Carney McCulloug: Okay, I'm very glad to be here with you today. I'm Carney McCulloug from the Office of Postsecondary Education with the Department. I want to say that my fellow federal negotiator on these Program Integrity rules, Fred Sellers really wanted to be here as well and boy, I wish he were here too to share in the love. He's back in Washington working on gainful employment issues. But I told him I'd give him a shout-out and tell everybody that he wanted to be here. I have a really full agenda for you today and we're gonna cover the requirements that are related to institutions in the recently published Program Integrity regulations.

There's lots of material to get through here so I'm gonna ask you to hold your questions until the end and I'm also going to tell you that this is the high altitude flyover of these provisions. This is not – there's no substitution for reading the imperiums in the final and so I'm trying to give you – hitting the highlights shall we say for you on all of these various provisions.

We'll just talk a little bit about process, just a little reminder. We started the negotiated rule making process about a year and a half ago, back in June of 2009. We had three hearings in Denver, Colorado, Little Rock, Arkansas and in Philadelphia. At the conclusion of the hearings in September of 2009, we issued a federal register notice and that announced our intent to negotiate the fact that we were planning to have two teams of negotiators. One dealing with Program Integrity issues, and one dealing with foreign schools. We listed what the topics that we planned to negotiate were and we solicited nominations for non-federal negotiators in that notice.

The Program Integrity Team, the one that Fred and I were the co-federal negotiators for, we had 14 issues: high school diploma, ability to benefit, misrepresentation, incentive compensation, so on and so forth. I'm not going to list all 15 of them cause we're going to talk about 9 of them in this session today. We have three meetings in November and December of 2009 and in January of 2010 and they were really chockfull of discussions. They were 4 solid days worth of negotiations for each of those so we really had a total of 12 days of negotiations and I would say that our discussions that we had really helped improve and make sure that we had a really good NPRM that came out. We did not reach consensus on the NPRM and when that happens the Department is free to regulate as it sees fit.

But we did preserve a lot of the tentative agreements that we have reached throughout the negotiations and in some cases maybe not

the exact language, but the spirit of the tentative agreement. So I think the negotiations were quite helpful in getting us good results. We published the Notice of Proposed Rulemaking on June the 18th, 2010 and a separate Gainful Employment NPRM on July 26, 2010. The comment period on the June NPRM ended on August the 2nd and we received nearly 1,200 comments and let me tell you, that was a lot of comments and because there were 14 issues in this package, the comments weren't short. They were really lengthy and they had a lot of meat in them, but they were very helpful and we published our final regulations on October 29th, 2010. There were actually two packages, a really large package dealing with the nine issues and a smaller one on one aspect of the Gainful Employment Regulations.

We met that master calendar deadline by a couple of days. We beat it, the November 1st deadline by a couple of days. In fact, we've had some people come in looking for the November 1st regulations, they can't find them because they were published on October 29th. The effective date of these regulations with the exception of the Verification Regulations is July 1st, 2011. The Verification Regulations will be effective July 1st of 2012.

As I said before, today we're gonna talk about nine of the issues. We're gonna talk about state authorization, credit hour, gainful employment, misrepresentation, written arrangements, incentive compensation, disbursement and the two return of Title IV funds issues that were in the negotiation.

We're gonna start off talking about state authorization. And when developing this presentation, I sort of did a why are we regulating in this area, why we're revising the regulations in this area, that sort set the stage on each of the topics. And for state authorization, we decided we needed to revise the state authorization procedures to ensure a direct state role in approving institutions. Remember, there's a triad. There are responsibilities that are the Department's to monitor, there are responsibilities of ensuring certain quality things are left to accrediting agencies and states are responsible for making sure that an institution is legally authorized to operate in the state.

We also wanted to clarify what was required for an institution to be considered to be legally authorized by a state for the purpose of federal programs. This will ensure that students and families and employees have a venue in which they can file complaints about institutions, provides a more active role that will help ensure that substandard institutions and diploma mills are not able to operate.

Now I want to point out that regulations do not require states to establish new entities and that these provisions only apply to federal programs. In other words, programs that are interested in receiving assistance under a federal program.

So just a little refresher about what the requirement is. Basically in order for an institution to be eligible to participate in the Title IV HEA Programs, it must be legally authorized to provide post-secondary education in the sate in which it is located.

The regulation set these requirements out based on whether the institution is established by name as an educational institution, whether it's authorized to conduct business in the state or whether it's authorized to operate as a non-profit charitable organization by the state. Federal and tribal institutions are exempt from these requirements as long as the institution is authorized by name, by the federal government or by a tribal government. And certain religious institutions are also exempt from these requirements and I'll talk a little bit more in a minute about religious institutions.

So in an institution is established as an educational institution by a state, it's considered authorized for federal program purposes if the institution complies with any applicable state approval or licensure requirements except that the state may exempt the institution from any state approval or licensure requirements based upon the institutions accreditation by one of the accrediting agencies that's recognized by the Secretary or based upon being in operation for at least 20 years. If the institution is established by a state on the basis of authorization to conduct business in the state or to operate as a non-profit charitable organization, the institution, by name, must be approved or licensed by the state and it may not be exempt from the state's approval or licensure requirements based on accreditation, years in operation, or another comparable exemption.

The state must have a process to review and act on complaints concerning the institution that's independent of any process that the institution has for resolving complaints. And for a tribal college, the tribal government must have a process to review and appropriately act on complaints that it receives.

As I mentioned before, certain religious institutions that are exempt from state authorization under state law or under a state constitution are exempt from these state authorization requirements. And what do I mean by religious institutions? We

have a definition in the regulations and that's one that is owned, controlled, operated, and maintained by a religious organization and awards only religious degrees or certificates. For example, if you've got an institution that only awards a degree in Bible Studies, it could be exempt from these state authorization requirements. However, if that institution later decides it wants to add another program, it wants to add a degree program in Accounting for example, then it's no longer exempt so they have to only be offering religious degrees or certificate in order to qualify for the exemption.

