

## UNITED STATES DEPARTMENT OF EDUCATION

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GAINFUL EMPLOYMENT  
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 2

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TUESDAY,  
FEBRUARY 6, 2018

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The Negotiated Rulemaking Committee met in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C., at 9:00 a.m., Ramona Buck, Rozmyn Miller, and Javier Ramirez, Facilitators, presiding.

PRESENT

RAMONA BUCK, Federal Mediation and Conciliation Service, Facilitator  
 ROZMYN MILLER, Federal Mediation and Conciliation Service, Facilitator  
 JAVIER RAMIREZ, Federal Mediation and Conciliation Service, Facilitator  
 JEFF ARTHUR, Vice President of Regulatory Affairs & Chief Information Officer, ECPI University  
 WHITNEY BARKLEY-DENNEY, Senior Policy Counsel, Center for Responsible Lending  
 JESSICA BARRY, President, School of Advertising Art  
 JENNIFER L. BLUM, ESQ., Senior Vice President, External Relations and Public Policy, Laureate Education, Inc.  
 STEPHEN CHEMA, Ritzert & Leyton, PC  
 JENNIFER DIAMOND, Program Associate, Maryland

Consumer Rights Coalition  
DANIEL ELKINS, Legislative Director, Enlisted  
Association of the National Guard of the  
United States  
RYAN FISHER, Intergovernmental Relations  
Division, State of Texas Office of the  
Attorney General  
PAMELA FOWLER, Executive Director of Financial  
Aid, University of Michigan - Ann Arbor  
CHRISTOPHER GANNON, Vice President, United  
States Student Association  
ANDREW HAMMONTREE, Director of Financial Aid and  
Scholarships, Francis Tuttle Technology  
Center  
NEAL HELLER, CEO/President, Hollywood Institute  
of Beauty Careers  
MARC JEROME, President, Monroe College  
C. TODD JONES, President, Association of  
Independent Colleges & Universities in  
Ohio  
ROBERTS JONES, President, Education & Workforce  
Policy, LLC  
JOHN KAMIN, Assistant Director, The American  
Legion's National Veterans Employment &  
Education Division  
KIRSTEN KEEFE, Senior Attorney, Consumer Finance  
and Housing Unit, Empire Justice Center  
CHRISTOPHER MADAIO, Assistant Attorney General,  
Office of the Attorney General of Maryland  
JORDAN MATSUDAIRA, Nonresident Fellow, Urban  
Institute; Assistant Professor, Cornell  
University  
MARK MCKENZIE, Executive Director, Accreditation  
Commission for Acupuncture and Oriental  
Medicine  
LAURA METUNE, Vice Chancellor of External  
Affairs, California Community Colleges  
ANTHONY MIRANDO, Executive Director, National  
Accrediting Commission of Career Arts and  
Sciences  
MATTHEW MOORE, Director of Financial Aid and  
Scholarships, Sinclair Community College  
KELLY MORRISSEY, Director of Financial Aid,  
Mount Wachusett Community College  
CHAD MUNTZ, Director of Institutional Research,  
Office of Administration and Finance, The

University System of Maryland  
JONATHAN K. PIERRE, Vice Chancellor for  
Institutional Accountability and Evening  
Division, Southern University Law Center  
TIM POWERS, Director of Student Aid Policy,  
National Association of Independent  
Colleges and Universities  
THELMA L. ROSS, Interim Director of Student  
Financial Aid, Prince George's County  
Community College  
SANDY SARGE, SARGE Advisors  
AHMAD SHAWWAL, Student, University of Virginia  
DAVID SILVERMAN, Chief Financial Officer and  
Director of Business Affairs, The American  
Musical and Dramatic Academy  
JOHNSON M. TYLER, Senior Attorney, Consumer and  
Foreclosure Units, Brooklyn Legal Services  
CHRISTINA WHITFIELD, Associate Vice President,  
State Higher Education Executive Officers  
Association

STAFF PRESENT

STEVEN FINLEY, Office of General Counsel  
GREGORY MARTIN, Office of Postsecondary  
Education

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:00 a.m.

3 MR. RAMIREZ: All right, so we're  
4 getting ready to start Day 2, I guess Round 2, Day  
5 2 of the Department of Education gainful employment  
6 rulemaking.

7 And I want to thank everyone for  
8 yesterday. I thought that there were some  
9 difficult conversations, but everyone remained  
10 professional, and to a certain degree,  
11 problem-solving.

12 I'm hoping to see a little bit more of  
13 the problem-solving today and tomorrow, but  
14 overall, I would say that it went well.

15 Let's start off with any general  
16 comments from the negotiators or alternates. Are  
17 there any general comments that anyone would like  
18 to make?

19 (Pause.)

20 Okay. Public comments? I know we  
21 have at least one for public comments.

22 Go to the mic and just state your name.

23 MR. SMITH: Good morning, everyone.

1 My name is Christian Smith. I represent the Higher  
2 Ed Not Dead campaign. What I'm going to be doing  
3 today is just reading briefly one story of an Andres  
4 Jinow (phonetic).

5 "So Andres Jinow, my name is Andres  
6 Jinow. I am 33 years old, a janitor who cleans  
7 toilets and mops floors in public school, but my  
8 real passion is cars.

9 "In 2011, I saw an advertisement that  
10 promised a rewarding career as a mechanic. The  
11 school was called Lincoln Tech. The tuition was  
12 high, about \$30,000, but it seemed like a worthwhile  
13 investment.

14 "I'd be working at DMV or Mercedes  
15 dealerships, or so they said. In reality, the  
16 school was a joke.

17 "When I took the first test to get into  
18 school, the proctor handed a scrap sheet on which  
19 we could do math calculations. The scrap sheet  
20 was the answer key to the entrance test itself.

21 "I nevertheless enrolled, believing a  
22 good job would help me become an independent adult.

23 I still live with my aunt, because renting in New

1 York is expensive.

2 "Lincoln's auto classes were  
3 rudimentary at best. The instructors would be  
4 there one day and gone the next. There was a  
5 culture of cheating that the teachers encouraged  
6 by leaving answer sheets around the shop.

7 "In my last quarter, I went to my  
8 internship, where I was supposed to make  
9 connections and develop skills as a mechanic. The  
10 internship was at Valvoline Instant Oil Change  
11 Garage, where I operated a cash register and changed  
12 oil, something I've done since I was a teenager.

13 "Other students' internships were at  
14 Pep Boys and Auto Zone. No one got near an engine  
15 or transmission. I actually paid for this  
16 experience, about \$5,000, by my calculations.

17 "After I graduated with straight As,  
18 like many, I've sent my resume to countless jobs  
19 postings and got no interviews. Then I saw a job  
20 posting at Craigslist that made my heart sink.  
21 It said, Lincoln Tech grads need not apply.

22 "I took Lincoln Tech off my resume and  
23 pounded the pavement. When dealerships learned

1 I went to Lincoln Tech, the interview would end  
2 quickly, or I'd be offered a \$7-an-hour job ferrying  
3 cars from one dealership to another that quote,  
4 'might,' lead to work in a shop.

5 "I gave Lincoln Tech about \$30,000 in  
6 Pell Grants and student loans. What a mistake.  
7 I have since learned that Lincoln Tech has the  
8 second-highest automotive mechanic tuition in the  
9 country, and that its students only earn only \$9  
10 to \$12 an hour, three to four years after  
11 graduating.

12 "I cannot understand why the Government  
13 allowed me to take out federal loans I have to repay  
14 to go to this so-called school. I feel tricked.

15 I heard the annual salary of the President of  
16 Lincoln Tech was \$2.1 million shortly before I  
17 enrolled. That was two and one half times more  
18 than the salary of Harvard's presidents.

19 "My lawyer tells me that there's a rule  
20 that might have steered me away from Lincoln Tech,  
21 if it existed at the time, the gainful employment  
22 rule.

23 "Under this rule, 40 percent of Lincoln

1 Tech's programs of study are so bad that they will  
2 lose federal aid if they do not improve. These  
3 included two auto mechanic classes.

4 "But the current administration is  
5 planning to undo gainful employment, making it easy  
6 for Lincoln Tech to continue to deceive students  
7 like me, who don't know better.

8 "The Government is supposed to protect  
9 us from thieves and swindlers, not enrich them.  
10 I have to repay my student loans. It's only fair  
11 that the Government weed out the bad programs so  
12 that I pick one of value in the future."

13 Thank you for your time.

14 MR. RAMIREZ: All right, thank you.

15 Any other public comment?

16 PARTICIPANT: I have a -- something  
17 from the Paul Mitchell schools they wanted to hand  
18 out, so I'm just going to be handing it around.

19 MR. RAMIREZ: Sure. All right. So  
20 while that's being passed out, I do believe that  
21 we have Sarah Hay back to give us a little bit more  
22 information, maybe take a couple of questions as  
23 well.

1                   So we'll bring her up and take care of  
2 that piece.

3                   PARTICIPANT:   Okay, yesterday we had  
4 a discussion about N size, and I promised that today  
5 I would replace myself with someone who's a little  
6 more familiar with the mathematics behind all of  
7 this.

8                   So I'm going to turn it over to Sarah  
9 Hay for that discussion.

10                  Go ahead, Sarah.

11                  MS. HAY:   Good morning everybody, how  
12 are you doing today?

13                  Good, good to hear you.   For the  
14 recording, this is Sarah.

15                  So, I'm here to talk a little bit about  
16 N sizes, and some of this goes together with what  
17 I heard you say about the disclosures being tied  
18 to the appeals, being tied to everything else.

19                  So if sanctions are off the table, and  
20 appeals are off the table, what moving from N equals  
21 30 to N equals 10 gets us is a whole lot more  
22 programs.

23                  And I and the Department of Education

1 think that giving information to students is  
2 important.

3 Now how many programs is that? When  
4 you go from N equals 10 to N equals 30, you lose  
5 about half your programs.

6 Now that's old data, so some of this  
7 pre-dates my time from the Department of Ed., okay,  
8 so I was looking at the 2013 research that was done  
9 sort of for previous regs.

10 Okay, I do know that when we created  
11 the category for small institutions, I used IPEDS  
12 enrollment data, and 80 percent in the proprietary  
13 sector alone, because things evolve, right, but  
14 I looked at the proprietary sector, and 80 percent  
15 of the institutions were -- had fewer than 450  
16 enrollees. Okay?

17 And so most of the institutions are  
18 small. Most of the program cohorts are small.  
19 And we want to be able to get that information out  
20 to the students, okay? So that's the idea behind  
21 the change to a smaller N size, is to get more  
22 programs.

23 The flip side of that is protecting

1 identity. So why didn't we just make it for  
2 everybody, right? Why not for all programs?

3 For those of you who know about  
4 disclosure avoidance techniques, and some of that,  
5 the number at which agencies and researchers  
6 suppress data is around 10-ish, and knowing what  
7 that number is tells you how many pieces of  
8 information you need to know in order to uncover  
9 who one of those people is. And that's what we're  
10 trying to prevent.

11 We don't want to put out there what one  
12 person's salary is, or what one person's debt is.

13 We want the information to reflect the students  
14 that attended and completed that program.

15 So that is generally where that number  
16 falls. That's also the minimum number that Social  
17 Security Administration is willing to give us back.

18 Now they don't give us individual-level  
19 earnings. They give us the mean and the median  
20 value for the program that those students  
21 completed. So we don't have a way to match the  
22 student's debt to the student's earnings. We match  
23 mean earnings to mean debt for that program. Okay?

1           So those are some of the reasons behind  
2 the move from N 30 to N 10.

3           One of the things that happens if you  
4 put sanctions back on the table, then you have to  
5 have an appeals process, right?

6           And with an appeals process, the  
7 appeals come in as survey data. And one of the  
8 requirements of survey data, if you want to be able  
9 to use standard statistics, which involve the  
10 normal distribution, and standard deviation, and  
11 confidence intervals, is that you have to apply  
12 the central limit theorem, which works at N equals  
13 30 or larger, and so that's where the N equals 30  
14 came from previously was that at a minimum, in  
15 survey data, you have to have 30 responses in order  
16 to be able to use the central limit theorem and  
17 apply some of those statistical techniques.

18           But if those things are not being  
19 considered and contemplated, then we can let out  
20 more information, still protecting the individual  
21 borrowers, but give as much information to the  
22 students who are trying to make decisions as  
23 possible.

1 Do you guys have questions?

2 PARTICIPANT: I so appreciate, and I  
3 thought about this overnight. And so this isn't  
4 just about privacy. So I just want to be really  
5 clear, this isn't just about -- and I know Todd  
6 mentioned privacy, and there's certainly privacy  
7 issues, but this isn't just about privacy issues.

8 This is about accuracy of what it means for the  
9 program.

10 And even if you're not on a sanctioned  
11 basis, you're on a disclosure basis, the  
12 disclosures are meaningful to the aid of the  
13 students and actually have implications for the  
14 schools in terms of you know, accuracy.

15 I mean, we definitely get questions  
16 about our disclosure pages, whether they're ours  
17 or the gainful employment pages, all the time.

18 So accuracy, and consistency across --  
19 if you're trying to evaluate the -- and I think  
20 that is what we're trying to do here, is in some  
21 form or fashion, assess and I'll call it quality  
22 for the purposes of the conversation that at least  
23 an ROI on the part of the institution, and if you're

1 including all debt, which is another piece of the  
2 conversation, so you're no longer just talking  
3 about tuition and fees, you're talking about ten  
4 students' decisions about living expenses, which  
5 we don't -- we have some counseling ability, but  
6 we don't control.

7           So I see this data as potentially  
8 fluctuating, and I mean, this isn't even -- you  
9 know, in terms of N sizes, you know, I understand  
10 the desire to put a lot of programs -- you know,  
11 to put as much -- as many programs into the mix  
12 as possible. I totally understand that.

13           But if the data you're going to provide  
14 is not an accurate representation year to year,  
15 then, you know, and doesn't tell this consumer  
16 something relevant over time, then you shouldn't  
17 be doing it with any program, let alone all  
18 programs.

19           So -- and I think this all debt issue,  
20 this is all -- I mean, I was thinking about this  
21 a lot last night, every little component of this  
22 regulation is wrapped together.

23           You also mentioned appeals, and by the

1 way, I am going to propose that there be an  
2 opportunity to question on appeals, so regardless  
3 of whether it's disclosure or sanctions.

4 So you're assuming that we're -- you  
5 know, that appeals are off the table, but I wouldn't  
6 necessarily jump to that conclusion, either.

7 And I don't mean to be -- you know, I  
8 just feel like, like I said, every single -- this  
9 is a puzzle piece that we're putting together, and  
10 if you include all debt, and you go to ten students,  
11 you're no longer talking about a return on  
12 investment that relates to the cost of attending  
13 that institution.

14 MR. RAMIREZ: Todd?

15 MR. JONES: Okay. My concern -- I  
16 raised the issue of privacy more to speculate, and  
17 it turns out that's what it was, your decision to  
18 go to ten. But my greater concern also remains  
19 accuracy of the data, and variability from year  
20 to year.

21 If you have a sample size of ten, and  
22 we know that the characteristics of those ten  
23 include multiple variables, which was just

1 discussed, then the likelihood that there is a  
2 variability from year to year increases, if we have  
3 a small sample size, as compared to a large sample  
4 size.

5 Let me correct that. It's not a sample  
6 size, but it is an N size.

7 We're likely to have more variability  
8 for year to year from the same program, simply  
9 because of the idiosyncrasies of individual people,  
10 their decisions, the economy, etcetera.

