone:
Replying to "Just want to emphasi..."

It specifies that the student is Title IV eligible, it definitely does not specify that the student is using Title IV to pay for his/her meal plan.

From A, Sophie Laing, Legal Aid to Everyone:
Replying to "Seconding Magin's po..."

*to swipes too

From A-Alyssa Dobson, 4yr Public to Everyone:
Agree strongly with Zack Goodwin's comments on swipes.

From (P) Barmak Nassirian, Veterans & Mil. to Everyone:
+1 on Magin and Emmett's points. The requirement should apply to swipe balances as well. Schools should not rely on charging students for services they don't receive to sustain their operations. Drop-out rates are known and calculable.

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:
agreed with Zack here about the overhead associated with running food service and the difficulty of estimated cost per swipe

From P - Laura Rasar King, Specailzed Accreditation to Everyone:
I agree with Dom. I am concerned that students will not eat to get the money back. Unintended consequences.

From (A) Dom Chase - Business Officers to Everyone:
Institutions would be required to rollover any remaining funds to subsequent terms or years, returning any remaining funds when a student leaves undergraduate studies at an institution, either upon graduation or earlier if a student leaves an institution for any reason prior to graduation.

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:
Agreed on the lack of clarity in terms of the frequency of authorization required for institutionally-provided books and fees. I was going to ask the same question Jillian posed.

From P - Laura Rasar King, Specailzed Accreditation to Everyone:
I agree with Dom. This language will mean that students will not have the resources on the first day of class. Some will not purchase books and supplies at all. This leads to challenges with student outcomes.

From P. Jo Blondin, Community Colleges to Everyone:
Reacted to "I agree with Dom. ..." with 👍

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:
Reacted to "I agree with Dom. Th..." with 👍

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

I think it's important to remember that for students who will have a credit balance (the definition of which is proposed to change) schools will still have to provide a means for obtaining books and supplies by day 7 of the payment period. However, I acknowledge this doesn't cover everyone, such as those who will not have a credit balance.

From P, Jason Lorgan, Public 4-year to Everyone:
Agree with Dom. Participation (having access to textbooks immediately) is the goal of opt out programs. This is similar to employers realizing how important retirement savings is for their employees and auto enrolling employees in their 401k or other retirement programs, with the ability to opt-out. Institutions want to encourage immediate access to content, and that is why we choose that as the default. The ability to opt out still gives students agency. Opting out is allowed at most institutions through the add/drop period, giving plenty of time to make their decision.

From P, Jillian Klein, Proprietary Instit to Everyone:
Barmak, appreciate your comment but my question is also just an operational one, which his how exactly is a school supposed to show that a compilation is below market value when literally there is no place for the student to actually buy it. I'm struggling with even how that works in the current proposal.

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:
Here is a link to the students' publication: https://thehill.com/opinion/education/4420447-biden-can-limit-colleges-scheme-to-tack-textbook-costs-onto-tuition/

From P. Jo Blondin, Community Colleges to Everyone:
Michael Cioce, Community Colleges' Alternate, has a comment.

From P, Jillian Klein, Proprietary Instit to Everyone:
Jamie's Xerox example is similar/the same as my chapter example - these items literally cannot be purchased anywhere.

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:
Reacted to "Jamie's Xerox exampl..." with 👍

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:
Reacted to "Jamie's Xerox exampl..." with 👍

From P, Jason Lorgan, Public 4-year to Everyone:
Reacted to "Jamie's Xerox exampl..." with 👍

From (A) Dom Chase - Business Officers to Everyone:
Does the Department have data to support/show noncompliance and abuse of the current rules that can be shared?

From P Jamie Studley, Institutional Accreditors to Everyone:
My example is that the school provides duplicated pages in a printed package and the cost of that duplication was incorporated within overall tuition/instit operating costs. Wd the reg prohibit that?

From A, Emmett Blaney, Students/Borrowers to Everyone:
Publishers manipulate the market rate.

From P Jamie Studley, Institutional Accreditors to Everyone:
and as to the reqt of market rate research-- would the school be in jeopardy of violating federal rules if someone found the materials available somewhere the school had missed at a lower price?

From (P) Barmak Nassirian, Veterans & Mil. to Everyone:
I think Jamie's (and Jillian's) point about (1)(i)(A) can be addressed by clarifying that institutions should be able to incorporate the cost of books and supplies into tuition, but that specific books and supplies fees may not be auto-billed to students unless there is a compelling health or safety reason.

From (A) Zack Goodwin (he/him), Financial Aid Administrators to Everyone:
Reacted to "I think Jamie's (and..." with 👍

From A, Emmett Blaney, Students/Borrowers to Everyone:
Again, bumping the second memo we sent during the first session. It cites data that shows that equitable savings programs do NOT save students money. And if it does save money, then we will all opt in.

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:
i am stepping aside to allow my primary negotiator, Erika Linden, to step to the table

From P, Jillian Klein, Proprietary Instit to Everyone:
Reacted to "I think Jamie's (and..." with 👍

From A, Scott Dolan, Private Nonprofit IHEs to Everyone:
apologies, i will stay on until the temperature check

From A, Emmett Blaney, Students/Borrowers to Everyone:
91% of schools do not disclose the COA accurately anyways.

From A, Emmett Blaney, Students/Borrowers to Everyone:
https://www.gao.gov/blog/what-financial-aid-offers-dont-tell-you-about-cost-college

From (P) Barmak Nassirian, Veterans & Mil. to Everyone:
Disclosures are no substitute for meaningful guardrails against price-gouging by bad actors.

From A, Emmett Blaney, Students/Borrowers to Everyone:
Reacted to "Disclosures are no s..." with 👍

From P - Carolyn Fast, Civil Rights/Consumer to Everyone:
Reacted to "Disclosures are no s..." with 👍

From A, Magin Sanchez, Civil Rights/Consumer to Everyone:
Reacted to "Disclosures are no s..." with 👍

From A, Sophie Laing, Legal Aid to Everyone:
Reacted to "Disclosures are no s..." with 👍

From Michael Cioce, 2 Year Colleges (A) to Everyone:
Reacted to "Disclosures are no s..." with 👍

From Michael Cioce, 2 Year Colleges (A) to Everyone:
Reacted to "91% of schools do no..." with 👍