This is the one that got people really excited yesterday. If an institution offers education through distance or correspondence education, and yes that includes on-line instruction, to students in the state in which it is not physically located or in which it is otherwise subject to state jurisdiction, it has to meet those state requirements to be legally authorizing post-secondary distance or correspondence education in that particular state. And it would need to be able to document the state's approval upon request.

As I mentioned before, the general effective date for the regulations is July 1st, 2011, however an institution may request a one-year extension to July 1st, 2012 and actually, if necessary, they can request an addition one-year extension to July 1st, 2013 if the state is unable to provide appropriate state authorization. And in order to receive the extension, the institution has to obtain from the state an explanation of how this-one year extension, or in some cases a two-year would permit the state to modify its procedures in order to comply. We recognize that there could be some changes that are needed and so we wanted to provide a venue or an avenue for people to have an extension so that is how we're doing it in this particular section of the regulations.

Moving onto credit hour. So why did we think it's necessary to define and to deal with this credit hour definition? Well, first of all there's no definition in any current regulations of a credit hour for programs funded under the HEA and there's also no definition in the accrediting agency regulations. We thought it was important to provide for consistent measure of at least a minimum quantity of a student's academic engagement and establish a basis for measuring eligibility for federal funding. Cause if you think about it, a credit hour is really a unit of academic progress. It's the basis for us for determining institutional eligibility, program eligibility, student eligibility and determining the amounts of payments of student aid, so it's a very important component for Title IV purposes.

I want to stress that this definition of credit hour is solely for federal program purposes. It's not intended to limit or prescribe how institution assign credits to their courses for academic or other purposes apart from the federal programs. And what the definition does is it defines a credit hour as an amount of work that's represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than 1 hour of classroom instruction or direct faculty instruction with a minimum of 2 hours of out of class student work each week for approximately 15 to 17 weeks for 1 semester or trimester of credit or for 10 to 12 weeks for 1 quarter hour of credit or the equivalent amount of work over a different amount of time or at least an equivalent amount of work for other academic activities as established by the institution including laboratory work, internships, practica studio work and other academic work that leads to the award of credit hours.

And the definition is really intended to allow institutions to use their discretion to determine the in class and out of class components. For example, one credit hour of lab work doesn't need to consist of one hour in the lab plus two hours of out of class work related to the laboratory. And the definition allows institutions that have alternative delivery methods, measurements of student work or academic calendars to determine intended learning outcomes and verify evidence of student achievement.

The regulations required accrediting agencies to conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours and accrediting agencies can satisfy this requirement by reviewing the institution's policies and procedures for assigning credit hours, reviewing how the institution adheres to those policies and procedures and then making a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practices in higher education.

Okay, the regulations also make changes to the clock hour/credit hour conversion regulations concerning when an institution must use the standards in making changes to the standards themselves. Clock hour to credit hour conversion is used to determine whether certain programs meet certain length requirements for program eligibility and then the result in credit hour values have to be used in awarding title for student financial assistance.

Undergraduate non-degree credit hour programs of all types of institutions are subject to clock hour/credit hour conversion unless each course within the program is acceptable for full credit toward a degree offered by that institution so this is applicable to all non-degree undergraduate programs at any institution. The final regulations modified – added additional caveat to what was sort of already existing regulations.

The institution has to be able to – like I said, they're subject to the conversion unless each course within the program is acceptable for full credit toward a degree offered by that institution and the caveat is the institution has to be able to demonstrate that students enroll in and actually graduate from the degree program that's used for the exemption. We had seen cases in the past where institution had a lot of students in a certificate program and theoretically, I should say, the credits transfer to a degree program, but no students were ever enrolled in that degree program or they didn't graduate from that degree program so in this case, made it clear that they have to offer the program - that you've got to have some students enrolled in that program to use that exemption.

I mentioned that we have new conversion ratios now in the regulations, the new parameters specify that one semester or trimester credit hours equal to at least 37 and a half clock hours while one quarter credit hour has to be equal to at least 25 clock hours.

Now there's an exception to the minimum that I just mentioned which would allow a lesser rate of conversion based on additional student work outside of class. In order to use the exception, the work outside of class combined with the clock hours of instruction must meet or exceed the numeric requirements of the new standard conversion minimums so there could be no deficiencies identified by the creditor or the state for assigning the credits. And they can meet the current minimums, in other words, and those current minimums are that one semester trimester credit hours equal to at least 30 clock hours or one quarter credit is equal to at least 20 clock hours.

You must base your evaluation on individual coursework components of the program, sort of like what I mentioned before. We are looking at classroom study versus what would be appropriate for practica or outside labs that have little outside study so expect you to do that in making these types of determinations.

For students that are enrolled in the programs that are subject to this conversion as of July 1st, 2011, the institution has an option. It can use the regulations until the students complete the program or it can apply the new regulations for all its students that are enrolled in payment periods that are assigned to the 2011/2012 award year.

For students who enroll or who reenroll on or after July 1st, 2011, the institution is required to use the new requirements and the new regulations.

Big sip of tea before I talk about gainful employment right? Okay. Why were we taking on gainful employment? Well, we thought its important that students and families need better information about programs that are designed to prepare students for gainful employment in a recognized occupation. And so let's just talk for a minute, kind of remind ourselves what the requirements are. There are certain programs that are eligible to participate in the Title IV Programs only by virtue of the fact that they lead to gainful employment in a recognized occupation. So it's a fundamental of their eligibility and its set forth this way in the statute. This is not a regulatory requirement, this is a statutory requirement.

And what that really applies to, it applies to all programs, degree and non-degree, at proprietary schools except for a limited exception for a program leading to a baccalaureate degree in Liberal Arts. So basically all programs at for-profit schools. At public and private non-profit institution, it applies to all of your non-degree programs with the exception of two-year transfer programs. So basically these gainful employment requirements apply in some method to all institutions be they for profit, private, non-profit, or public institutions.

We define a recognized occupation in the regulations now as one that's been identified by a standard occupational classification or SOC code established by the Office of Management and Budget or one that's been identified by an occupational network or O*NET-SOC Code established by the Department of Labor.