11 My question yesterday remains today,  
12 is, has the Department actually attempted to do  
13 any runs on these smaller sample sizes to find out  
14 about what variability would be? My impression  
15 would be that the Department has some of the tools  
16 at hand to gauge this, and in fact, using student  
17 loan data system, using Social Security data, you  
18 should be able to do some preliminary runs to find  
19 out just how variable this data is.

20 We discussed yesterday the fact that  
21 many of the standards set up -- Mr. Martin  
22 mentioned, well, we had to pick a number, so we  
23 picked this one, and that's -- there are many

1 numbers that are picked for Agency purposes.

2 I mentioned that some of the basis of  
3 numbers picked by regulating agencies are based  
4 on an evaluation of past practice and finding  
5 critical points at which yes/no decisions should  
6 be made.

7 I think it is incumbent upon the  
8 Department to have at least done this analysis at  
9 least once, to be able to answer some of these  
10 questions. And so I'm going to say, my first  
11 question to you is, has the Department attempted  
12 to do any of these runs at a cell size of ten, and  
13 what did we learn about the increase in variability  
14 of data based on those runs?

15 MS. HAY: Okay, so first let me address  
16 Jennifer's comments, and then I'll get back to  
17 Todd's comments, right? Okay. I don't know all  
18 of your names yet.

19 That's okay. So Jennifer, I hear what  
20 you're saying about variability. I think there's  
21 two sides to that coin, and some of this is for  
22 you guys to decide as the negotiators at the table,  
23 right?

1           I would say that there is variability  
2           in the world, but that ten people all making the  
3           same sort of decision probably does say something  
4           about the program that they're attending.

5           So I don't want to get into an argument  
6           about that, but ten data points does say, if those  
7           are the ten people that completed your program,  
8           that borrowed to attend the program, that's what  
9           the data are.

10           And what you guys decide to include or  
11           exclude is a different conversation, okay?

12           So to get to Todd's question, which sort  
13           of continues the variability question, I'll preface  
14           this with, this work was done in 2013, and not by  
15           me, or anyone on my staff. The people are no longer  
16           with the Department.

17           But with the short turnaround time, I'm  
18           going to tell you as much as we're able to answer  
19           for you, okay? So they did look at it in 2013,  
20           and yes, the variability increases when you go down  
21           to  $N$  equals 10, relative to  $N$  equals 30.

22           In a world of sanctions, that an error  
23           rate where in two out of three years we would falsely

1 identify an institution as failing of roughly five  
2 or six percent was deemed too high, and they went  
3 to N equals 30. So at N equals ten, it was about  
4 five or six percent.

5 There are difficulties in those  
6 calculations. First, we don't have student level  
7 income data. We just don't, not for every student.

8 And that's what would be needed in order to do  
9 the computations really correctly.

10 Our MLU with SSA doesn't cover that for  
11 research purposes. It's really just for  
12 production purposes, and it just gets us the  
13 information, right now, for the programs that are  
14 labeled as GE, okay?

15 So in 2013, they did use a sample file  
16 based off a survey, and it was tricky, because the  
17 way GE is done, the cohorts overlap, and so there's  
18 a confounding factor there that is effected by  
19 Bernoulli distributions, and binomial modeling.  
20 But the best guess they could get was that sort  
21 of the maximum error they were thinking was five  
22 or six percent at an N equals ten, okay?

23 It is true that you change parameters,

1 and a lot of things change, right? I mean, that's  
2 kind of the world of statistics. You move one  
3 thing, this other thing over here changes, too.  
4 But it is true that with -- if you increase the  
5 N size to 30, the variability goes down, but you  
6 lose half the programs.

7 So there are pros and cons there, that  
8 I think it's probably up to you guys to decide which  
9 way to go, okay?

10 That sort of is the information I know  
11 about the work that was done previously.

12 MR. RAMIREZ: Jennifer, go ahead and  
13 respond to that, and then we'll get Mark.

14 PARTICIPANT: Thank you. So I think  
15 you said that you know the decision of ten people  
16 to attend and complete an institution is the  
17 decision of those ten people, and so it's relevant.

18 And so I just want to counter that a  
19 bit. And again, I don't want to get into it, but  
20 just a couple of things.

21 One, we're already confined, and I'm  
22 past this, obviously, but we're already confined  
23 to the fact that we're only talking about title

1 IV borrowers, so I just want to be really clear  
2 that you know, it's not ten completers from a  
3 program. There could be 30 completers, 20 of whom  
4 were not title IV, who are making quite a good  
5 salary, and doing quite well in life.

6 And so in terms of -- and I just want  
7 to keep focused on what we're talking about here.

8 We're talking about a reflection on a program.  
9 We're trying to inform the student who's looking  
10 at the page who by the way might be a non-title  
11 IV student who's looking at the page too, about  
12 something that's useful to them to make a decision  
13 about whether to attend.

14 We're already carving out a huge  
15 population by not including title IV. I get the  
16 reasons. I'm not bringing that up as if we should.

17 I'm just saying, we're already at a deficit here,  
18 in terms of accuracy. Okay, I think we can all  
19 agree on that, right?

20 So taking them -- and I understand, by  
21 the way, why it's more relevant for title IV  
22 borrowers to understand their world outside of the  
23 non-title IV borrowers, so I totally understand

1       that.

2                   But then to say that the decision of  
3       the ten borrowers is the same, that's precisely  
4       the point I was making yesterday. It's not the  
5       same. Unless you keep the debt at the amount of  
6       the educational cost, because the other piece of  
7       the debt is actually variable. Like that is the  
8       very variable piece, is the decision, one student  
9       might decide, you know what, I don't need any living  
10      expenses. The other one might say, you know, I'm  
11      going to max out on the living expenses. It's  
12      theirs to decide, not us.

13                   There's total -- no relevancy to the  
14      calculations. So if we're going to go to ten, then  
15      I would just emphasize that this piece that I  
16      brought up yesterday becomes incredibly relevant,  
17      because the variability spikes. And you, to some  
18      agree, I think don't have the ability to do this,  
19      actually, the schools are probably each better  
20      equipped because we know exactly how much is the  
21      tuition and fees, and how much, and I think we could  
22      probably all agree from an institutional level that  
23      that's the piece that we have no sort of can't,

1 won't, year-to-year.

2           And again, you know, I think you keep  
3 mentioning like taking the sanctions out, and I  
4 just want to be really genuine about this. We care  
5 about disclosures. We absolutely care about the  
6 accuracy of the disclosures, not just because I'm  
7 trying to -- I mean, we care about that for the  
8 right reasons. We want to be making sure that we're  
9 accurate. I'm sure the Department does, too.

10           So to disclose for disclosure's sake,  
11 on a variability, and I'm going to focus on this  
12 debt piece, we've got to get the debt piece right  
13 if you're going to go to ten.

14           MR. RAMIREZ: Yeah, go ahead, Todd.

15           MR. JONES: My question was not  
16 strictly about variability of the data, but  
17 variability from year to year. And so if we have  
18 an institution that is at a given ratio, and the  
19 next year it's at 130 percent of that ratio, the  
20 next year, it drops to 90 percent of that ratio,  
21 that is a variability that from my view as someone  
22 who is seeking to contemplate public policy, is  
23 a great deal more variability than it would be if

1 the ratio from year to year and that may be because  
2 of larger sample size varied from 2 percent to 4  
3 percent to 102 to 104 to 96. That's a much smaller  
4 variability, the beta there, is changing much more  
5 slowly.

6 So my question is, has the Department  
7 looked at how much dropping from a sample size of  
8 30 to 10, that that variability from year to year  
9 is going to increase?

10 MS. HAY: So maybe I wasn't completely  
11 clear, and I apologize. So when they looked at  
12 looking at sort of two out of three years, the false  
13 positive rate at N equals ten was about five or  
14 six. So that is, over time, that wasn't looking  
15 at the variability in a single year versus the  
16 variability in the next year. It was looking out  
17 of three years, did we make a reliable decision  
18 each of those three years that the assessment for  
19 an institution failed is a good assessment that  
20 didn't change from year to year.

21 Does that make sense?

22 Okay. I would say that because the data  
23 are essentially census data, the value for a single

1 year is what it is. And so for the data points  
2 that we have, right? So for the borrowers that  
3 we have data on, that match to the borrowers that  
4 exist in the Social Security Administration, that's  
5 the information we have, and the math is what it  
6 is.

7 But when you start looking across  
8 cohorts over time, you're right, there are more  
9 statistics that come into it. And you're right,  
10 the variability is less at N equals 30 across those  
11 3 years than it is at N equals 10. And it does  
12 affect the false positive rate.

13 The work that was done is from 2013,  
14 and part of that is because we just -- the sample  
15 file, I think, was from 2009, and we don't really  
16 have anything newer than that.

17 We could go back and look again. We've  
18 done a really rigorous look trying to find this  
19 information, but we can certainly try and find a  
20 newer file, and try and replicate some of the work.

21 But I don't know that it would get us different  
22 answers, if we're using the same file. Does that  
23 make sense?

1                   Okay. Did I answer your question?

2                   PARTICIPANT: Yes.

3                   MS. HAY : Okay.

4                   MR. RAMIREZ: Thank you. Let's go to  
5 Mark.

6                   PARTICIPANT: So Sarah, I have two  
7 questions.

8                   MS. HAY: Sure.

9                   PARTICIPANT: My first is, is, I  
10 believe this area, I believe the wages will remain  
11 generally similar, stable, but I think all the  
12 variability is going to be in the debt, and I believe  
13 that this brings up the argument of why the metrics  
14 should look at only borrowers. And I think this  
15 N size affects the community colleges and  
16 independent colleges where there are a lower  
17 percentage of borrowers than most.

18                   And just so the table can understand  
19 it, a program that has ten, if five students borrow,  
20 there's going to be a debt number, and it could  
21 have a debt to earnings that's high. The next year,  
22 four borrow, it gets a zero, and that gets to the  
23 question of whether we're looking at it accurately.

1           So I would ask you to look at, does the  
2           variability drop a lot when you limit this to  
3           borrowers, rather than dealing with the median debt  
4           of not including borrowers, and I just believe it's  
5           going to drop a lot.

6           My second comment is, I did a lot of  
7           work on this back in '13, and my concern was,  
8           essentially, the rule was not reaching the vast  
9           majority. So back then, my research showed, 90  
10          percent of certificates in the public sector had  
11          less than 30, and 70 percent in the proprietary.

12          Did you confirm that data?

13                 I just wanted -- I've never had the  
14          Department come back to me on it.

15                 MS. HAY: Sorry, I'm still learning to  
16          use this thing.

17                 So I think, no we didn't answer the  
18          second question. I didn't look at it. We -- no,  
19          we didn't look at it.

20                 For the first question, on variability  
21          and debt, I think it really comes back to you guys,  
22          and how you want to define that.

23                 So the math will come out with different

1 things, depending on how you guys decide you want  
2 to define it. So, if you want that N equals ten  
3 only to be title IV borrowers, you can make it that  
4 way.

5 The Department of Ed. doesn't have  
6 necessarily a roster of every single Social  
7 Security Number for every single student in the  
8 entire United States. We keep information on the  
9 people who borrow from us.

10 So -- and so that's the Social Security  
11 Numbers that we would be sending over to the Social  
12 Security Administration to match with, okay? Does  
13 that make some sense?

14 PARTICIPANT: I just wanted to let the  
15 negotiators know -- sorry -- that in my mind, the  
16 prospective student actually really, it's  
17 important that they get the information on students  
18 like them, borrowers, and that the whole zero median  
19 which doesn't reflect borrowers ends up being a  
20 very misleading statistic.

21 I'm aware when, if it was a sanctions  
22 environment, I might not be saying it so loudly,  
23 because it hurts my institution, it hurts many of

1       ours, but from a consumer standpoint, I'm just --  
2       I firmly believe it's the right thing to show the  
3       information for borrowers and not dilute it with  
4       the non-borrowers.

5                   MS. HAY:   Okay.

6                   MR. RAMIREZ:   Johnson?

7                   MR. TYLER:   Thank you, Johnson Tyler.  
8       So, actually, I need a clarification, because I'm  
9       not getting this.

10                   So is the proposal to have -- once you  
11       get ten people who you have earnings on in a program,  
12       but if all ten of them didn't borrow money, are  
13       you going to use that data?  In other words, as  
14       Mark was saying, six of them pay their own way,  
15       you're still going to examine that data and then  
16       using the debt of the other four to figure out what's  
17       going on?

18                   PARTICIPANT:   Johnson, their proposal  
19       is ten completers that receive title IV, whether  
20       it's with a loan or without a loan, not pay their  
21       own way.  That is their proposal.

22                   MR. TYLER:   Beginning title IV means  
23       either you got a Pell, or you got a --

1           PARTICIPANT: Exactly. But Pell and  
2 a loan are two very different things.

3           PARTICIPANT: Pell's not a loan.

4           MR. TYLER: Okay. Okay. Well, okay.

5           MS. HAY: Yeah, so he's correct.

6           MR. TYLER: Okay, so now I have more  
7 of a comment here, okay? So I completely  
8 understand that institutions don't want this  
9 information to be incorrect when you're looking  
10 at a smaller group that may reflect not the  
11 parameters of your average borrower or your average  
12 student, that you're trying to correct in terms  
13 of a disclosure.

14           But these regulations, when they -- and  
15 the negotiated rulemaking had to do with gainful  
16 employment, and I think we're missing here in  
17 getting into the minutiae of this what we were here,  
18 or at least what I as a Legal Aid attorney am here  
19 for, which is to protect people from institutions  
20 that don't provide value, people like the person  
21 we heard about in the beginning. And I think you  
22 know, if there isn't going to be a sanction, the  
23 disclosure -- for my consumers may not make that

1 big of a difference.

2 I think the difference is getting rid  
3 of the bad apples, so there's less of this -- there  
4 is less predatory lending going on.

5 So I really think the people who are  
6 -- who have articulated their concern about N ten  
7 from an institutional perspective, it makes sense.

8 If I was representing those people, I'd be very  
9 concerned. I think it does create a problem.

10 But from a statistical standpoint, as  
11 you said, it's very compelling why you've picked  
12 these numbers. You know, 30, if you can't deal  
13 with an appeal of a case where you're taking away  
14 people's money and perhaps closing a business, you  
15 can't have them smaller numbers.

16 So I think we really do need to think  
17 about what are we here for? Are we here to  
18 basically protect our turf -- and I understand  
19 people are here to protect their turf -- but at  
20 what expense?

21 Because we don't want to walk away from  
22 here where the public has no more useful information  
23 than they did before, otherwise, we're wasting our

1 time, and we're wasting taxpayers' time.

2 MR. RAMIREZ: Thank you. John?

3 MR. KAMIN: Yeah, it's really been  
4 fascinating to listen to. I keep on going back,  
5 and especially after Jennifer's comments yesterday  
6 when we talked about what the rationale would be  
7 for no sanctions, and that would be that  
8 essentially, we could double-down on transparency,  
9 and we can empower the individual to pursue college  
10 options with the best tools available, the best  
11 information, about institutions of all types.

12 And I'm going to leave that one alone.

13 But I'd just say that if that's the case, and that's  
14 what the ideal state is, it is remarkable that  
15 appeals would be excluded from it. Because it  
16 would seem that schools have a very, very important,  
17 compelling interest in making sure that information  
18 is accurate.

19 Now a cynical person would suggest that  
20 the reason that appeals are off the table is because  
21 this tool isn't going to matter anyway, and schools  
22 don't need to worry about it. All right? It's  
23 going to be obscure and nobody's going to pay

1 attention to it.