We had some very outdated references in our regulations to the Dictionary of Occupational Titles, which I understand has been gone for a really long time now. So we replaced that was the current references to the SOC Codes established by OMB in Department of Labor.

Institutions are now going to be required to submit annual information on students who complete a program leading to gainful employment in a recognized occupation including student in program information, amount that the students have borrowed from private loans or financed through the institution, matriculation information, and end of your enrollment information. And the information that will need to be reported is both program specific and student specific and the data that is reported has to be linked to each individually identifiable student.

The first set of data is going to be due on October 1st, 2011 and we're gonna be asking, "Did you use 2006/2007 award year information to report on that if it's available?" But regardless we're going to be requesting information from 2007/2008, 2008/2009, and 2009/2010 so that's a must thing. Yesterday that wasn't clear to people so that's going to be required.

For 2010 and 11 and beyond, the report's going to be due no earlier than September 30ths, but no later than a date established by the Secretary in a Federal Register Notice. Institutions are going to have to comply with some required disclosures and they're gonna have to be providing the names in the SOC Codes with links to the appropriate O*NET occupational profiles. They've got to be providing information about tuition and fees charged by the institution for completing a program within a normal timeframe, the typical cost of books and supplies and room and board if applicable. So that's not like just your annual tuition fees, it's tuition fees for the entire program.

Information regarding the on time graduation rate and by on time I mean on time according to the institution catalogue or publications. This is not your Student Right to Know rate which is based on 150 percent of time to completion. This is your on time completion rate. Gonna have to report placement rate information and eventually you'll be reporting that as determined under a methodology that will be developed by the National Center for Educational Statistics through their TRP Process.

They'll be working with people to get the appropriate data and they're alternatives that are listed in the regulations on that. Also, information about median loan debt, which will be provided by the Department based on information that you've reported to us from the institution and information that we can pull from NSLDS. Gonna have to identify separately in the disclosures the median Title IV Loan Debt and the median loan debt from private educational loans and institution financing plans. And you must

include in promotional materials that the institution makes available to perspective students and you also have to post on the website.

The information needs to be prominently displayed on the programs homepage and appropriate links need to be provided as well, needs to be displayed in an open format that can be retrieved, downloaded, indexed and searched. And you need to use the disclosure forum that the Department is going to develop is in the process of developing when it becomes available so we're working on a form that will help you be able to comply with this.

The regulations also require institutions to notify the Department of new programs that are subject to gainful employment requirements and you have to notify the Department at least 90 days before the first day of class. This is a requirement that's effective July 1st, 2011. These requirements are in the separate smaller package that I mentioned that was published on October 29th, 2010 and what I mean by a new program, it's a program with a CIP code that's different from any other program that's offered by the institution. Or it's a program that has the same CIP code as another program, but it leads to a different degree or certificate. Or it can be a program that the institution's accrediting agency has determined is an additional program.

In the notification to the Department, we're gonna ask for information about how the institution determined that there was a need for the new program, how it was designed to meet local market needs, if it's an online program, how was it designed to meet regional and national market needs, any wage analysis that was performed, how the program was reviewed, approved or developed with business advisory committees, program integrity boards, public/private oversight agencies in any businesses that are likely to employ graduates.

We expect information that demonstrates that it's been approved by or included in the institution accreditation and we want the date of the first day of class for the program. You're not required to get departmental approval after submitting the notification unless we require you to do so. If you don't provide us notification on a timely basis, like I said, within the time perimeters that I mentioned earlier, you would have to get Ed approval.

And if we make a determination that we need to give special approval to the program, an alert notice will be sent to the institution at least 30 days before the first day of class.

The Department's going to review a number of things. From the looks of this we're gonna look at the financial and administrative capability and I will tell you right upfront that we're not gonna deny a program on that basis. We're also going to look at whether the program replaces or expands existing programs, how that program fits in its historical offerings, growth and operations and if the process and determination to offer the program seems to be sufficient.

And if we deny a program, we're gonna explain to you how it failed and we're also going to provide an opportunity for the school to respond and the institution is able to request reconsideration of a denial that we would make and so –

And actually I'm gonna take a brief break and return to a process thing that I meant to mention when I was going through the process because just looking at slides it reminded me very much of something I wanted to tell you, which is I mentioned that this is a high level overview that I'm giving you today. And you can see there's a lot of meat around these bones, so to speak, that you need to go through. And you might think that I'll just pull the final regulations up and take a look at them and that'll tell me everything you need to know.

I want to tell you there's no substitution for reading the final regulations, but you also need to go back and you need to look at the appropriate Notices of Proposed Rulemaking and this is way. In the preamble to the Notice of Proposed Rulemaking, we explain very carefully what the proposed regulations are and the reasons that we're making the proposals. We go into a lot of detail explaining in fairly detailed way what we're proposing and why because we're trying to solicit appropriate comments. And you need to understand why.

We get to the final regulations, now certainly the reg language in the final regulations, that's what you want to rely on. But the preamble to the final regulations basically covers comments; we summarize all the comments that we got and we have a discussion of those comments so we respond to the comments, we answer them, the questions that were asked, the comments that were made, we agree, we disagree, whatever. And we highlight changes that were made from the Notice of Proposed Rulemaking to the final

regulations. Well, let's say there's something that's in the Proposed Regulations that we didn't get many comments on, didn't make changes, you're not going to find a discussion of that in the Final Regulation so you really have to look at both the NPRM and the final and there's a wealth of information. The big package published on October 29, when it went to the Federal Register was almost 900 double spaced pages so if you have any insomnia and you're looking for something to put yourself to sleep, I can highly recommend that.

But what I'm really trying to say, there's a lot of meat that I'm certainly not able to go into tremendous detail with you today and I might not even – my hard drive might not be able to retrieve all of the information that's in those final regulations on a dime here on the question and answer portion, but it's got a lot of really good information in it and hopefully we've answered most of the questions that are out there in the documents.