2 I have to believe that we're here for  
3 a better reason than that, and that there's a better  
4 rationale from the Department of Education for not  
5 including appeals in this, and still maintaining  
6 an accurate, transparent environment for schools.

7 So I'd be interested, as this discussion  
8 continues, what exactly that is.

9 MS. HAY: Okay, so relative to the  
10 appeals, we've already talked about the central  
11 limit theorem, and how that requires us to have  
12 30 respondents in order to do some standard  
13 statistics.

14 So if you have 30 completers, right,  
15 that then would legitimately put you into a  
16 debt-to-earnings calculation. Let's change --  
17 let's live in the world of what if, right?

18 So if N is 30, right, and that's what  
19 gets put in the rule, then, if you want to appeal,  
20 what that means is that if you have 30 completers,  
21 you have to get an answer from every single one  
22 of your students, which is 100 percent response  
23 rate, which is difficult.

1                   There are decisions that have been made.

2                   (Pause.)

3                   I won't pretend to be an attorney.

4                   (Laughter.)

5                   PARTICIPANT: So the issue is, right,  
6 the Department was sued on the appeals process for  
7 the alternative earnings appeals on gainful  
8 employment metrics. And we had a threshold  
9 requirement on the response rate, that the judge  
10 set aside.

11                   And so we're dealing with appeals right  
12 now that were not subject to a threshold response  
13 rate, but we're still working through them. But  
14 going forward, we're looking for reliable outcomes  
15 that would not be encountering this kind of  
16 difficulty.

17                   MS. HAY: Okay. Thank you. So not  
18 being the attorney, I don't know where that line  
19 always is.

20                   So response rate is a serious concern,  
21 if we're talking about appeals, right? And I would  
22 say, just throwing a ballpark figure out there,  
23 I haven't gone and done the lit review on it, or

1 anything, okay, but social science surveys, a 25  
2 percent response rate is not uncommon, right?

3 Now the Office of Management and Budget  
4 requires the Federal Government to get 80 percent,  
5 so we're used to living in a different kind of world.

6  
7 But if we're talking about 25 percent  
8 being considered reasonable, right, then what that  
9 means about the size of your cohort, if you have  
10 to get 30 pieces of data, or 30 responders, you  
11 then have to multiply by 4, right, if you're getting  
12 a 25 percent response rate.

13 So you have to start with a population  
14 of 120. So think about what that means for a  
15 program size that completes 120 students, and what  
16 that then means about the size of the institution,  
17 and what that then means about how many institutions  
18 this regulation would then apply to.

19 So that's sort of the thought process,  
20 from the mathematical perspective, when we talk  
21 about practical implementation. Okay? And so if  
22 100 percent response rate is unreasonable, and we  
23 still have to get 30 responses, then what is a

1 reasonable response rate, and what should the N  
2 value be on the cohort size so that when we apply  
3 the response rate we're going to require, we still  
4 get a minimum of 30 responses so we can use the  
5 central limit theorem.

6 So that's the fundamental question, the  
7 math question, that's behind the appeals portion  
8 of this, okay? So as you think about it, that's  
9 the piece to think about, and then think about,  
10 making those decisions, how does that impact who  
11 this regulation and which institutions, and which  
12 groups of students this then provides information  
13 for. Okay?

14 Does that answer your question? Okay,  
15 great.

16 MR. RAMIREZ: Jordan?

17 MR. MATSUDAIRA: Yeah, thank you. I  
18 just want to go back to the cohort size issue, the  
19 n equals ten issue. And I think this is an area  
20 where the interests of the colleges and students  
21 really aligns, and that's in the interest of having  
22 accurate data.

23 You know, you were describing the

1 properties of the kind of reliability, the year-  
2 to-year variability in the data, by discussing just  
3 the false classification rate of, you know, are  
4 you above the standard or below the standard. But  
5 the issue is really a little bit more pervasive  
6 than that, because, and even where it doesn't matter  
7 for, you know, whether a school is labeled, to the  
8 extent that this is really a transparency play,  
9 and we're trying to put this information more in  
10 the hands of students to help them make decisions  
11 about programs, then it matters across the full  
12 space, not just like in the neighborhood of kind  
13 of where the threshold meets.

14 In other words, we care about now the  
15 variability of schools, with a debt to earnings  
16 of you know, .15, and .02, and so on, instead of  
17 just around that threshold, which is what the kind  
18 of misclassification rate you're describing is  
19 really characterizing.

20 So I think, a nice thing that I'm pretty  
21 sure you should be able to do is to show us by the  
22 cohort size of a program, so break down the number  
23 of schools into different buckets, like 0 to 10,

1 10 to 20, 20 to 30, 30 to 40, and so on, by cohort  
2 size, and then show us the percent change, the  
3 average absolute percent change, in the  
4 debt-to-earnings measure, and then separately for  
5 the denominator and the numerator. And that will  
6 allow us to see just how variable the data are,  
7 when you increase the cohort size overall. So I  
8 can put the data request in writing, but I think  
9 that would be illuminating.

10 MR. RAMIREZ: Thank you.

11 Thank you, Jennifer.

12 PARTICIPANT: Yeah, I just want to --

13 MS. HAY: Before we do that -- quickly,  
14 just Jordan, to remind you, we only have earnings  
15 data for the GE programs.

16 MR. MATSUDAIRA: Yeah. So I realize  
17 that. But I mean, I think unless we think that  
18 the year to year variability for GE programs is  
19 super different than for other programs, I think  
20 it will still be informative about just the general  
21 properties of how the metrics behave as a function  
22 of cohort size --

23 MS. HAYS: Okay.

1 MR. MATSUDAIRA: -- which --

2 MS. HAYS: I wrote it down.

3 MR. MATSUDAIRA: -- is what's relevant.

4 MS. HAYS: All right. Got you.

5 Thanks.

6 MR. RAMIREZ: Okay. Jennifer?

7 PARTICIPANT: I just wanted to address  
8 something that Johnson said, because I'm, you know,  
9 totally sympathetic to the bad actors piece, and  
10 wanting to address that.

11 But I do want to acknowledge that  
12 especially now, because the disclosures would apply  
13 to all programs, we need -- there's a secondary  
14 purpose, in my view, to these metrics, which is  
15 not just to address getting rid of or addressing  
16 somehow more severely the bad actors.

17 And that is -- and this was true, by the way,  
18 I think, and I think the Department actually said  
19 this in its preamble, and through the last two rule  
20 makings, on gainful, which was to provide the  
21 opportunity for improvement of those programs --  
22 you know, of other programs.

23 And so, you know, for example, if you

1 were in zone, the idea was that you -- and the metric  
2 made it very difficult to get out of zone, but the  
3 idea there was to you know have it move the dial  
4 for the program, that there would be pressure.

5 And you know, we can obviously at some  
6 point discuss sanctions versus disclosures, but  
7 even at the disclosure level, and across all  
8 programs, the good news piece of this, I think,  
9 is that there really will be data out there that  
10 should put some pressure on programs to improve.

11 And so I just want to acknowledge, and  
12 that's one of the reasons why I feel like it's really  
13 important that the data be accurate, because the  
14 data is telling, and it is interesting, and even  
15 under the gainful, that I will say that the best  
16 part about gainful has been sort of understanding  
17 metrics a little bit better.

18 But in a disclosure world, I just don't  
19 want to under estimate, and I feel like it's being  
20 under estimated, the power of the marketplace, with  
21 disclosures.

22 And -- but only when done well. And  
23 I do think that they're on the positive side, if

1 done correctly, understanding what the rest of the  
2 sort of higher ed marketplace looks like can be  
3 informative and helpful to institutions that are  
4 not bad actors. But we do need to get it right.

5  
6 And so on the debt piece, what I would  
7 say, and I totally understand, and we talked about  
8 it yesterday, I very much understand why it's useful  
9 to understand the living expense piece. I just  
10 don't think it should be part of the metric.

11 So I'm not saying it shouldn't be  
12 disclosed. And so maybe there's a conversation  
13 about how the living expense piece would be  
14 disclosed -- it already is fairly public, but how  
15 that fits into the disclosure pieces of the gainful.

16 But the metric itself, you know, I think that hard  
17 and fast piece on tuition and fees.

18 So it's a little bit of a, to the extent  
19 that you wanted ideas, I'm throwing one out there  
20 that as it relates to -- and again, it relates to  
21 the n size discussion, because you're getting to  
22 more accurate data if you're sticking to the actual  
23 educational services piece for the amount of debt.

1 MS. HAY: Okay. Thank you. And I  
2 actually agree with you a lot, that disclosures,  
3 when they're done well, can be very informative,  
4 and you're talking to a numbers gal, so I certainly  
5 agree with you on that.

6 I just want to say, some -- there's a  
7 lot of moving pieces, right, and how you guys decide  
8 to put them together is kind of what you're here  
9 to do, right?

10 So I can try and help you understand  
11 how the math pieces interact with each other, but  
12 the policy questions, those are Greg, okay?

13 So I agree, you know, how you guys decide  
14 to go is your decision to make. Yeah. Okay.

15 MR. RAMIREZ: Okay. Yeah. Sandy and  
16 Mark. Sandy?

17 MS. SARGE: Thank you. First of all,  
18 Sarah, thank you. I found your explanations a  
19 reminder of the statistics courses I took, which  
20 is always good, because it was a long time ago when  
21 I took those. So thank you, it was actually really  
22 informative.

23 And I can see what you're trying to do.

1        Now I feel you're -- between your group, who's  
2        looking at the mathematical accuracy and fairness  
3        issue, if you will, like you want each piece to  
4        be sound, for lack of a better word, okay?

5                    And you're right, it is going to be our  
6        decision and really at the end of the day, what  
7        the weighing is, on this issue, I think, is increase  
8        the number of programs upon which we disclose,  
9        versus, a five to six percent potential error rate.

10

11                    And is error rate the right word in that?

12        I know there's a technical term for error rate  
13        within statistics, but where it could be a false  
14        negative.

15                    MS. HAYS:    Right.    So if the table  
16        understands --

17                    MS. SARGE:    Yeah.

18                    MS. HAYS:    -- I think it's fine.

19                    MS. SARGE:    Okay.

20                    MS. HAYS:    Right?

21                    MS. SARGE:    So, is everybody okay with  
22        that being -- what I heard her saying is that we  
23        run the risk that five to six percent of the time,

1           there would be a false negative.

2                       So that would mean that a school would  
3       be deemed to be below performing or  
4       under-performing, or failing, or whatever term we  
5       decide to come up with, 5 to 6 percent of the time,  
6       but we would get, I think you said, 50 percent more  
7       schools being reported upon.

8                       So you know, I hate to say this, however,  
9       I'm with Sarah. I'm a numbers girl. I'm almost  
10      wondering, is there an opportunity where we could  
11      get a whiteboard or something that we could put,  
12      like, let's stick some of these issues up there,  
13      somewhere where we don't lose them in the fray of  
14      everything else.

15                      MR. RAMIREZ: Yeah. Yeah, that would  
16      be possible.

17                      MS. SARGE: Okay.

18                      MR. RAMIREZ: As a matter of fact, that  
19      was one of the notes I put down over here.

20                      MS. SARGE: Okay, great.

21                      MR. RAMIREZ: Because there's a lot of  
22      moving pieces here.

23                      MS. SARGE: Right, there is a lot of

1 moving pieces.

2 So I want to make sure we don't lose  
3 these choices, if you will. Because we haven't  
4 even gotten to all of the other choices.

5 I fully appreciate, based on my  
6 clientele, the difficulty of receiving survey  
7 responses, and the way you described, you're  
8 absolutely right, if we got 25 percent on surveys,  
9 I think everybody would be thrilled, on all kinds  
10 of things, student satisfaction, and all kinds of  
11 things, we'd be excited about that.

12 So that again brings a very reasonable  
13 explanation, and to me, that's an issue.  
14 Especially if you take into consideration the time  
15 line associated with trying to get those responses,  
16 how quickly we have to respond, and how quickly  
17 our students or graduates want to respond, right?

18 So that's not our choice.

19 I had so many different things. The  
20 other thing I want to bring back is I think the  
21 debt-to-earnings ratio is intended to be a measure  
22 of, has this program provided through gainful  
23 employment the ability for a student to repay the

1 debt that they took out associated with that  
2 program?

3 And I know what you guys were saying  
4 earlier, the simplicity is an issue. And it is  
5 a very big issue that there may not be any budget  
6 given to the Department of Ed. to do any kinds of  
7 systems upgrades to capture data points like  
8 tuition and fees.

9 But I do agree with Jennifer, that we  
10 need to start to segregate, in my mind, what is  
11 literally the personal choice of the student,  
12 versus what is the choice of the school, if we're  
13 going to judge the school.

14 So adding in living expenses or whatever  
15 that case may be, I agree that living expenses are  
16 a part of going to school. However, there is a  
17 choice between going to Omaha and going to New York,  
18 and that is the student's choice.

19 You can go to a small town where there  
20 are many solid community colleges and public  
21 university branches, and for-profit schools,  
22 proprietary schools, in small metropolitan areas  
23 that cost a fraction of what it is to go to a school

1 in a bigger city, a Chicago, a New York, a Los  
2 Angeles.

3 You go to those locations not because  
4 it's your only choice, but because you have some  
5 other intrinsic reason to want to live there, above  
6 and beyond.

7 So I respect the student's choice, and  
8 I agree that living expenses are part of going to  
9 college. What I don't agree with is if you're going  
10 to judge the program, that you're just muddying  
11 the water on the calculation that we're trying to  
12 answer. Use the calculation for the question we're  
13 trying to use it for, will the student have the  
14 ability to repay the debt?

15 Because not every student is raised to  
16 think there is -- you should suffer a little when  
17 you're in college. You don't need to go to Whole  
18 Foods or live in New York. You should eat ramen  
19 noodles.

20 My son was like, Dad gave me a whole  
21 case of shrimp-flavored ramen noodles for  
22 Christmas. I said, good.

23 Be prepared, because when you don't have

1 student funds available to you, financial aid, and  
2 you're on your own, the first few years of your  
3 career, you're not making a lot of money either.

4 MR. RAMIREZ: Okay. Sandy, I need for  
5 you to wrap that up.

6 MS. SARGE: I know. Sorry. You're  
7 right, I apologize.

8 MR. RAMIREZ: Okay.

9 MS. SARGE: Remember, ability to repay  
10 the debt associated with the program by the gainful  
11 employment you get from that program is what we're  
12 trying to address in debt to earnings.

13 MR. RAMIREZ: Thank you.

14 MS. SARGE: Sorry.

15 MR. RAMIREZ: Mark?

16 PARTICIPANT: Just two quick points.  
17 Number one, it would be nice to know at 30 what  
18 percentage of programs across the country would  
19 be exempt. I think it's going to be in the 60  
20 percent range.

21 Two, the reason that's relevant is, for  
22 me at least, are there large numbers of small  
23 programs where debt to earnings is very high, and

1 we're not capturing it.

2 The second thing for the Department to  
3 consider is, does the 30 n size hide  
4 poorly-performing programs where no one's  
5 completing, and there are many, many borrowers.

6 And this gets to the Department's, I  
7 think, goal, of having completion, you know,  
8 continue to move up.

9 But essentially the gainful employment  
10 rule incentivizes low-performing programs, because  
11 they become exempt, because no one's completing.