Okay, moving onto the next topic which is misrepresentation. And why did we decide we needed to make some revisions on misrepresentation? Well, these are regulations that we last revived somewhat over 20 years ago. We were trying to figure out exactly how long it had been since we had revised them as Representation Regulations and we've been hearing – we've heard complaints from students who are alleging that have been victims of false promises that have been made to them.

And this summer I think we all saw the results of the GAO Undercover Audit where they visited undercover 15 for-profit institutions where 4 of them actually encouraged fraudulent practices, but all 15 made deceptive or otherwise questionable statements to the undercover applicants. So we've seen a lot of stuff on this and we wanted to strengthen the Department's regulatory enforcement authority and that's really what these regulations are all about, it's our enforcement authority.

So, in general, they cover two things. The first is it describes the actions that the Department may take if it determines that an institution has engaged in substantial misrepresentation, that includes revoking the program participation agreement, we can impose limitations, we can deny applications, we can initiate a fine, limitations, suspension or termination proceeding. So those are some of the activities that we could do.

And it also describes the types of activities that constitutes substantial misrepresentation. The new regulations provide that an

eligible institution is deemed to have engaged in substantial misrepresentation if the institution, one of its representatives, or an entity that's under contract to the institution for providing educational programs or marketing advertising recruitment or admissions activities makes a substantial misrepresentation regarding the eligible institution.

And finally the final regulations clarify that substantial misrepresentation is prohibited in all forms and by that I mean written, oral or visual. So let's briefly kind of high level go through the definitions.

Misrepresentation is any false erroneous or misleading statement that's bee made by the institution directly or indirectly to a student, a prospective student, a member of the public, an accrediting agency, a state agency or the Department or really anybody if you really look at who we all have listed there, right?

So what is a misleading statement? Well, a misleading statement is one that has the likelihood or tendency to deceive or confuse and it could be made in writing, it could be made visually, it could be made orally or it could be made through other means such as advertising or promotional materials. And it includes student testimonials that were given under duress or because the testimonial was required in order for the student to participate in education program.

Now so what's substantial misrepresentation then? That is any misrepresentation on which the person to whom it was made could reasonably be expected to rely or has reasonably relied to that person's detriment. The regulations go on and further describe misrepresentation with respect to four areas, the four sections of the regs listed there.

One deals with the nature of the educational program, and by that I mean acceptance of course work upon transferring into the institution, statements that could be made about the transferability of credits earned at the institution, statements about accreditation that the institution has including specialized accreditation, statements regarding graduate's qualifications to take examinations or to meet conditions needed to secure employment, information about nature of financial charges and that includes the cost of the program, refund policy, financial assistances available to students, the ability of students to reject any amount of aid, any appropriate amount of aid, or particular type of aid, also information concerning employability of graduates including

misrepresentations about knowledge that the institution has or maybe doesn't have, about current or likely future employment opportunities and also requirements that are generally needed to be employed that field. And finally, relationship with the Department of Education, any suggestions that the Department approves or endorses the quality of the institution's educational program.

Couple of things that are not covered under these regulations are, and this sort of showed some confusion that the commenters had, it's not additional an additional avenue for litigation for students, employees and other members of the public and it does not create a new federal private right of action.

Okay, written arrangements. It's been a number of years since we revised these regulations. That seems to be kind of a common theme in a lot of these things and basically these regulations allow an eligible institution to contract with another eligible institution or entity to provide part of a student's educational program. You think of these as being consortium arrangements between institutions in a lot of cases and then contractual arrangements are those that are between the eligible and the ineligible entity.

What we're trying to do here was to address some instances of abuse that we've seen within institutions that are under common ownership. We're going to add some additional restrictions on contracting with ineligible institutions. We wanted to align the regulations with our definition of an educational program and as a result of negotiations, we expanded some student notification requirements related to written arrangements.

The first thing that we did was we made two important clarifications. The first is that we want to clarify that another institution they provide part of, but not all of an educational program under written arrangement. That's where we needed to align things with our definition of an educational program. We don't allow an institution to offer – the eligible institution, in order to be eligible, has to offer some portion of the educational program, it can't contract the entire program out.

The second thing that we wanted to clarify is that the institution that's granting the degree or certificate has to have any necessary approvals to offer the educational program in the format in which its being provided such as distance education. Didn't want people that just sort of get around certain requirements by trying to contract those out so we tried to clarify that.

For a written arrangement that's between two eligible institutions that are under common ownership, the degree or certificate granting institution must provide more than 50 percent of the educational program. And the degree granting institution is responsible for limiting the amount of the program taken at the other institutions.

Now I wanted to let you know or clarify that this does not apply to public or non-profit institutions even though you could have a public university system and some people might think that that means its under common ownership, does not apply in the way that we've written this to public or non-profit institutions. It also doesn't apply to accepting credits on transfer for individual students. That's not contracting with someone to provide another part of the program. A student could come in with more than 50 percent of the educational program in transferring in and that is not a problem here.

We added three additional conditions under which are written arrangement between an eligible institution and an ineligible institution or entity is prohibited and that's if the ineligible institution has had its certificate to participate in our programs revoked, has had its application for recertification denied or has had its application for certification denied.

Well, we're in negotiations. The student representatives always really have a lot to add to our discussions and they raised some concerns about some of the situations in which students might not be aware that another entity or institution might be going to provide part of an educational program in some circumstances.

You know, the students enrolling at ABC school because they're really excited about having a certificate or degree from that particular institution and they get there and find out that ABC has contracted with XYZ to offer some portion of this program. So we thought – we added some consumer requirements to our regulations and so institutions would have to make information available to students about the portion of the educational program that's being provided by the non-degree granting institution, the name and the location of that entity, sort of an estimate of additional costs that the student might incur as a part of that contracting out and information about the method in which that portion of the program is going to be delivered.

And this applies to what I refers to as like blanket or programmatic arrangements. It doesn't apply to student initiated arrangements,

you know, the student comes to your institution and said, "Well, I want to take a really tough course this summer at my local community college when I go home." It doesn't apply to those type of circumstances. This really applies when you've got a blanket arrangement with another institution that's covered on that.