12 MR. RAMIREZ: Jeff?

13 MR. ARTHUR: Yeah, I would just like  
14 to point out another aspect to this.

15 While I think ten may be low, I mean,  
16 we've got to see the data, I still think there's  
17 room to lower the n, because it does create an  
18 opportunity and an incentive for institutions to  
19 provide better service to more students, to help  
20 them get better jobs, better career services. And  
21 I think that factor alone also would move the dial  
22 for a lot more students.

23 And it also makes it, with a smaller

1 n, it makes it easier to help those students be  
2 more successful, because you're talking about a  
3 smaller population.

4 So again, I think there is room to lower  
5 the n to some degree. I'm not sure how much. But  
6 I think it would provide better outcomes for  
7 students overall, so I think we should strongly  
8 consider it.

9 MR. RAMIREZ: All right. And we still  
10 have a few folks in the queue here, but I want to  
11 remind folks, if you could target your questions  
12 or responses to Sarah, while we have her, and then  
13 we could save the discussion of what you want to  
14 do with it afterwards.

15 So we have Jennifer next.

16 PARTICIPANT: So I just wanted to  
17 clarify something. When Sandy was talking, it made  
18 me realize that the five to six percent figure on  
19 the error piece, that was from 2013. That debt  
20 level was just tuition and fees, wasn't it?

21 MS. HAY: I have no idea.

22 PARTICIPANT: Well, was it based on --  
23 what was your -- what was the debt that you used

1 to measure the --

2 MS. HAY: So, I'd have to go back and  
3 look at it. I read summary papers at like 10  
4 o'clock last night, so I don't know the answer to  
5 your question right now.

6 PARTICIPANT: Okay. Well, that's, I  
7 mean, hugely relevant, I mean, just since we're  
8 relying on the five to six percent error number.

9 I suspect, but I definitely need the Department  
10 to confirm, that if it was based on GE data back  
11 in 2013, it may have been, but it's before, so the  
12 timing of it is, since it was 2013, I'm not exactly  
13 sure what debt you were relying on to do the metric  
14 at that time because -- well, no, because it was  
15 -- didn't the metric come out in 2014 though? So  
16 that's why I'm not sure what they were relying on  
17 in 2013.

18 Anyway, it's a question because  
19 obviously, that variability rate if it was just  
20 -- and I'm comfortable with ten. It's just if we're  
21 doing ten, it heightens the metric piece. That's  
22 what I'm trying to get at here.

23 And so understanding that variability,

1 if it was just based on the tuition and fee amount,  
2 you have to run it all over again if we're going  
3 to use all debt because that's a pretty -- you know,  
4 I mean -- so you get the point of what I'm trying  
5 to say.

6 In terms of the -- so just to switch  
7 gears again with a concept here, I know there's  
8 concern about reporting on tuition and fees and  
9 believe me, it's a lot of work and if it's all  
10 programs, it's a ton of work to report on tuition  
11 and fees.

12 Query whether as sort of a compromise  
13 on this the institutions do, of course, know when  
14 they receive the loan from the Department, they  
15 know what proportion stays at the school and what  
16 proportion of the loan then becomes the credit  
17 balance to the student. And so it would still be  
18 a reporting requirement for the institution, but  
19 I actually think a lesser one to -- and it wouldn't  
20 match exactly tuition and fees, but it would be  
21 the amount that the school received for educational  
22 services. So it would be a reporting requirement  
23 on the part of the institutions, but I mean -- and

1 I think it's doable because we all automatically  
2 have that data, of course. So I would put that  
3 forward as a way to deal with the debt issue.

4 MR. RAMIREZ: Chris, and when I say  
5 Chris, that's Madaio, and then when it's Chris  
6 Gannon, I'll also say Gannon.

7 Chris?

8 MR. MADAIIO: Thank you. Chris Madaio.

9 I'll let Chris Gannon speak to whether students  
10 are gorging themselves on Whole Foods with all their  
11 debt, but I found that comment very frustrating.

12 I think the living expenses is an  
13 important point to take into account with the debt.

14 And we talked about this a lot yesterday. I mean  
15 I think a student looking at am I going to be able  
16 to repay my debt to go to the school, isn't what  
17 the disclosure is intended to accomplish,  
18 especially if you only go to disclosure. I'm not  
19 sure how that accurately does that if it isn't  
20 including the debt that the student is going to  
21 take to live while he or she is at the school.  
22 It seems that we're trying to avoid over complexity  
23 and over disclosure. Even if you wanted to add

1       some sort of long caveat about how well this doesn't  
2       include the debt   you're going to take out to live  
3       here, then I'm not sure how that again, that number  
4       really tells the student anything because they're  
5       going to have to take out more debt   than that to  
6       go to the school.

7                So therefore, looking at a number that  
8       tells them, you know, what the repayment or what  
9       the earnings compared to that debt is like is  
10      totally a false number.   So I just think it would  
11      be inaccurate for students to give a number and  
12      then give a disclosure that essentially tells them  
13      this number isn't true, so it's not really worth  
14      very much.

15               As far as the n equals 10 and n equals  
16      30, so I'll address that a little bit.   I mean  
17      obviously I do think appeals are necessary, both  
18      because I think there should be some sort of  
19      sanction and we can talk about that later.   Maybe  
20      there are other ideas for sanctions, but also  
21      because as Jennifer said and I'm sure all the  
22      schools said, the disclosures should be something  
23      that students are taking into account, deciding

1 whether to go to that school compared to another  
2 school, that school or no school at all. And  
3 therefore, if the disclosures are something that  
4 we want students to make life decisions on,  
5 life-changing decisions on, we probably do need  
6 an appeals process to make sure they're accurate.

7 So I don't know. This is just something  
8 I thought of. Is there some way to have  $n$  equals  
9 10 and equals 30, a disclosure based on -- you're  
10 shaking your head no.

11 PARTICIPANT: So I think if there's an  
12 appeals process in place, you actually have to use  
13 an  $n$  that's much larger than 30 because of the  
14 response rate issue.

15 So if there's an appeals process in  
16 place, you're looking at needing to have the central  
17 limit theorem which means you need to have 30  
18 responses which is then dependent upon your  
19 response rate. So if we use a 25 percent response  
20 rate, in order to get 30 responses at the end, you  
21 need 120 completers because 120 times 25 percent  
22 gets you to 30 responses. So I just wanted to make  
23 sure that was clear.

1 MR. MADAIIO: Okay. I appreciate that.

2 I think what I was trying to get at was and this  
3 might be totally stupid, is there an  $n$  equals 10  
4 calculation that can be done for disclosures and  
5 an  $n$  equals whatever is needed to do appeals based  
6 on that's used for sanctions. So two calculations  
7 that are done, one that's done that relates to  
8 sanctions and it will be appealed on and one that's  
9 done that tells students this is in the use for  
10 disclosure.

11 PARTICIPANT: So from an operational  
12 perspective only, and a mathematical simplicity  
13 perspective, my preference is for simpler, right?

14 What you guys decide to do is a different  
15 question. So it's easier to implement and it's  
16 easier to explain math that's simpler, so the more  
17 layers you put in and the more complex you make  
18 it, the harder it is to understand.

19 That's not an insult to you guys. I'm  
20 saying the general population, if they have to  
21 disclose two debt-to-earnings rates, one at say  
22  $n$  equals 120 and the other at  $n$  equals 10, I could  
23 see could be confusing.

1           MR. MADAIO: I agree with that. So  
2 maybe the n equals 30 or whatever plus higher  
3 wouldn't be something that's disclosed on the GE  
4 template. I don't know, maybe Whitney can tell  
5 me why that's stupid, but -- or anyone. That's  
6 something I'm throwing out is there -- I get if  
7 there's an intent that you want to encompass more  
8 schools and more programs and get an accurate  
9 number, you know, that might be a very good thing.  
10       But I think appeals are necessary for the reason  
11 I said before.

12           PARTICIPANT: Okay. So I think that's  
13 a policy question, right?

14           MR. MADAIO: Totally, yes.

15           PARTICIPANT: All right --

16           MR. MADAIO: I'm throwing that out  
17 there for the policy making discussion.

18           PARTICIPANT: All right, so I don't  
19 want to spend all of Greg's morning talking math,  
20 but if there are any other math questions that I  
21 can help clarify for you before I hand you back  
22 over to Greg, let's do those.

23           PARTICIPANT: Of the table tents that

1 are up, again, I'm asking that specific questions  
2 to help the clarity on this. If not, I would ask  
3 you put your tent down, otherwise, we'll go ---  
4 and let's actually even time box this for like the  
5 next ten minutes and let's see if we can get Sarah  
6 out of here in the next ten minutes.

7 Chris.

8 MR. GANNON: Yes, I just wanted to bring  
9 some clarify to the reality of the student  
10 situation. The student that I talked about  
11 yesterday that's homeless and lived in their car  
12 during their undergrad, she didn't shop at Whole  
13 Foods. She shopped at a food bank. She shopped  
14 with a bridge card or subsidized -- had her food  
15 subsidized. And I think all the students that I  
16 know would be insulted -- would be insulted knowing  
17 that somebody at this table --

18 PARTICIPANT: I get it. Let's -- got  
19 that. Do you have something specific for Sarah?

20 MR. GANNON: No. I think we need to  
21 keep this conversation centered on students to  
22 understand the student experience and I'm not  
23 hearing that right now.

1                   MR. RAMIREZ:     Okay.     Thank you.  
2 Whitney.

3                   MS. BARKLEY-DENNEY:   Yes, so the idea  
4 of two rates has been, well, at least based on  
5 insights -- that's sort of been said that's  
6 operationally really difficult.

7                   My question is is there a way to reach  
8 both what your debt-to-earnings ratio might look  
9 like with only tuition and fees and also with living  
10 expenses?   Because I do think and from my own  
11 personal experience, when I decided to go to the  
12 University of Michigan, I had also gotten into a  
13 comparably good school in a big town, in a big city,  
14 and looking at the living expenses actually helped  
15 me make the decision to go to University of Michigan  
16 because of -- they were relatively the same in  
17 tuition, but so different in living expenses.

18                   And you know, I think that this is --  
19 and I will just put a pin in this and say I think  
20 that this is probably most valuable as a disclosure  
21 for people who have the money and ability to really  
22 sit down and parse out what that information means.

23                   If you're a single mom going to your closest school

1 so your parents can help you raise your kid, living  
2 expenses probably don't matter that much. But I  
3 think it is a valuable metric for some group of  
4 the student population.

5 So is there a way to sort of thread the  
6 needle on that and do both or would we need to do  
7 one or the other?

8 PARTICIPANT: So I think that's an  
9 interesting question. And I think from an  
10 operational answer only. This isn't a yes or a  
11 no. This is just to help you understand what would  
12 be involved.

13 I think if we're dealing with a single  
14 end value and we get information that helps us  
15 figure out which part is academic or tuition and  
16 fees and which part is living expenses, if that  
17 would be easier to do, than having two different  
18 end calculations that are doing two different  
19 things.

20 Okay, so that's not a yes or a no or  
21 any kind of advice, just sort of my operational  
22 thoughts on the complexity.

23 Any other math questions?

1                   MR. RAMIREZ: Yes, I think Jennifer had  
2 a quick response to that and then Jordan is next.

3                   PARTICIPANT: I just want to quickly  
4 respond to both Whitney and Sarah on this. So this  
5 is what I was saying before where I think for the  
6 purposes of the metric, relying on the actual --  
7 well, not the actual tuition and fees, it would  
8 actually be the amount that the school retains for  
9 the loan amount, whatever that is, of the --- the  
10 amount that the Department disburses. And then  
11 disclosing the other -- having a disclosure around  
12 the living expense.

13                   So to Whitney, to your point, somebody  
14 on the same page could look and say okay, here's  
15 the debt-to-earnings metric based on the tuition  
16 and cost. And here's the living expenses that I  
17 -- you know, the average living expense that would  
18 be, something that I would have to contemplate as  
19 part of the decision. And so it would be, I  
20 actually think it's more transparent in that manner  
21 than it is keeping the two, the whole debt level  
22 together because the students not learning what  
23 the actual tuition and fee expense part of the debt

1 is if you keep it combined. So disaggregating it,  
2 I don't think you need to do the metric both ways.

3 I think you do the metric one way and you have  
4 literally, you can have a disclosure on the same  
5 -- where you would be doing the disclosure that's  
6 of the living expenses as well.

7 MR. RAMIREZ: Jordan?

8 MR. MATSUDAIRA: So I wanted just to  
9 re-bring up an idea that I mentioned yesterday which  
10 is, you know, we look at the data and decide that  
11 below some n size threshold the data are more  
12 variable than we'd like, then we consider having  
13 a roll up kind of cohort like a multi-year cohort  
14 to allow programs that enroll a small number of  
15 people in any given year to still be captured by  
16 the metric, but still retain more reliability by  
17 incorporating data for more students, so putting  
18 together three successive cohorts, for example,  
19 in a metric.

20 And then also I just wanted to say if  
21 you bring data back to us, in addition to knowing  
22 the number of programs or the percent of programs  
23 that fall below a certain n size threshold, knowing

1 the percent of students that are in those programs,  
2 I think is also useful.

3 My rough recollection is, you know,  
4 there are really large number of programs that have  
5 n less than 30, so maybe 40 percent or something  
6 like that. I think you just mentioned a statistic  
7 which sounded right to me, but I think there's a  
8 very small fraction of the overall students that  
9 are enrolled in those programs overall.

10 So just when we're thinking about making  
11 these tradeoffs, knowing the fraction of students  
12 that would actually be affected would be helpful.

13 Thanks.

14 MR. RAMIREZ: Okay. So the final two,  
15 we have Johnson and Sandy.

16 MS. SARGE: So just to respond to the  
17 first part of what Jordan said, so there are  
18 tradeoffs with multi-year cohorts. The longer  
19 that -- the more number of years you have in a  
20 multi-year cohort, the larger the data lag is.  
21 And so that's just something to consider. So if  
22 you're doing a one-year cohort and you guys should  
23 correct me, I think the reg. currently, the proposed

1 language has two-year cohort?

2 PARTICIPANT: That's correct.

3 MS. SARGE: Okay. So a one-year  
4 cohort, you can turn around when you have the data.

5 A two-year cohort, you have to wait a year before  
6 you have two years of data before you can publish  
7 it.

8 If you go longer than that, just think  
9 about operationally what that means for how long  
10 it takes the information to get to students. Okay.

11 Yes. And which way you go again is a policy  
12 decision.

13 Any other data questions?

14 PARTICIPANT: Yes, I have a question  
15 about the tuition, the actual cost. So is the idea  
16 that somehow the Department of Ed. knows the actual  
17 cost? It would simply be the actual amount that  
18 was a loan for a student for tuition versus how  
19 much the tuition of the school charged, I guess  
20 that's a different question.

21 PARTICIPANT: I'll go, Sandy.

22 MS. SARGE: Okay.

23 PARTICIPANT: The question here is

1 about what we have currently. And the tuition and  
2 fees we currently have because schools report that  
3 to us. That's part of what GE programs have to  
4 report to us.

5 The whole conundrum we were in was that  
6 if you go to administrative calculation of this,  
7 meaning what we'll calculate without having to have  
8 schools report to us any more, that that leaves  
9 us with the data we currently have available and  
10 then NSLDS to do the self-enrollment data. It's  
11 a little bit different calculation, but we can do  
12 that. But we don't have a mechanism to capture  
13 the tuition and fees. We can't do the calculation  
14 we currently do unless we have schools report to  
15 us what the tuition and fees are for the entire  
16 program, right?