The student initiated contacts, since this was sort of a student initiated provision, we can make an assumption that if they're initiating it, they know the name and location of the other entity, they know about additional costs and the various things that we're wanting them to provide so this really only applies to the blanket and programmatic arrangements.

Excuse me for continuing to sip my tea with lemon and honey but after – this is the fourth presentation of six. I'm trying to make sure I still have a voice tomorrow so okay. The reason that we wanted to change the incident of compensation provisions was really two-fold. We've received complaints from students and enrollment advisors about high pressure sales tactics of some post-secondary institutions. Some have argued that tying staff compensation to the number of students enrolled is an inherent conflict of interest and that the safe harbors that were in our regulations undermined the statutory ban on incentive compensation.

We also heard from a number of educational institutions that the lack of clear guidance that we had had prior to the establishment of the safe harbors made it difficult for institutions to be confident of their compliance with the rule. Now our experience demonstrates that unscrupulous actors routinely relied upon the safe harbors that are in our current regulations in order to circumvent the intent of the statute so we believe that simplifying the regulations better aligns them with the law and hopefully will therefore improve compliance.

The regulatory requirements which really mirror the statute has several important pieces to it. First is that commissions or bonuses may not be paid if they're based in any part direct or indirectly on success securing enrollments or financial aid and that's by persons or entities who are engaged in any student recruiting or admissions activities or in making decisions about the awarding of Title IV funds.

There's a statutory exemption or shall we say so the lawn, the regulations do not apply to the recruitment of foreign students living in foreign countries who are not eligible to receive Federal

Student Aid and that's straight out of the statute. The new regulations remove the 12 safe harbors that are in our current regulations and those safe harbors, if you're familiar with them, were used to describe explicitly permitted behavior and instead we used some definitions to describe who is affected and that's really an entity or person that's engaged in any student recruitment or admissions activity or making decisions about financial aid and how they are affected. They're affected if they engage in activities surround securing enrollment or the award of financial aid and what is affected is that they can't be paid commissions, bonuses or other incentive payments for doing that particular type of work.

Now we developed a two-part test to help institutions evaluate whether payments are permitted or not permitted. And the first question that you ask is whether or not the payment is a commission, bonus or other incentive payment defined as an award of a sum of money or something of value that's paid to or given to a person or entity for services rendered. In other words, are you giving them something that is of value?

And the second question is is the payment made based on success in securing enrollments or the award of financial aid? If the answer to each of these questions is yes, the payment would not be permitted under the law or the regulations. We provided this test as sort of a tool to help institution evaluate their compensation practices if they may consider implementing. It doesn't add any substantive requirements that are not otherwise included in the regulations.

And I think I should just sort of say at this point that the Department has, over the recent years, has sort of had a ban on – we've not answered individual questions about compensation plans or given additional clarifications on incentive compensation and we stated in the imperiman, the final that we plan to continue that practice. However, if we receive a number of questions, if we think that there's something that needs additional clarification, we'll consider issuing a dear colleague letter. But historically, from the history of it, we gave some private letter guidance and it was kind of if I do this, am I okay? Well, what if I do that? Is that okay? What if it – so we're not answering those types of questions and we would refer people to their legal counsel and refer them to this two-part test to determine whether or not they're in compliance.

We made some changes to disbursement rules. We've heard a lot of horror stories, as far as students are concerned, over the years

about institutions who were refusing to disburse aid to students in a timely manner to allow them to pay their educationally related expenses, particularly true in a lot of cases of lower cost institutions where students would have large amount of credit balances.

And for some of the students, they need to pay for their housing, they need to pay for their food, transportation, and for others, what they really need is their books and supplies so they can go to class and so that they can actually engage in the educational activities.

Historically we depended upon institutions to disburse aid in a manner that best meets the student's needs and quite honestly we heard more and more recently about concern with what the institutions needs were. Some institutions were being more concerned about what they perceived as their needs as opposed to being concerned about the student's need to get these credit balances to help them so we wrote some regulations to deal with one aspect of this.

These revised regulations apply to Pell Grant recipients although you are certainly to do this for your other Title IV recipients also and we focused our concern on making sure that these most needy of our students are able to purchase their books and supplies and are not therefore hindered in keeping up with their coursework cause some of those students have more of a propensity. They were already facing some difficulty that some other students don't have so we want them to definitely be able to have their books and supplies.

And the regulations require that if an institution could have disbursed the students' Title IV funds ten days before the beginning of the payment period and if all of the Title IV funds had been disbursed, the student would have had a Title IV credit balance, the institution has to provide a way for the student to purchase books and supplies by the seventh day of the payment period.

Now when I'm talking about what does it mean on the could disburse ten days before classes, the student must have met all of the student eligibility requirements and all conditions for receiving Title IV aid. So, for example, the student hasn't completed verification, you wouldn't have to do this for them. If they have an unresolved C Code or they have unresolved conflicting information, they don't meet this criteria, these new provisions wouldn't apply in those circumstances.

And if you've got a student who's subject to a 30 day delay disbursement of loan proceeds, you would not consider the loan funds in determining the credit balance for that particular student. What the institution has to provide is the lesser of the presumed credit balance or the amount that the institution determines that the student would need to buy their books and supplies.

And you would do that by looking at either actual costs for the books and supplies, or by looking at the allowance that is in the cost of attendance for the student's program.

Students have to be able to buy their books and supplies by the seventh day of the payment period and this is applicable to each and every payment period unless the institution knows the student isn't attending. An institution that includes the cost of books and supplies in their tuition and provides the materials to the student before the start of class meets these requirements automatically.

An institution may use bookstore vouchers, they may use cash disbursements, stored value cards, prepaid debit cards or extensions of credit. And they can use one of those methods, they can use a variety of those methods or a similar method, something that I haven't thought of to put on the slide here. If you're using a bank issued stored value or prepaid debit card, the student has to have access to funds via the card by the seventh day of the payment period.