17 So that leaves -- Sarah explained the  
18 math to you. I'll explain the practicality to you.

19 That leaves one of two things. Either we do the  
20 calculation without the cap on tuition and fees  
21 or we make every school in the country for every  
22 program report what is currently required to be  
23 reported by proprietary or by GE by schools subject

1 to GE for their programs.

2 I think any of our -- the people here  
3 who report, especially those at larger institutions  
4 will tell you, there is some burden associated with  
5 that reporting. And when you start talking about  
6 a school with 110 programs, that's going to be  
7 fairly large. So those are the only two options  
8 in order for us to calculate rates.

9 The other suggestions would be to make  
10 modifications to NSLDS in order to be able to  
11 capture things like tuition, fees, institutional  
12 debt, private debt. There's no doubt, that could  
13 be done, absolutely could be done, probably not  
14 fast enough to continue to calculate rates on an  
15 on-going basis.

16 We can't make the promise here that  
17 we'll be able to do that, that we'll be funded to  
18 do that or we'll be able to accomplish that and  
19 that's where this current proposal comes from.  
20 It's more -- Sarah, definitely explained the  
21 mathematical portion of it, but a lot of it was  
22 rooted in practicality. What can we do now to  
23 eliminate the burden of reporting? If we eliminate

1 the burden of reporting, what do we have? Well,  
2 we don't have tuition and fees on which to base  
3 that cap and that's really what it's about.

4 MR. RAMIREZ: So I saw a few other tents  
5 pop up during that conversation. Were those  
6 math-related questions?

7 All right, so then have Sandy, next.

8 MS. SARGE: So just to Jennifer's point  
9 about the reporting on the net amount, the only  
10 problem I see with that or one of the problems I  
11 see with that is the fact that not all credit  
12 balances are due to title IV money. Students could  
13 be getting additional funds above and beyond debt.

14

15 So what would -- how would you  
16 differentiate the stipends that are coming from  
17 VA funds or from an outside scholarship, as opposed  
18 to just coming from title IV? So that's the only  
19 thing I think would be an issue there.

20 PARTICIPANT: So it's my understanding  
21 that the institutions actually -- I mean they know  
22 the breakout. They know what's coming from VA  
23 versus title IV, at least from an auditing

1       standpoint. I sure hope they do.

2               So with respect to Greg, so this is not  
3 going to be my point, so I'll just respond, with  
4 respect to Greg, there is another option which is  
5 what I just put on the table which is -- and it  
6 is a simpler reporting than the tuition and fees  
7 which is to -- when the Department gives -- of  
8 course, the Department could do this themselves,  
9 but the Department gives the loan disbursement  
10 amount to the school. The school could then report  
11 back how much they capped and how much went to the  
12 student.

13               MR. MARTIN: Well, I agree with that.

14       That's hypothetically, but you still need a  
15 mechanism to do that.

16               PARTICIPANT: That would be in the  
17 reporting section, the same way that we were in  
18 the reporting section in the first --

19               MR. MARTIN: We can't break that -- in  
20 other words, if we want the reporting to take place  
21 at all schools, we have to use the current format  
22 which requires all of the reporting. We can't just  
23 break that out and say well, we're only going to

1       require one element to be reported. So if we don't  
2       have another mechanism to do that, so if we were  
3       going to alter NSLDS or modify NSLDS, we may as  
4       modify it to collect the tuition and fees.

5               PARTICIPANT: Well, I mean that would  
6       be -- so I guess I would put on the table a short-term  
7       solution and a long-term solution. One would be  
8       in the short term the same way you created a whole  
9       regulation around tuition and fees reporting which  
10       we have all abided by, you could create a reporting  
11       provision that requires in the meantime  
12       institutions in the short term to report what I  
13       just said that the breakout of the loan amount --

14              MR. MARTIN: But what I'm saying is we  
15       don't have a current structure to do that. We have  
16       what we have now that currently GE programs are  
17       required to report. We can make all schools do  
18       that. That would be the way to get that  
19       information.

20              PARTICIPANT: So let me explain this  
21       a little differently. He's explaining an IT system  
22       constraint problem which is that NSLDS is a very  
23       old system and programmed in very old language.

1 And there are limitations to that and it takes a  
2 long time to make changes to it because there aren't  
3 many people who still code in that language. Does  
4 that make sense? Okay.

5 So that's why Greg is trying to say we  
6 can either work with the system as it is or we can  
7 propose something else that's doable, but proposals  
8 that change the NSLDS system are just trickier  
9 because it takes a long time to get those changes  
10 made. So it's a practical implementation  
11 question.

12 MR. RAMIREZ: Jeff?

13 MR. ARTHUR: I think I have a real  
14 straight-forward request that should be pretty easy  
15 to accomplish. So you've got a lot of data there  
16 already and to make the current calculations, you  
17 clipped some individual student's debt at the  
18 tuition and fee number that was reported.

19 Could you just not recalculate the  
20 median debt for us without doing that, just leaving  
21 that debt where it is and tell us what the new median  
22 debts are for each program?

23 I suspect, and as I've stated before

1 and nobody, I think, many people believe me that  
2 it's accurate. I don't think it's going to change  
3 much, frankly. But can we find out that out?

4 PARTICIPANT: So I will ask. A lot of  
5 the coding work in NSLDS is done in black boxes.  
6 And I don't know that they record the interim  
7 steps. Does that make sense? So I don't know that  
8 we have the data the way you want it, but I will  
9 ask.

10 MR. ARTHUR: But they did write a script  
11 to extract the data that had that code, piece of  
12 code that took that debt and clipped to equal the  
13 tuition reported. So all I'm doing is saying  
14 remove that line and they can just remove that line,  
15 re-run it, that script, boom, you got it.

16 MR. MARTIN: This is Greg. You're  
17 talking about recalculating the rate that we  
18 calculated using by employing the cap and removing  
19 -- not doing that, right? We'd have to ask and  
20 see if that was possible.

21 PARTICIPANT: So I'll take the question  
22 back. But the scripts you're referring to are  
23 inside of a black box. And they're not visible

1 to -- right.

2 MR. RAMIREZ: Final question from Chad.

3 Make it a good one.

4 (Laughter.)

5 MR. MUNTZ: All right, well, I guess  
6 it's related to small n, but it's also related to  
7 the policy question as I'm thinking through. We're  
8 opting in public universities, so we have millions  
9 of more students, thousands of more programs and  
10 they're all a little bit different.

11 We admit students into a university and  
12 then they pursue a degree program. They don't  
13 necessarily know the degree program when they come  
14 into the university. They did not seek to become  
15 an auto mechanic at the beginning. They might  
16 eventually get there. So there's a number of  
17 complexity issues.

18 Tuition and fees. I have universities  
19 that now have differential tuition. So for our  
20 degree programs that have very expensive costs,  
21 they charge more in tuition and fees for those  
22 programs. Those might be in the STEM fields. If  
23 you're familiar, STEM fields don't always have high

1 retention rates. So those students now choose to  
2 go somewhere else. Now they are in psychology.  
3 So psychology is going to have a very high  
4 completion rate. They're going to have  
5 potentially more debt and the outcomes and earnings  
6 might be a little bit lower, but they did pursue  
7 a STEM program in the beginning.

8 So now the engineering program which  
9 probably has high earnings, maybe has less than  
10 ten completers, is probably not going to have the  
11 debt associated to that or the students that served.

12 So I think this is another area to look at in the  
13 size and the different programs in comparison.

14 And the second is the kinds of  
15 institutions that are involved here. You're also  
16 going to measure the wealth of the students at the  
17 institutions. Some institutions have a lot of  
18 number of students that have high income. They  
19 don't need loans. So whatever program that they're  
20 in, you're not going to ever find out their value  
21 and their earnings and debt to radio.

22 Others have a high number of Pell Grants.  
23 They may not need loans either. I have some

1 institutions that have tuition and fees that are  
2 less than Pell. So you're not going to measure  
3 their effectiveness or their debt-to-earnings  
4 ratio.

5 And then finally, this may discourage  
6 your out-of-state students from coming in at a  
7 higher tuition rate when they want to come and be  
8 part of the programs that may not be offered in  
9 their state. They are now going to be charged a  
10 higher rate. Maybe they're in an institution where  
11 those programs didn't have a lot of debt except  
12 for out of state students and then this could impact  
13 the overall metric and what it looks like debt to  
14 earnings based on the out-of-state students.

15 So those are just three areas tuition  
16 and fees have an effect, as well as the students  
17 changing majors within the institution, can really  
18 drive this differently than what I thought it was  
19 intended with gainful employment of students  
20 seeking employment programs versus just an overall  
21 education degree.

22 PARTICIPANT: So you do bring up a good  
23 question about changing majors and how to get at

1 debt. And I think that's not an easy question.  
2 And I actually will turn it around to you guys  
3 and I'd like you to think about it. If you end  
4 up going down that road, think about how if a student  
5 changed majors a couple of times or say they  
6 graduate with more than one degree or they get a  
7 certificate and an undergrad degree, what if the  
8 SIPs are the same for the certificate and the  
9 undergrad or what if the SIPs are different. It's  
10 a complex allocation of debt and earnings question.

11 There's not a fast answer to it. But think about  
12 in an ideal world how might you solve that problem.

13  
14 So think about with the different levels  
15 if the SIPs change, if the SIPs don't change, how  
16 might you roll that debt together or how might you  
17 allocate that debt. It's a valid math question  
18 to think about. And I don't expect any magical  
19 solutions right now, although I take them.

20 MR. RAMIREZ: Jen has the magical  
21 solution.

22 PARTICIPANT: Oh, no I don't. As  
23 everybody knows, I've raised the CIP issue for years

1 and I don't have the solution on the CIP issue,  
2 but I do have a question.

3 So first of all, are you the CIP lady?

4 PARTICIPANT: I am not the CIP lady.

5 (Laughter.)

6 PARTICIPANT: Because I did bring up  
7 SIPs yesterday and I do again going to back to this  
8 as a disclosure, and even if it were a sanctions  
9 metric, the same question has applied or at least  
10 I pondered for many years and it gets exacerbated  
11 though now with a disclosure of all programs at  
12 all institutions is that schools self-select their  
13 SIPs. The Department does not assign the SIPs.

14 And so while I hear you say so think  
15 about that to Chad, so he might think about it one  
16 way and then another state institution might think  
17 about it a different way and then our -- to the  
18 extent that we are creating a disclosure system  
19 that students are looking at, they're not getting  
20 an apples to apples at all because the SIPs will  
21 have been -- could be different.

22 PARTICIPANT: Let me jump in here  
23 because I don't think this is Sarah's area here

1       so --

2                   PARTICIPANT:   Okay.

3                   MR. RAMIREZ:   So we'll have time to  
4 discuss that later.   So Sarah, thank you very much.

5       I really appreciated that.   I think that was very  
6 enlightening.   So thank you.

7                   PARTICIPANT:   My pleasure.

8                   MR. RAMIREZ:   I want to take a break,  
9 but before we do, I want to see if we can give you  
10 a little bit longer break, but give you some work  
11 to do during that break, okay?

12                   The next issue that we're going to be  
13 getting into is sanctions.   And looking at the  
14 paper, it can be broken down into two different  
15 pieces and I think if you look at the beginning  
16 of the paper where it starts off with 668.409, down  
17 to the halfway -- pass the second page where it  
18 says authority and lists the authority there, up  
19 to that point I think that that area there is fairly  
20 noncontroversial.   I think that if we would look  
21 at that and when we come back and see if you're  
22 okay with that piece, is to halfway down the second  
23 page, right after the section of effective data,

1 Secretary's final determination.

2 So what I'm talking about is from  
3 starting with 668.409 final determination of the  
4 D/E rates measures, down to the end of the paragraph  
5 that begins effective date of Secretary's final  
6 determination.

7 PARTICIPANT: Halfway through the  
8 second page.

9 MR. RAMIREZ: I think that that's  
10 fairly noncontroversial. Let's see if we can maybe  
11 see if can do a temperature check on that when we  
12 get back and see if it's okay.

13 But the second from last page that  
14 begins with restrictions and eligible programs  
15 where the strike outs begin on the second from last  
16 page, that's when I'm going to want to jump in right  
17 after that. And I anticipate there's going to be  
18 some discussion there.

19 And so what I want to do is incorporate  
20 a break/caucus and allow folks to gather with  
21 whoever they think they may need to because as we  
22 discussed yesterday, we're here because the rule  
23 that was in place was not acceptable, so the status

1       quo is not going to be acceptable. Doing nothing  
2       is not going to be acceptable. We have to do  
3       something different.

4                If striking out restrictions is not  
5       acceptable, what might be? And that's the question  
6       that I want you all to discuss during this  
7       break/caucus.

8                So what I would suggest is that it's  
9       10:30 now. Let's shoot for 11:00 o'clock. And  
10       I say shoot for. I'll be floating around and see  
11       where you all are at to see if we need some  
12       additional time and I'll make some announcements  
13       at the time if we need additional time. So let's  
14       shoot for an 11 o'clock reconvene. Thank you.

15               PARTICIPANT: I just want to flag on  
16       the assumption that the first part of it is  
17       noncontroversial. I feel and I think that a lot  
18       of other people feel really uncomfortable doing  
19       a temperature check when we're talking about things  
20       like the term GE being eliminated there. And I  
21       would not feel comfortable (a) calling that  
22       noncontroversial or (b) doing a temperature check  
23       on that until we have reached actually some of the

1 other issues and come to a little bit of an agreement  
2 because I don't want my lack of a vote or my sideways  
3 vote to be an indication that I agree with the  
4 elimination of the term GE on that page.

5 MR. RAMIREZ: Then let's jump right  
6 into the last piece.

7 PARTICIPANT: Thank you.

8 MR. RAMIREZ: Okay, let's get started.

9 Before we break for lunch, I'm going to share with  
10 you an idea that we have to help try to keep some  
11 of the information straight, but we'll explain that  
12 right before lunch.

13 In the meantime, what I'd like to do  
14 to start off is ask Greg if you could go through  
15 the summary on Issue 4, as well as explaining some  
16 of the rationale for that summary position. And  
17 then we'll jump into the idea of sanctions or not  
18 or maybe some other ideas, right? And we'll just  
19 open up the floor for some discussion.

20 So Greg?

21 MR. MARTIN: Thanks, Javier. This is  
22 -- for the record, this is Greg. Before we begin,  
23 I just want to again officially thank Sarah for

1 her assistance this morning and coming up and  
2 helping us with those issues. She reminds me of  
3 some of my math teachers, so in that regard it scares  
4 me, but it's also good to have those folks around.

5 She's always threatening to give me a math lesson  
6 about something. I usually demur. Ask if we can  
7 read Shakespeare, something I'm more familiar with.

8 All right, so let's take a look at Issue  
9 Paper 4, sanctions for programs based on D/E rates,  
10 and when we started with scope and purpose, we sort  
11 of hit this issue early on, so we have discussed  
12 some of this already, but this is actually the area  
13 of the regulations that would change.

14 We propose to eliminate the loss of  
15 eligibility to participate in title IV HEA programs  
16 as a possible sanction under the D/E rates measure,  
17 as well as restrictions on starting new programs  
18 that are similar to low-performing programs.

19 We propose that notifications would be  
20 provided to students and prospective students for  
21 any year an educational program is determined by  
22 the Secretary to be low performing. We propose  
23 to add a requirement to notify students and

1 prospective students that the institution has made  
2 or is making changes to the program to improve its  
3 outcomes.

4           We propose to remove a requirement that  
5 the institution receive acknowledgment from the  
6 student that they have received a notification.  
7 For prospective students, we proposed that they  
8 receive the notification on first contact with the  
9 institution, but not again prior to enrollment.  
10 I think we already discussed the Department's  
11 reasons for going to a disclosure environment here  
12 and moving away from the loss of program  
13 eligibility.

14           Just to reiterate, we are moving to more  
15 of a -- making this more of a transparency of a  
16 transparency issue. We did have some problems with  
17 using the debt-to-earnings metric as the sole  
18 determiner of program eligibility. And these  
19 rules do reflect the direction that the leadership  
20 wants to go in.

21           Moving on to the changes in disclosures  
22 that we made, we still have the disclosures. We  
23 did try to streamline some of the requirements for

1 -- remove some of the redundancies in disclosures.

2 Namely, again, removing the requirement that the  
3 institution receive acknowledgement from the  
4 student after they receive notification. We had  
5 a lot of questions about that. There was a lot  
6 of difficulty in determining exactly what that was  
7 and what that consisted of and how schools were  
8 to monitor that. So we have removed that  
9 particular requirement, but maintain the  
10 requirement that schools do provide students with  
11 the disclosures.

12 So it's only a one-time thing, so the  
13 current regs provided for within a certain period  
14 of time, if a certain period of time had elapsed,  
15 they had to issue the notification again prior to  
16 enrollment and we have eliminated that requirement.

17 So we can -- want to move to the first  
18 part of that, Javier?

19 MR. RAMIREZ: Sure.

20 MR. MARTIN: In 409, just to make sure  
21 we go over everything. I don't want to skip any  
22 of it. So we'll start with the final determination  
23 of D/E rates and the notification of determination.

1       And there you can see for each year the Secretary  
2       calculates the rates, we'll issue a notice of  
3       determination and the only thing that changed there  
4       was the elimination of GE and the substitution of  
5       an educational program as the rules would now apply  
6       to all programs.

7               And just some minor changes there, in  
8       1, the determination of the Secretary whether the  
9       program is -- we changed that from passing/failing  
10      to acceptable or low performing as we -- using those  
11      terms that had talked about earlier. And note the  
12      elimination of whether the program could become  
13      ineligible based on final D/E rates. In these  
14      proposed rules, the loss of program eligibility  
15      is removed.

16             And then moving on to page 2, whether  
17      the institution is required to provide -- you'll  
18      note that we struck student warning and we've  
19      changed that to notification.

20             And the part that says if the program's  
21      final D/E rates are failing or in the zone, we struck  
22      that as well because there are no more failing or  
23      zone and there would be no more alternate rates

1 appeal under either of these proposed, under these  
2 proposed rules.

3 And then in (b) on page 5, the effective  
4 date of the Secretary's notification, we eliminated  
5 the appeal, reference to appeals there.

6 And then we can go to consequences.  
7 Notification for low-performing schools, in  
8 general, for any year in which an educational  
9 program is determined by the Secretary to be low  
10 performing, the institution must provide that  
11 notification to students. And we'll just look at  
12 this notification and then stop there.

13 Note that we took the student warning  
14 language out and then at the bottom of page 2, you  
15 can see the content of the notification. And it's  
16 important that we follow this because this portion  
17 here that relates -- that will relate to appeals  
18 when we get there, so just note this additional  
19 language here.

20 So state the program has not met the  
21 standards established by the U.S. Department of  
22 Education, what we've based those standards on.  
23 And the portion that talks about that the program

1       could lose eligibility has been removed and we've  
2       added -- you'll see there, the added language is  
3       that the reported earnings -- the reported earnings  
4       that were reported to the Internal Revenue Service,  
5       it talks about that, and then says similar programs  
6       offered at other institutions may have better  
7       outcomes under this measure.

8               And then there's this disclaimer  
9       portion that we've added. Please note, however,  
10       that this program measure could be effected if a  
11       significant number of students who complete our  
12       program, graduates did not report all of their  
13       income such as tip income or were self-employed  
14       and had business expenses that were just the  
15       earnings being reported.

16               So as we talked about earlier, we  
17       eliminated the appeals process for some of the  
18       reasons we've already discussed. And added this  
19       language to inform students that the measure could  
20       have been effected, for instance, in a program where  
21       graduates earn a large portion of their income from  
22       gratuities or where there are self-employed  
23       business expenses. I think one of the examples

1 for that was such as chiropractic or something along  
2 those lines or maybe acupuncture, those kinds of  
3 things where you're setting up a practice, take  
4 into account those start-up costs.

5 So I'll stop there and we can discuss  
6 those issues before moving on to the rest.

7 MR. RAMIREZ: Are there any questions  
8 on that or do you want to table that and get to  
9 the other issue?

10 A little bit further down on the page  
11 on the actual sanctions or not.

12 Sandy, you had a question on that, a  
13 clarification question?

14 MS. SARGE: Yes. This is Sandy. On  
15 page 3 where you make note of the Internal Revenue  
16 Service, I know it eventually gets to SSA, but  
17 should that be Internal Revenue Service or should  
18 it be Social Security Administration? Or is that  
19 a change?

20 MR. MARTIN: It would still be -- we  
21 still get the Social Security -- we use the Social  
22 Security database would match it against, but it  
23 is based on earnings that are reported to the

1 Internal Revenue Service. So I think for purposes  
2 of the -- when you look at purposes of the disclosure  
3 as to what it means to students, I think it makes  
4 a lot more sense to say reported to the IRS as  
5 opposed to Social Security earnings because they  
6 might not understand what that means.

7 MS. SARGE: Okay, thank you.

8 MR. RAMIREZ: Whitney.

9 MS. BARKLEY-DENNEY: So would this be  
10 the appropriate place to discuss consequences for  
11 low-performing programs or does that come later?

12 MR. RAMIREZ: Yes, I think that comes  
13 later. I guess the whole idea is what happens with  
14 sanctions, are you talking about sanctions? Yes.

15 MS. BARKLEY-DENNEY: I was just asking  
16 because the language --

17 MR. MARTIN: The point is that it's kind  
18 of -- it might be difficult to talk about  
19 notifications outside the context of why they're  
20 right. I mean that the notifications now relate  
21 to the -- there's no more warning because there's  
22 no more sanctions, right? Is that what you're  
23 trying to --

1 MS. BARKLEY-DENNEY: That's what I'm  
2 trying to say.

3 MR. MARTIN: Right. I didn't say any  
4 better than you did. Worse, in fact. But I think  
5 everybody knows that that's the -- yes, we can  
6 certainly -- whatever comments you want to make.

7 MR. RAMIREZ: Chris.

8 PARTICIPANT: I do have a question  
9 about the language that the Department proposes  
10 in the warning/notification, talking about the last  
11 sentence, the sort of a please note.

12 So Greg, I'm wondering kind of the basis  
13 for the reason for including that, things like --  
14 is there any identification on what a significant  
15 number would be and then why, secondarily, why this  
16 would be included for a program that wouldn't  
17 contemplate really having tipped income or may not  
18 have students who are except for perhaps the vast  
19 outlier being self-employed?

20 MR. MARTIN: Right. A little  
21 background on this, so and again, we need everybody  
22 to remember that these are proposed -- this is  
23 proposed, this reflects our reasoning and it's not

1 that we're not -- I don't want to preclude,  
2 certainly, I encourage, alternative ideas, if you  
3 have them. But I'll give you our thinking on this.

4 So given the constraints that we're -- I know we're  
5 not talking about appeals now, but -- and Sarah  
6 discussed some of that when she was up here, the  
7 constraints we have with the current appeals  
8 process that the inside issues we have, which by  
9 the way, are hard and fast, so statistically, you  
10 need 30 respondents and Sarah talked about -- and  
11 with the 25 percent response rate how many -- with  
12 that one being 120.

13 With all of that, grappling with how  
14 to get around that and not having any -- finding  
15 any ways to do that, we move to this idea of dropping  
16 the -- getting rid of the appeals process. But  
17 if we did that, of course, and I think it's  
18 understandable that programs would like to convey  
19 to students that one of the reasons for schools  
20 doing the appeals was obviously affected program  
21 eligibility, but to show that -- to demonstrate  
22 that earnings of students, actual earnings of  
23 students in fields that involved gratuities were

1 much higher than what was reflected in the SSA  
2 earnings.

3 So absent, so looking at it from the  
4 way these proposals were written, absent the  
5 appeals -- if the appeals are not there, then  
6 providing some mechanism for schools to be able  
7 to inform students that yes, these are the rates,  
8 and since you wouldn't be able to appeal those  
9 rates, you're disclosing those rates. But to give  
10 some disclaimer around that.

11 To your question about well, why include  
12 for everybody, we grapple with that as well, but  
13 then we were faced with the situation of -- or the  
14 problem rather of determining which programs could  
15 use the disclaimer and which couldn't and then it  
16 comes down to making decisions about some would  
17 be very easy. Cosmetology, for instance,  
18 everybody would just obviously, yes, a significant  
19 portion of earnings comes from tips, maybe some  
20 hospitality as well, but we didn't want to be in  
21 the position of having to look at every program  
22 and say yes, yeah, nay, whatever. In these  
23 proposed rules, the disclaimers are automatically

1 attached to the notification. That was the reason.

2 It doesn't preclude anybody from  
3 disagreeing from it. I just wanted to point out  
4 how we arrived at this.

5 MR. RAMIREZ: Bob, then Whitney.

6 PARTICIPANT: I just have one comment  
7 on top of that. I mean so, of course, I disagree  
8 with that. I think that there's a vast number of  
9 programs, more programs that wouldn't need this  
10 disclosure than would need this disclosure. So  
11 I think putting it on for everyone is really  
12 misleading students as far as the accuracy of what  
13 they're reading. It kind of gives another reason  
14 why we're putting all this work into creating a  
15 metric that we want to say something and it's not  
16 going to accomplish that if right after the metric  
17 it says well, there could be reasons why this is  
18 not right, so you should probably just ignore it.

19 Especially, as I said, in programs that it would  
20 be misleading especially if a school or you know,  
21 if someone is intimating to students that the number  
22 is not right, because there are students who, I've  
23 heard, start their own criminal justice advising

1 program or something that really isn't what the  
2 vast number -- essentially all the students are  
3 going to school for.

4 MR. RAMIREZ: Okay, we have Bob and  
5 Whitney.

6 PARTICIPANT: First, I'd like to go  
7 back and raise the issue we discussed briefly  
8 yesterday and I'd like to know something of the  
9 Department's thinking here. This becomes very  
10 confusing when we -- it makes an assumption that  
11 this data demonstrates poor performance when, in  
12 fact, it may be simply reflective of the particular  
13 occupation that's involved, whether it's  
14 cosmetology or a lot of other fields where it takes  
15 longer to earn money to pay back and whatever.  
16 And that kind of information definitely needs to  
17 be disclosed to students and whatever, but this  
18 language, very pejorative language that says low  
19 performing, when in fact, it may be one of the best  
20 programs in the country. But the field doesn't  
21 respond in the way that some cyber security or some  
22 other field might do.

23 I think finding new language is

1 essential if this is going to work as a disclosure  
2 system. And the second part of that is on page  
3 3, 2, 3, yes, 3, where you get into this language  
4 you just discussed about gee, maybe there's some  
5 programs better in other schools. That's an odd  
6 thing for the Department of Education to say. It  
7 has little, if anything, to do, once again, with  
8 the outcome of the program which may be related  
9 to the occupation and not the school.

10 There's a confusion here. A disclosure  
11 system should be designed to inform students of  
12 the field, the expectations, the payback, all the  
13 things related to the performance of the program  
14 and things. But here we have sort of a combination  
15 of old language in a new system and I would hope  
16 some thought can be given to how we clear that up.

17 MR. RAMIREZ: Thank you. Whitney?

18 MS. BARKLEY-DENNEY: Yes. So  
19 specifically on the question of whether or not this  
20 sort of tagged disclosure should come with every  
21 program, so my concern about this is a little bit  
22 more specific which is that because we don't have  
23 a job placement rate that we're working off of here,

1 or a way of calculating job placement, we don't  
2 actually know if the tips that are being paid in  
3 that case in particular are something that is  
4 current or common within that industry or if it's  
5 a way that the person is making up money that they're  
6 getting from a job that is not related to whatever  
7 it is that they were trained in by the program.

8 So for programs that we've heard of from  
9 Neal and others where like cosmetology programs  
10 this is a real issue, I don't necessarily have any  
11 problem with this language, but if it's because  
12 you're working as a Starbucks barista and you went  
13 to an auto mechanic program and so you have some  
14 portion of your income that is now derived from  
15 tips, I think that that's actually quite deceptive  
16 to the borrower.

17 PARTICIPANT: Could I ask -- I hear what  
18 everybody is saying here, but it would be helpful  
19 if you feel that this language should only be  
20 associated with certain programs how we would  
21 determine exactly where the parameters are, which  
22 programs would use. I mean some of them would be  
23 very easy. I mean it's very easy to say

1       cosmetology, okay, that's probably a given. But  
2       then we get to other programs where the distinction  
3       might not be as easy to make.

4               MR. RAMIREZ: Are there distinctions?

5       If folks have some ideas of which schools would  
6       be more susceptible to this disclaimer, which  
7       programs rather would be more susceptible to this  
8       disclaimer.

9               PARTICIPANT: So could I offer a  
10       suggestion?

11              MR. RAMIREZ: Sure.

12              PARTICIPANT: So is there a concern?  
13       That sentence can go either way, I think depending  
14       on the program in question. Could it be optional  
15       that language? Maybe it's specific like if you're  
16       going to include it, this is the language you  
17       include, but if you're not, it's okay, to not  
18       include if you believe -- if the school believes  
19       that it would be misleading to the student based  
20       on that particular program, then leave it up to  
21       the school to decide whether it's misleading or  
22       not and then it could be optional I thought.

23              MR. RAMIREZ: Jennifer?

1           PARTICIPANT:  So I'll stay.  I had a  
2           couple of other points, but I'll stay on this one  
3           and then do the other two.

4           So on the TIPS language, so this -- so  
5           I'm thinking about what Chris said and I actually  
6           think that this language which I, generally  
7           speaking, of course, support including, but I also  
8           generally think it argues for keeping the appeal  
9           process because if you think that there's a  
10          significant chance that the earnings is better than  
11          why not let the institution demonstrate that in  
12          an appeal and then it's factually correct that  
13          that's the case.  So I just -- and I know Chris,  
14          you had talked earlier about appeals as well, so  
15          I would just say I know the Department is arguing  
16          that they're doing this in lieu of appeal, but I  
17          actually think including the statement begs for  
18          appeal.  If this is the case, then prove it to be  
19          true.  So that's the one point that I wanted to  
20          make.

21          And then I don't want to speak for --  
22          I mean we do have some programs where this is  
23          relevant, but one topic that comes to mind and I

1 don't want to speak for David, but I'm just thinking  
2 about our last meeting, and it does occur to me  
3 that there are certain professions where you very  
4 well might have a job in the field and I'm thinking  
5 about theater, but you also definitely might have  
6 extra earnings on the sides that might be driven  
7 by tips. So you definitely have a very legitimate  
8 job in the field post-graduation, but then you also  
9 are increasing your earnings through other means.

10 So I think it would be very difficult to parse  
11 out to your point, Greg, on sort of the  
12 difficulties. I don't think it's worth trying to  
13 even go there because I think it's too hard to go  
14 there, but I would go to the appeal concept on that.