I stress that because sometimes there's some additional requirements that you have to have so it's not like you can just like start the process on the seventh day. The student's gonna have to be able to take that and buy their books. And the seventh day was something, and once again, we got a lot of feedback from our students at the negotiating table and their thought was that first few days of class sometimes you're determining are you really going to – is the professor really going to use that book, am I going to stay in that class, am I going to drop that class and change to something else, but basically by the seventh day they need to have their books and supplies in order to do their coursework.

I want to point out there's no change in the treatment for return of Title IV purposes. If a student doesn't begin attendance, Section 668.21 continues to apply and the institution is liable for returning any disbursed Title IV funds except for direct loans that they disburse directly to the students. If you did disburse them directly – proceeds directly to the student, you have to notify the

Department so the Department can begin collection of those amount of funds.

If a student withdraws after beginning attendance, the return of Title IV requirements apply. If the institution provided a bookstore voucher, I want to point out to you remember that the expenses for the required course materials then are considered to be an institutional charge because the student did not have a real and reasonable opportunity to purchase the books from another source. So keep that in mind if you're using a bookstore voucher to comply.

Institutions have to describe the way they're meeting these new requirements in its financial aid information and its notifications to students. The new regulations also require that an institution have an ability to allow the student to opt out of the way that the institution is providing for the student to obtain or purchase books and supplies so there needs to be an opt out possibility for students. However, if the student does in fact use the way that's provided by the institution, so say you issue a bookstore voucher and they use that, the student is considered to have authorized the use of his or her Title IV funds for the method and there's no need to obtain any additional written authorization for this purpose.

Okay, on to return of Title IV funds. We had two separate issues dealing with return of Title IV funds that we regulated. The first one dealt with modules and revising our R2T4 approach to dealing with modular programs. And why were we doing this? Well, we wanted to ensure equitable treatment for students who withdraw from credit hour programs regardless of whether the program span the length of the term of include compressed forces and those that are offered in modules. What we had seen is some extremely short modules and under our previous policy, students who completed a module were not subject to the R2T4 provisions even though they may have been enrolled only for a very small fraction of the period for which their aid was intended.

So what did we mean by offered in modules? What we really mean is the course or courses in a program do not span the entire length of the payment period or the enrollment period.

Under their final regulations, a student is considered to be withdrawn if he or she does not complete all of the days in the payment period or of enrollment period that he or she is scheduled to complete prior to withdrawing, that's pretty simple. In calculating the percentage of the payment period or enrollment

period that's completed, it's you, the institution, would need to include the calendar days that the student was scheduled to complete regardless of whether any course was completed that is less than the length of the term. You would still continue to exclude any scheduled breaks of at least five consecutive days in making this determination.

A student's not considered to have withdrawn if the institution obtains written confirmation from the student that he or she will attend a later module in the same payment period or period of enrollment. So if you've got a student, they enroll, you've got a payment period made up of several modules, they withdraw from the first module. If they provide written confirmation that they're going to return to a later module in the same payment period, you can consider them, at this point, not to be withdrawn. You have to get the confirmation of later attendance from the student at the time he or she ceases enrollment. The student may change that date. We do know that students like to change their mind, don't we?

If they're going to attend a later module than they originally intended, as long as the later module begins in the same payment period or enrollment period, the student makes that change in writing at the time that would have been the withdraw. Now if the student is enrolled in a non-term or non-standard term program, the next module has to start within 45 calendar days after the end of the module that the student ceased attending. And if the student does not return as scheduled, he or she is going to be considered to be a withdrawal and the withdrawal date and the total number of calendar days are those that would have applied if written confirmation had not been provided so it would be what would have happened when they ceased attendance originally.

We came up with three handy dandy questions to help you determine if a student in a program with modules has withdrawn. And the first question is, did the student cease to attend or fail to begin attendance in a course that they were schedule to attend? And if the answer to that is yes, then you go to question two. And question two says when the student cease to attend or fail to begin attendance in a scheduled course, were they attending other courses? And the answer to that, if that's no, then you go onto question number three that says, did the student confirm attendance in a later module and the payment period or enrollment period and the 45 day rule that I mentioned being applicable, if the answer to that is no, then the student is a withdraw.

And there's this little footnote there that want to remind you that the student may not be a withdrawal, but you may still have to do a Pell recalculation for a change in enrollment status. I just don't want you to forget that that provision is still out there, separate and apart for return of Title IV funds.

The final issue that we're gonna talk about today is the return of Title IV funds issue on taking attendance or institutions that are required to take attendance and why were we making these revisions? Well, we have always taken the position that we're seeking the best information about when a student has ceased to enroll and therefore ceases to be eligible for Title IV aid in order to have an accurate determination of how much Title IV aid the student has actually earned prior to withdrawal.

So what institutions are considered to be ones who are now required to take attendance? It's if either an outside entity or the institution itself requires its instructors to take attendance or has a requirement that can only be met by taking attendance or some sort of a comparable process. So if an institution requires its faculty to take attendance, whether that's at the programmatic level, whether its at the department level or at the full institution level, you have to use those records. However, the fact that you have some faculty members who think their course is really important and there's not a requirement, but those individual faculty members take attendance does not automatically make the institution be an institution that is required to take attendance.

The institution may choose to and we certainly would encourage you to use those records to determine the best date of withdrawal, but it does not turn the institution into one that is required to take attendance. Taking attendance is basically required in a clock hour program in order to show that the student is present and participating in a core academic activity.

Now if the institution is required to only take attendance for some of its students, it would use the attendance records that it has for those students in determining a withdrawal date. If the institution is required only to take attendance for some limited time period, we use attendance record to determine withdrawal dates during that limited time period. If attendance is only taken on a specific date for say census purposes, the institution is not considered to be one that is required to take attendance.

An institution is also not considered to be required to take attendance if a student is required to self-certify his or her

attendance directly to an outside entity so let's say that there's an employer in town that requires the student – they're paying for it, paying some portion of the bills and they're gonna require that the student tell them that they're attending classes, that does not mean the institution is one that is required to take attendance.