15 And then I just want to mention two other  
16 -- these are just editorial suggestions on the  
17 actual language in the first sentence, you just  
18 say has not met standards. I think it needs to  
19 say debt to earnings or whatever we're call these.

20 And they're not called gainful employment any  
21 more, so whatever we're going to call the standards,  
22 just because otherwise it's like this over-arching  
23 like ouch. So that, I would hone in on whatever

1 term, however we're naming the standards.

2 And then I don't want to beat a dead  
3 horse, but I will. It says this program has not  
4 met. And I will -- I'm coming back to the CIP code  
5 issue, this has been a huge source of frustration  
6 for us and it will be a frustration, I think, across  
7 all institutions when it is quite possible for a  
8 program to be passing, but be sucked into a CIP  
9 code where the overall CIP code because there are  
10 four or five programs in it, that program actually  
11 is fine, but it's buried. That it's fine because  
12 the CIP code is the problem because there are other  
13 programs that have issues.

14 So this -- I don't have a solution, but  
15 I'm just pointing out that this program has met  
16 or not met whatever is actually in some cases going  
17 to be an inaccuracy.

18 MR. RAMIREZ: Okay, Steve, did you have  
19 a comment? Okay. Jeff.

20 MR. ARTHUR: This is Jeff. I just  
21 wanted to clarify. I think when we're talking  
22 about any kind of an indication on the -- well,  
23 the statement that we make about the performance

1 of the program that it could be done on the  
2 consumer disclosure platform, whether that's a  
3 scorecard or whatever, that it needs to be  
4 consistent with how we eventually label these,  
5 whether it's below average, above average or low  
6 performing/acceptable, whatever it is that needs  
7 to be referenced.

8 And the warning, I think, any of the  
9 language there could be included on that platform  
10 rather than delivered to the student and then a  
11 link to the scorecard, so we just directly link  
12 them and the information is there, allow  
13 comparison.

14 And I just point out that the -- just  
15 a minor grammar error in that students who completed  
16 our program graduates did not report. I think you  
17 mean students who graduated or students who  
18 completed our program did not report. Remove  
19 graduates.

20 MR. RAMIREZ: What page are you on?

21 MR. ARTHUR: It's page 3.

22 MR. RAMIREZ: Tony.

23 MR. MIRANDO: Tony Mirando. Thank

1       you. So one of the things at the risk of getting  
2       hate mail from my colleagues, I think that the  
3       creditors might be able to provide some clarity  
4       as to whether or not the programs for which they  
5       accredit, based on the job placement information  
6       we receive, we could determine whether or not it's  
7       a position that would be altered by whether they're  
8       self-employed or whether or not they -- or is a  
9       profession that a good substantial amount of their  
10      money is based on tips. So just putting it out  
11      there.

12                   MR. RAMIREZ: Jordan?

13                   MR. MATSUDAIRA: Thanks. I was going  
14      to suggest another way that you could identify  
15      programs where tipped income is common is using  
16      the SSA data that you have. On the W-2 form,  
17      there's a box that records tips, tips reported to  
18      the employer.

19                   I realize not all tips are reported to  
20      the employers, but you could just buy CIP code,  
21      using the data that you have, calculate either the  
22      fraction of people who report any amount of tips  
23      or the fraction of income that's accounted for by

1 tips and just establish, if that's over some kind  
2 of minimal threshold, then this disclosure can kick  
3 in. If it's not, then it won't.

4 PARTICIPANT: Jordan, let me ask you  
5 a question. Are you talking about so in the field  
6 of the W-2, which, of course, Ed. wouldn't have,  
7 so you're talking about the school?

8 MR. MATSUDAIRA: That's correct.

9 PARTICIPANT: The school doing that,  
10 making that calculation to see if --

11 MR. MATSUDAIRA: No. No, the  
12 Department can ask SSA to give you back by CIP code  
13 the fraction of people in the GE universe that  
14 report --

15 PARTICIPANT: Oh, I see what you're  
16 saying.

17 MR. MATSUDAIRA: -- tips for each  
18 six-digit CIP code and just establish by CIP code  
19 whether the disclosure for tips is relevant.

20 PARTICIPANT: So make that part of our  
21 Memorandum of Understanding. Okay, I see what  
22 you're saying.

23 MR. RAMIREZ: Tony, do you have a

1 comment on that?

2 MR. MIRANDO: Yes, so I don't think that  
3 would work in the profession that keeps getting  
4 brought up which is the cosmetology world. A good  
5 majority of the individuals who graduates end up  
6 doing what they call booth renter and so they really  
7 don't get into a situation where they get a W-2  
8 at the end of the year, so there's really no way  
9 of assessing that properly. And again, if we're  
10 doing this to be realistic, then you're not going  
11 to get it that way. So whether they go into private  
12 practice for themselves or whether or not they go  
13 work at a salon, there again, they're really what  
14 they call booth renters, so they're just giving  
15 a certain percent, giving certain percentage or  
16 paying a flat fee. And so they don't receive a  
17 W-2.

18 MR. RAMIREZ: Chris, then Jessica.

19 MR. MADAIIO: Chris Madaio. Although,  
20 you know I think that Ed. should make some  
21 affirmative determination on the program whether  
22 by asking for information from the school itself  
23 on what analysis it's done of its students, however,

1 if that's something you don't want to do or don't  
2 think you can do, and I guess another option, I  
3 don't love it, would be the school could decide  
4 a little bit like Sandy was saying to put this  
5 statement on its numbers. However, the statement  
6 should be adjusted to make a representation to  
7 students that a significant number of this  
8 program's graduates make tip income or are  
9 self-employed and therefore, if the school is not  
10 accurate in that representation, Ed. could ask the  
11 school for its back up for that. A state attorney  
12 general for its back up for that. So the school  
13 has got some skin in the game where if it's making  
14 that statement, it should have a basis for making  
15 that statement and not just because well, maybe  
16 some students made some tipped income.

17 MR. RAMIREZ: Okay, Jessica.

18 MR. MADAIIO: Could I get a temperature  
19 check on that? I don't know. I got a lot of nods  
20 on that.

21 (Laughter.)

22 MS. BARRY: Jessica Barry. I actually  
23 agree with Sandy, too. I think that's a good idea.

1       And I just wanted to provide another example of  
2       a different occupation. I know we have talked a  
3       lot about cosmetology schools and that is a very  
4       important part of this disclaimer, but graphic  
5       design is another example. And I just wanted to  
6       share that with all of you while we're making these  
7       comments and decisions.

8               I graduated from my institution, so I  
9       started my career as a graphic designer and I work  
10      with these students every day. And many of them  
11      in their first job, they wouldn't be considered  
12      self-employed because they do have a full-time  
13      position as a graphic designer or a marketing  
14      specialist. A lot of times those positions have  
15      lower pay and then they are building their career  
16      in those first five years. So they're doing a lot  
17      of free-lance work for people through word of mouth,  
18      for family members. And that's a significant part  
19      of their income.

20             In my first few years, that was over  
21      ten percent of my income, was that free-lance work,  
22      and that's what helped me build my reputation and  
23      my career.

1           So the additional income, I just want  
2           to give you another example of some -- of another  
3           position or another profession where this is very  
4           important. And graphic designers graduate from  
5           all of our institutions. Just in my area, there's  
6           for profit, community college, public, private,  
7           nonprofit and they're all trying to make their way  
8           in the same way. So I just wanted to lend that  
9           example.

10           MR. RAMIREZ: Thank you. I do want to  
11           circle because it did seem like there were quite  
12           a few bobbing heads.

13           Chris, could you restate what they would  
14           thumb on your idea?

15           MR. MADAIIO: So this would be along the  
16           lines that, I don't know, the wording may need to  
17           be wordsmithed, but along the lines that a school  
18           would need to be representing, so not this language  
19           here that talks about the program measure could  
20           be effected if a significant number, but more along  
21           the lines of this program has a significant number  
22           of students who has program graduates that did not  
23           report all of their income, thus reducing their

1 earnings reported. Something along those lines  
2 that the school is representing to prospective  
3 students that it has such a situation, thereby  
4 needing skin in the game. So it's an affirmative  
5 representative to a student.

6 MR. RAMIREZ: So let's -- do you have  
7 a clarification question on that?

8 PARTICIPANT: Yes, just a  
9 clarification. So the school would have the option  
10 of not including the tipped income section of the  
11 disclosure. Got it. Okay.

12 MR. RAMIREZ: Let's see a show of thumbs  
13 on that idea, a temperature check. Yes.

14 MR. CHEMA: A clarifying question,  
15 Steve Chema. I understand the idea of the  
16 representation that Sandy and Chris, you both have  
17 suggested here, but I'm wondering as how I would  
18 advise any of my clients who are schools as to where  
19 the line in the sand is for significance,  
20 particularly going back to this discussion we just  
21 had about an n size of ten. So it's a fuzzy standard  
22 and I would be very worried if it's something that's  
23 going to put a school in the cross hairs of an

1 attorney general action or a Subpart M  
2 misrepresentation action.

3 So can you give any thoughts about how  
4 you might arrive at it?

5 PARTICIPANT: I mean you're a good  
6 lawyer, I'm sure you advise clients on  
7 reasonableness all the time. There's lots of fuzzy  
8 things in the law, so obviously, I can't give you  
9 that answer, but if your client thinks it's on the  
10 line, maybe you shouldn't make that representation.

11 I don't know what to say except that if they want  
12 to -- maybe Johnson, you want to say something on  
13 that.

14 MR. TYLER: I would just add, I spend  
15 a lot of time helping people try to modify their  
16 mortgages and if they're not forthcoming with their  
17 taxes, it comes back to bite them. If you're  
18 educating someone to enter into hopefully the  
19 middle class, they have to report their taxes.

20 And I completely understand the barbers  
21 out there. I completely understand that. I have  
22 lots of clients like that. And they don't have  
23 mortgages that they're trying to modify.

1           But I think for a lot of these other  
2 fields and I'll defer to Jessica on her clients'  
3 experience, but even ten percent of your income  
4 is not a huge amount of under reporting.

5           It just confounds me the idea that a  
6 lot of people are going to a lot of institutions  
7 and not reporting their incomes to IRS and are not  
8 getting 1099s and W-2s that they've got to file  
9 with the IRS.

10           MR. RAMIREZ:   Stephen?

11           MR. CHEMA:   I appreciate that Johnson,  
12 but I think it's also important that you and the  
13 table understands that there's not necessarily --  
14 this is not information that all institutions have.

15           Those that are accredited by Dr.  
16 Mirando's association probably have it because he  
17 requires them in instances where they are reporting  
18 placement rates to back that up with some record  
19 that the student is an independent contractor.  
20 They won't necessarily have tip income, whether  
21 that happens or not, but they'll at least know what  
22 may be what the method of mode of employment is.

23           Schools that are accredited by different

1        associations aren't necessarily held to that  
2        standard. Institutions might not know this, so  
3        putting affirmative representation on them that  
4        can lead to legal jeopardy is problematic.

5                MR. RAMIREZ: I guess that my point is  
6        if the school doesn't know this, why would we allow  
7        them to put this statement next to the  
8        debt-to-earnings rate when therefore allowing a  
9        student to think that it's true when the school  
10       doesn't even think it's true.

11               MR. CHEMA: Anecdotally, of course,  
12        you'll know what the trends are in the marketplace,  
13        what the labor market outcomes are, but you're  
14        asking me to advise an institution that they're  
15        going to be okay, that they have a significant  
16        number and I'm still unsure as to what that would  
17        be.

18               MR. RAMIREZ: All right, so just to  
19        close that loop, let's see a show of thumbs for  
20        the idea that Chris put forward. Again, it's a  
21        temperature check, so let's see a show of thumbs.

22        Four down.

23                So there's a request to do a temperature

1 check on the reporting, the disclaimer optional.

2 PARTICIPANT: In essence, Sandy is  
3 saying exactly what this language is and letting  
4 a school choose these or not. Is that what you're  
5 saying?

6 MS. SARGE: I'm sorry. This is Sandy.

7 Closer to this, mainly because and I like Stephen's  
8 word fuzzy.

9 You guys are trying to -- it seems like  
10 you're asking us to be very, very specific in this  
11 language, so that we're held to something that we  
12 all know is unreported. That's the whole point  
13 of making a clarifying statement is it's  
14 unreported.

15 So then we have to go survey and if we  
16 don't have enough surveys, then students are asking  
17 why do you want to know that? Why is that any of  
18 your business?

19 And you know, come on, at the end of  
20 the day and I know I'm the target for anybody who  
21 makes an extreme example, even though you guys can  
22 make extreme examples and nobody calls you out on  
23 it, but here's the thing.

1           We know realistically that there are  
2 industries and there are places in the beginning  
3 of careers where people do rely on tips. They rely  
4 on tips. They rely on other income, whether it's  
5 side jobs. I have a friend whose son is studying  
6 to be an electrician. He does side jobs all the  
7 time. And she tells him, get it in cash. I'm not  
8 saying I agree with that or disagree with that.  
9 I'm just saying coming on, there is some reality  
10 here about this.

11           And I think what the Department is just  
12 simply trying to do is inform a student, these  
13 numbers -- and they would be impacted if all the  
14 income might -- is not reported, then the outcome  
15 is going to be different. That's just a  
16 mathematical fact. So for me, I'm comfortable with  
17 this language, but I agree that not all programs  
18 would be impacted by tips, so that's why I'm  
19 offering should it be optional.

20           MR. RAMIREZ: Chris, that was a yes.  
21 Okay. So let's see a show of thumbs for the  
22 language being optional.

23           It's the language that is proposed, but

1 it would be optional to the institution whether  
2 they want to add a disclaimer or not. Okay, so  
3 let me see a show of thumbs. One, two,  
4 three -- there's four down.

5 Okay, we have about three minutes left  
6 before we'd like to try to break for lunch. Let's  
7 see here. Yes, go ahead, Sandy.

8 MS. SARGE: I would put out to the group  
9 that we change the words that standards potentially  
10 to benchmarks and that we also use the terminology  
11 below benchmarks and above benchmarks as opposed  
12 to low performing or acceptable. I think those  
13 are opinion statements as opposed -- and  
14 potentially could be viewed as stating a quality  
15 thing when in reality what this is doing is the  
16 Department has established a benchmark based on  
17 good research that you think is appropriate and  
18 that this program is above or below it and make  
19 it a statement of fact.

20 MR. RAMIREZ: Okay. John.

21 MR. KAMIN: John Kamin. I just want  
22 to make this short and sweet and returning to  
23 something that Jennifer said. I know I'm skipping

1 a section here, but I think ultimately what we're  
2 all focusing on is the fact that it seems almost  
3 untenable for there to be no appeals process. And  
4 presently, I cannot see any way we could be in favor  
5 of zero appeals.

6 So maybe the conversation just goes to  
7 us brainstorming ways to build something out, an  
8 appeal that works, but I can tell you right now  
9 that the proposal on the table for no appeals and  
10 we'll just let it stand as is is not a point where  
11 we can move forward on.

12 MR. RAMIREZ: Thank you. David,  
13 you're good? Okay. Neal.

14 MR. HELLER: You know, I kind of look  
15 at this language and I look at this issue and I  
16 sort of say well, this is why we can't find consensus  
17 on anything around this table. And Whitney and  
18 some others have already alluded to the fact that  
19 it's plain as day when you look at the cosmetology  
20 and barber-related fields. I believe that this  
21 language was crafted in direct response to the  
22 lawsuit that we've talked about earlier today.