The final regulations also define academic attendance and attendance at an academically related activity to include things such as physically attending class where there's an opportunity for direct interaction between the instructor and the students, submitting an academic assignment, taking an examination and interactive tutorial or computer based instruction or attending a student study group that's been assigned by the institution as opposed to a group of students deciding to study together, participating in online discussions about academic matters and initiating contact with a faculty member to ask a question about the academic subject that they're studying with that faculty member.

Attendance does not include things such as living in the dorm, right? Living in the dorm doesn't mean they're going to class, right? Also eating. Using the meal plan does not mean they're going to class. We've also said it does not include just merely logging into an online course without some sort of active participation. It also does not include participating in academic counseling or advisement and that's a change from our current regulations and quite honestly that's in part because we had seen some abuse where somebody would suddenly call the student and have a counseling session on the phone so that they could just continue to say they were enrolled and attending so changed that.

A student certification of attendance without school documentation is also not acceptable. You can't just – student, "Really honestly, I'm here. I'm going to class." That's not acceptable. Okay, with that I will be happy to take your questions. We have two microphones there, number five and number six and I would certainly welcome any questions and suggestions you have. Do I have a pen? *[Inaudible Comment]*. Oh God, how great. I knew you *[Inaudible Comment]*.

We'll see if I have answers for you or if some of these things I have to take back. I should also mention that in addition certainly and I have my contact information there, you're welcome to e-mail me and I may, in some cases, ask you to send something in writing. We're collecting some of these questions with the idea that we might need to issue some written clarification so sometimes if the questions get rather complex and complicated, I may ask you to

write them in. And also will point out that in the final regulations we list contact individuals for each of the topical areas and so some of those people are really very expert in the subject matter, more so than I am. But okay, with that we'll start over to the right.

Female 1: Hi, I have a question with regarding to a student who unofficially withdraws, doesn't show up to class and you say you must get confirmation when student ceases their attendance. Does that enough if someone says to someone, "Hey, I heard she's not coming to class anymore." The student does not bother to notify the school in writing at any point or the student tells the teacher, "I can't come to class anymore for whatever reason." What do you consider confirmation?

Carney McCulloug: I'm sorry. What is confirmation of withdrawing?

Female 1: Yes.

Carney McCulloug: We've got regulations that get very specific about what's considered to be a withdrawal because you're asking about – I'm assuming you're asking about the modular portion that I was covering.

Female 1: Right.

Carney McCulloug: Okay, it depends on whether the institution is required to take attendance or its an institution that is not required to take attendance. And there's separate requirements, those remain unchanged about how a student notifies.

Female 1: If the school is required to take attendance.

Carney McCulloug: If the school's required to take attendance, the school would know when the student has ceased to be enrolled.

Female 1: Exactly. But that would be sufficient. The student does not have to notify the school then?

Carney McCulloug: No, for a school that is required to take attendance for a particular program, you use that, the last date of attendance, as the date that you use for calculating return of Title IV.

Female 1: Okay.

Carney McCulloug: Okay.

Female 1: Thank you.

Carney McCulloug: Over there.

Male 1: You mentioned that the gainful employment rate supply to non-degree programs. The only non-degree program we have is an alternative licensure program for students who already have Bachelor's degrees to get their teaching licensure. Would those gainful employment rates apply to that one program?

Carney McCulloug: This is an alternative teacher licensure program and you know, that's a really good question and I'm looking to see if anybody remembers. I'm not certain whether or we've made a total determination on that. If you want to send me that in writing – I don't remember finding that in the 900 pages right this second.

Male 1: Okay.

Carney McCulloug: So if you'd send me that in writing. That is a question that has come up several times. I do know that's something we've been working on so.

Male 1: Okay, thanks.

Carney McCulloug: Sure. Yes.

Female 2: Hi. For the new program approval requirement, is the department going to accept applications for new programs before July 1st if a school wants to roll out a program less than 90 days after July 1st? You know, if we want to put in a new program for fall term 2011?

Carney McCulloug: That's kind of an operational procedure thing and I'll be honest, I'm not sure of the answer. I imagine that we will be, but I think that's a good one for us to write down and try to get some clarification so schools are aware because people are making plans and we certainly know that and we want people to be able to make those plans so it's a good question. Yes.

Female 3: Hi, I have a question about state authorization on entities that do business like teaching hospitals or dental school clinics. How does the state show that the programs are authorized? Would it be a letter or are you working on another official form?

Carney McCulloug: Yeah, I think it's sort of is dependent upon each individual state in terms of what sort of documentation that they provide. I don't know if that helps, but -

Female 3: Okay, thanks.

Carney McCulloug: Okay. I do know they would need to list the institution by name, that XYZ school is authorized to operate as – so it does say by name. Yes.

Male 2: On the disclosures for students who have completed non-degree programs, it mentions private financing and institution financing but not student loans, is that correct?

Carney McCulloug: I believe we're gonna be getting the student loan information from NSLDS.

Male 2: Ah, that's why. And institution financing already includes payment plans.

Carney McCulloug: I'm sorry, I couldn't hear what you said.

Male 2: Institution financing includes payment plans? Is that correct?

Carney McCulloug: I believe so. And once again, I refer you back to the final regulations, but that's my recollection.

Male 2: So the amount of finance would be the whatever was on the payment plan?

Carney McCulloug: Could be.

Male 2: Correct? Yup, okay.

Carney McCulloug: Yes.

Male 3: Hi, just to follow up on state authorization. I'm from California and our state government is ceasing to exist.

Carney McCulloug: I'm sorry to hear that.

Male 3: Will the Department of Education be reaching out to the states or providing them with guidance on how to proceed and then will they be in touch with the schools or do we need to be proactively reaching out to them?

Carney McCulloug: Well, I know that we've certainly been in contact with state representatives of some organizations of SHEOs and some other types of state approval agencies and so we're doing some outreach.

I think it wouldn't be a bad idea for you to also contact – it can't hurt, right?

Male 3: Right. I will see if I can find someone.

Carney McCulloug: Okay. Yes.

Female 4: I also have questions about state authorization. I happen to be the Co-Secondary Registration Administrator in my state and the first question I have is about slide 15 having to do with schools that offer distance education, correspondence to students in a state.

Carney McCulloug: Right.

Female 4: In my state we do not register or license schools that offer solely distance education programs and have no fiscal presence in our state, is this new rule saying that such a school could not qualify for Title IV aid to offer –

Carney McCulloug: No, what it's saying is if there is a requirement in a state and you're offering instruction in that state, you have to meet it.

Female 4: So if we have a requirement, they have to meet our requirement if it's imposed upon us a new stipulation that we register schools we aren't registering?

Carney McCulloug: Correct. No. No, definitely not.

Female 4: Okay, a similar question. Our state law exempts from registration or licensing a number of our truly state based long-standing institutions and so I just want to confirm that if our state law exempts, for example, a private non-profit that has been in our state for 100 years, that in order to qualify for Title IV aid, then that school would need to show that they meet state authorization requirements in another way that's outlined in these rules? Is that true or?

Carney McCulloug: Well, I think so. I kind of lost you there for a minute. I mean, we sort of laid out and there's a chart in the final regulations. It's where it says if it's this type of state, you can exempt them from certain requirements based on accreditation and/or years of existence in the state if its under state law under the Constitution. It sounds like that's what you were saying.

Female 4: Sorry. Right. Well, we don't – my question is whether or not we have to change state law to provide for an exemption for

accreditation or years that the institution has been there? Can I use an example?

Carney McCulloug: I don't know that it's gonna help me be able to answer your specific question. I think that's one you might want to send in in writing and the real expert on state authorization is Fred, up at Fred Sellers so – but he might be able to answer that for you so.

Female 4: Okay.

Carney McCulloug: Yes.

Female 5: Hello. My question is on the incentive compensation, the two-part test on slide 65 and 66. The end of 66, it said if the answer to each question is yes, the payment would be prohibited. I want to interpret each. So is that both? Or is it either? So, in other words, if one is yes and two is no -

Carney McCulloug: It's really either. I think it's either. I mean, it's a two-part test we're giving you to help you make a determination about are you paying something something of somebody's something of value and is it being paid on success in securing enrollment? So either one of those you could be considered to be a problem.

Female 5: So does that then interpret that anyone involved in any of these activities, you're getting nothing more than salary?

Carney McCulloug: You're getting into the area – I'm sorry, you're getting into the area that we're not going to be answering questions on in this venue but I can take that as a question for consideration whether we need to add any additional clarification or not.

Female 5: Okay, I'm sorry. I still don't understand the answer. So is it –

Carney McCulloug: I'm not going to answer you is what it really is coming down to. Let's just be honest about that.

Female 5: All right.

Carney McCulloug: So.

Female 5: All right. So either one has a yes, stop.

Carney McCulloug: I would say so.

Female 5: *[Inaudible Comment] [Crosstalk]*. Okay, fair enough.

Carney McCulloug: You know, quite honestly on incentive compensation, if you've got to ask the question you might think twice about doing it.

Female 5: Fair enough.

Carney McCulloug: How's that?

Female 5: Thank you.

Carney McCulloug: It's kind of one of those types of things.

Female 5: Got it. Okay.

Carney McCulloug: Maybe that helps a little bit. Yes.

Female 6: Mine is actually on the same lines. We have profit sharing, which is across the board to everybody in the country – I mean, here's the company –

Carney McCulloug: We have some discussion on profit sharing in the final regulation so I refer you to that discussion about how that is or is not and how that works with regard to incentive compensation. There's a long discussion so I think that might be helpful for you to – if you haven't had a chance to read that, that might help answer some questions there. We did address that. Oh wow, one more.

Female 7: I just want to confirm something regarding the return of Title IV funds. When a school has a two module period within the enrollment period and payment period and is enrolled in the first module and the second module, let's say three in three. And stops attending in the first one but is still registered for the second one, do we still need the confirmation from the student that – or can we –

Carney McCulloug: Yes.

Female 7: We still need the – even though the student is registered for the second module?

Carney McCulloug: Yeah. You need to confirm that they're coming back as opposed to withdrawing completely.

Female 7: Okay, thank you.

Carney McCulloug: To not consider them a withdraw. I mean, you could just consider them a withdraw and process and then if they return, then you would undo, but I don't think you really want to do that so.

Female 7: It's not as we were doing it.

Carney McCulloug: You could do that. That's an option.

Female 7: *[Inaudible Comment] [Crosstalk]* like six credits, you drop to three, is it – you know?

Carney McCulloug: Yeah, you're kind of asking some questions. The new regulations are looking at the entire period so it's not – and we're doing away with the old policy which would have said if you'd completed three, you no longer had to worry about it so.

Female 7: All right.

Carney McCulloug: Yes.

Female 8: My question's on gainful employment and the median loan debt. We're a community college and most of our students, tuition fees and essentials are covered by Pell, yet they choose to take out loans, are you going to be considering that in your calculations?

Carney McCulloug: The median loan debt, I believe, if I recall correctly is something that the Department's going to calculate based upon the information you've provided us and we will give it to you to provide to your students.

Female 8: No, I mean if you're gonna look at NSLDS –

Carney McCulloug: We'll look at NSLDS and you're also going to need to tell us information about any private loans that students have taken out or any institution financing plans.

Female 8: Our students –

Carney McCulloug: It may be very low for your students.

Female 8: Correct, but what I was worried about is the amount that they've taken out in direct loans. That is on NSLDS.

Carney McCulloug: Correct.

Female 8: That they didn't need to use to cover their cost of attendance.

Carney McCulloug: Well –

Female 8: I mean, if their direct – direct costs. Correct.

Carney McCulloug: Their direct institution costs they didn't need to, but that's different then the median loan debt because you are able to borrow for things other than direct cost, but so those loans will be considered. I believe so.

Female 8: Okay.

Carney McCulloug: Well thank you everybody, you've been a great audience. Enjoy your evening.

[End of Audio]