23 So why can't we at least agree on that?

1       This is obviously something that was done in  
2       response to that lawsuit for cosmetology, barber,  
3       and beauty-related fields. And if you want to use  
4       this language for other fields, then you need to  
5       take some affirmative steps to prove it. Because  
6       just a couple of anecdotal stories about an  
7       electrician taking a \$20 tip doesn't make a rule.

8       And a rule can't capture everything. A law can't  
9       capture everything. But it's just disturbing  
10      that, and this is some of my colleagues as well,  
11      that we can't even agree on this. But I do think  
12      that the Department could have been more specific  
13      in this language and directed it towards  
14      cosmetology and beauty-related subjects.

15             And as far as an appeal process is  
16      concerned, I'm just wondering how you can have an  
17      appeals process if there's nothing to appeal. I  
18      think that's what the Department was the trying  
19      to get to. They've taken away the sanctions, so  
20      what exactly are we appealing? Thank you.

21             MR. RAMIREZ: Whitney, then Jennifer.

22             MS. BARKLEY-DENNEY: Before we go out  
23      to lunch, I'd just like to say this is the second

1 time that Neal and I have agreed during this  
2 negotiation. And I think that is progress.

3 MR. RAMIREZ: End then on that high note.

4

5 Are you going to bring us down? Okay,  
6 Jennifer.

7 PARTICIPANT: So I mean obviously I  
8 know it was with regard to one lawsuit brought by  
9 one sector, but what about culinary -- what about  
10 culinary, what about theater and film? What about?

11

12 There are -- so on the appeal, when you  
13 ask why there would be a need for appeal, because  
14 I think we all have been saying that low performing  
15 that term does mean something negative about a  
16 program. And so if there's a shred of chance and  
17 a school wants to put the resources behind it in  
18 a survey to get to the answer, they ought to be  
19 allowed to get to the answer so that they can  
20 demonstrate that the program is not low performing  
21 for disclosure purposes. That's the nutshell  
22 version. So I just to wanted to answer the  
23 question.

1 MR. RAMIREZ: Okay, Neal?

2 MR. HELLER: And obviously, there are  
3 other fields that this may apply to, but again,  
4 there should be some affirmative action taken to  
5 prove that.

6 As far as -- well, I don't know if it's  
7 an appeal, but as far other income is concerned,  
8 and that's what perhaps somebody else who is working  
9 in a different field from what they studied for  
10 or trained for is earning other dollars, that's  
11 kind of contemplated in gainful employment, because  
12 gainful employment doesn't speak to the specific  
13 amount of money earned in that particular field.

14 It speaks to your income in general.

15 MR. RAMIREZ: Okay. So before we break  
16 for lunch, because we still need to come back and  
17 now that we've discussed the easy part, we have  
18 to come back and hit some of the more difficult  
19 piece in here. What we were thinking of is Sandy's  
20 suggestion that -- and there are a lot of moving  
21 pieces here, right? And it's really complicated  
22 to figure out how we're going to make all these  
23 puzzle pieces fit and which ones are we going to

1 tackle first, right? Which puzzle pieces do we  
2 try to make fit first.

3 So what we're going to do is we're going  
4 to put up a section in the back over there that  
5 has each of the issues that are outlined, starting  
6 with number two through number eight, right? Scope  
7 and purpose, we're not going to put up there, but  
8 two through eight, so that as you all generate ideas  
9 that you don't want to be dismissed, we could put  
10 them up there so that way we could possibly consider  
11 them at some point or maybe even have another  
12 section over here which we will have where you could  
13 try to build areas of consensus. Right? So if  
14 there are pieces of that puzzle that look like it  
15 can work, let's put it in there. We don't have  
16 to necessarily agree on it quite yet, but at least  
17 we could segregate the areas of potential  
18 consensus. Okay, so we'll set that up and we'll  
19 show you what we put together after lunch.

20 So let's look at one hour, so it will  
21 be 5 minutes after 1 when we reconvene. Thank you.

22 (Whereupon, the above-entitled matter  
23 went off the record at 12:05 p.m. and resumed at

1 1:05 p.m.)

2 MR. RAMIREZ: All right, let me share  
3 with you at least the hopes of what we could do  
4 here with that board.

5 So, during the break we put that butcher  
6 block paper up on the wall there, so that way folks  
7 could put ideas up there that at some point we will  
8 hopefully consider. And the way that I was  
9 thinking that we could do that is that there are  
10 seven what I will call silos. And you can see them  
11 divvied up over there. It's 2 through 8. So that  
12 would be Issue Paper 2 through Issue Paper 8, scope  
13 and purpose not being up there.

14 So that if folks have certain ideas  
15 like, say for example, the -- the naming, what are  
16 we calling, going to call the groups in here:  
17 failing, not passing, whatever that terminology.

18 Any ideas that you have in there, I believe that  
19 was under Issue Number 2. You go to the Issue  
20 Number 2 silo, put your idea up in there and so  
21 we can have the ideas up there.

22 There's Post-Its, there's pieces of  
23 paper, tape, scissors. If you have ideas that you

1 want to cut out, you can cut them out and put them  
2 up there as well. And then we will see if we could  
3 leave some time for folks to go up there and take  
4 a look at and maybe have some dialog.

5 Which brings up the other two sections  
6 there. One section is package ideas, and the other  
7 section is possible consensus. Right? So, if  
8 there are ideas that, hey, this might work if we  
9 have this item, this item, and this item, pack them  
10 together, put them into the packaged area there.

11 And then as folks think that there's  
12 areas of possible consensus, then we can move them  
13 over into that possible consensus area.  
14 Hopefully, we will be able to start to clear some  
15 of the clutter so that when we get back to the next  
16 go-around we could focus on the areas that are still  
17 in -- that are not resolved yet. Okay?

18 PARTICIPANT: Just to add to that, as  
19 Javier was saying, there are these over there.  
20 You can do that at any point. You can do that during  
21 the break, whenever you have an idea. You don't  
22 have to wait until we tell you to do it.

23 MR. RAMIREZ: You could even write it

1 down as we go and cut it out, you know, later.  
2 So, jot them down. Don't let them go to waste,  
3 don't let the ideas go to waste.

4 All right. So one quick thing. There  
5 was a request while Sarah was here; we forgot to  
6 get the data. The data was not -- that wasn't  
7 forgotten. It has not been approved yet. As soon  
8 as it's approved -- as soon as it's approved, we  
9 will make sure that we get that to you. Okay?

10 So, from there, Greg, as far as Issue  
11 Number 4 goes, where do you want to go next on that?

12 MR. MARTIN: Okay. Before we get to  
13 the, to the sanctions part we still have a couple  
14 things.

15 If you will refer to on page 3, I believe  
16 it's the regulatory site is 668.410(a)(3). We're  
17 talking about there's some changes to be made there.

18 So I just want everybody to review them. And I  
19 want to give everybody the opportunity to comment  
20 on those before we move on and not, not skip over  
21 those.

22 So, for notification required to  
23 provide the enrolled students, you see here --

1                   MR. RAMIREZ: I'm sorry, Greg, could  
2 you state again where you're at?

3                   MR. MARTIN: Yes. I'm sorry. I'm on  
4 the bottom of page 3, halfway down page 3. Issue  
5 Paper 4.

6                   MR. RAMIREZ: Where it says "For  
7 notification provided to enrolled students"?

8                   PARTICIPANT: So you see there at the  
9 beginning we just simply changed "warning" to  
10 "notification." That language you see in 3 Roman  
11 at (i), is not changed.

12                   And if we move over to page 4, "Indicate  
13 whether the institution has made, or is making,  
14 changes to the educational program that are  
15 designed to improve its outcomes..." So the  
16 schools will be required to do that. "...and  
17 provide details about those changes." That -- that  
18 language is new.

19                   You can see that we eliminated whether  
20 or not they will refund tuition fees or explain  
21 students could transfer.

22                   We also eliminated "Consumer testing."

23                   "Alternative languages" has been

1 retained.

2 Let's look down to delivery of students  
3 -- delivery to students rather. I'm sorry.  
4 Because this is where there are some significant  
5 changes. We discussed this at the beginning.

6 You will note that the institution must  
7 provide the notification required under this  
8 section to each student enrolled in the program  
9 no later than 30 days after the date of the  
10 Secretary's notice of determination.

11 We retained hand delivery in the  
12 notification, or sending it to the primary email  
13 address used by the institution.

14 We still retained if they use the --  
15 if they send notification by email, ensure the  
16 notification is the only content in the email.  
17 There was a lot of discussion as to what actually  
18 was meant by "substantive," and so we removed that.

19 And we also removed, going over to page  
20 5 now at the top, (B). We eliminated "receive  
21 electronic or other written acknowledgment from  
22 the student that the student has received the  
23 email."

1           And then we retained "Send the  
2 notification using a different address or method  
3 of delivery if the institution receives a response  
4 the email could not be delivered." So if they get  
5 one of those bounce-backs, then they would have  
6 to do that.

7           The, below that is the delivery to  
8 prospective students. And we've basically changed  
9 "warning" to "notification" there.

10           And the big change with regard to this,  
11 at the bottom of page 5, where you'll see Roman  
12 (iv), they're providing notification orally to the  
13 student or third party if contact is by telephone.

14           Then below that we struck the special warning.

15           And just as a reminder of what that was,  
16 before an institution enrolled, or registered, or  
17 enters into a financial commitment with a  
18 prospective student, must provide the warning.  
19 And may not enroll or enter into substantial with  
20 a prospective student with respect to the program  
21 earlier than 3 business days after they've provided  
22 the warning. And then if more than 30 days have  
23 passed, to provide another warning.

1           So that's what was eliminated from the,  
2           from the -- what was previously the warning and  
3           will now be termed "notification requirements."

4           So, I will leave it at that and open  
5           the floor for comments.

6           MR. RAMIREZ: Any comments on those  
7           issues that Greg just covered?

8           Whitney?

9           MS. BARKLEY-DENNEY: Just a point of  
10          clarification. So we're only noticing borrowers  
11          as to whether or not the program is going to make  
12          changes to improve, or we're requiring the program  
13          to make changes to improve?

14          MR. MARTIN: Yeah, the language you're  
15          talking about is --- let's go back to page 3.  
16          Indicate -- so, at the bottom of page 3, indicate  
17          whether the institution will make or is making.

18          Those are not required -- those aren't,  
19          those don't represent changes we are requiring  
20          institutions to make. The institution is simply  
21          just required to disclose whether or not they have  
22          made or are making changes to the program to improve  
23          outcomes and provide any details about those

1 changes. But that doesn't represent a regulatory  
2 requirement on our part.

3 I'm sorry, it represents a requirement  
4 to disclose that but not make the changes.

5 MR. RAMIREZ: Daniel.

6 MR. ELKINS: Could you all elaborate  
7 a little bit more on the details of that new  
8 disclosure?

9 MR. RAMIREZ: I'm sorry. Could you  
10 repeat the question? I was distracted.

11 MR. ELKINS: The last line, you know,  
12 improve its outcomes and provide details about  
13 those changes.

14 MR. RAMIREZ: Yes.

15 MR. ELKINS: Are you leaving that  
16 specifically open-ended, or is there an additional  
17 set of criteria that you are going to be looking  
18 for in those details?

19 MR. RAMIREZ: No, there's no additional  
20 set of criteria. It's just simply if the school  
21 is -- it's an opportunity, if the school is making  
22 changes to the program to make it better, that they  
23 would have to disclose to the students what those

1 are. But we don't have any -- any parameters around  
2 that other than that they disclose whatever those,  
3 whatever those changes would be.

4 MR. MARTIN: I want to make one more  
5 clarification here. A correction, if you would.

6 At the bottom of page 5 where it talks about  
7 providing the -- providing the notification. And  
8 it says, currently it says providing the  
9 notification orally or third party -- or by third  
10 party if the contact is by telephone. We have  
11 eliminated providing it orally.

12 MR. RAMIREZ: Yes?

13 PARTICIPANT: How does it read?

14 MR. MARTIN: Scott. Show me how that  
15 reads.

16 I'm sorry, we made the change, and I  
17 just want to make certain.

18 Yeah, all of our Roman at (iv) is  
19 removed, that entire line. I'm sorry.

20 So all the deletions start there and  
21 then they go down to the bottom of 5, continuing  
22 on to page 6.

23 There will be no oral notification

1 permitted. Well, I mean I shouldn't say that.  
2 It won't -- it won't suffice for having made the  
3 notification.

4 MR. RAMIREZ: Okay, I have Chad, Jeff,  
5 and then Chris.

6 MR. MUNTZ: Okay. Chad Muntz.

7 Looking at page, page 3. Again,  
8 thinking about from the public university  
9 perspective, not knowing how this measure is going  
10 to work precisely, but some of our institutions  
11 have 100 undergraduate programs. So would you --  
12 or more, as Pam just said -- so would we advise  
13 them on every possible program that their transfer  
14 credits could go into at the university?

15 That would be one question.

16 The second -- and I will note that we  
17 do have state systems that do this. Like in  
18 Maryland it's called ARTSIS and we put in all the  
19 credits and figure out every program that the  
20 student's eligible for for a transfer, for example.

21 All right. The second question is on  
22 page 4, the languages. For our graduate programs  
23 we recruit internationally. And that's a big piece

1 of some of our research programs would the students  
2 come from multiple nations. Would language need  
3 to be changed for every possible native speaking  
4 country that the institutions recruit from?

5 MR. MARTIN: I'll start with the first  
6 question.

7 Where we say describe -- you're talking  
8 about describe the academic and financial options  
9 available to students, including whether the  
10 students could transfer credits earned in the  
11 program to another program at the institution.  
12 And, and which, of course, is a transfer.

13 Yes, the way that -- to answer your  
14 question, the way that the rule's currently written  
15 it would be, or proposed I should say, it would  
16 be for each program that you would be required to  
17 do that.

18 Moving on to the alternative language.

19 That is, we qualify that by saying "to the extent  
20 possible" notification in alternatives to English  
21 language for those students for whom English is  
22 not the first language. So I think there are, there  
23 is some, some latitude there. I don't think that

1       that would be read to say that, you know, it must  
2       be in every possible language.

3                       Certainly I don't know how many. I'm  
4       sure that in some schools that students come from  
5       all over the world. Is it an absolute requirement  
6       that it be, that it be translated into every  
7       possible, maybe even not major languages but  
8       dialect that a student speaks?

9                       MR. MARTIN:     Yeah, for example if  
10      you've got students attending from many countries  
11      but they are attending in a program that's only  
12      offered in English, you might be able to suggest  
13      that it's practical to make that disclosure, that  
14      notification to the students in English. But, you  
15      know, that's fair game for discussion around the  
16      table.

17                      MR. MARTIN:     I just want to say that  
18      this rule's not a hard and fast requirement that  
19      every, every language students speak and that every  
20      disclosure be in that language.

21                      MR. RAMIREZ:    Let me get to Jeff, Chris,  
22      and then Steve. Did you have a quick comment on  
23      that?

1           MR. MARTIN:     Yesterday this only  
2 applied to students who got Title IV aid.  
3 International students don't get Title IV aid.  
4 So why am I required to notify them of anything?

5           PARTICIPANT:   Yeah, that's a, that's  
6 a valid concern. And we'll take that back.

7           On page 4. Oh, I see what you're  
8 saying.

9           MR. RAMIREZ:   I'm sorry. Mark, let me  
10 just pause you. Could you get to a mike?

11          MR. MCKENZIE:   I believe the definition  
12 is on page 2.

13          MR. MARTIN:    Right.

14          MR. MCKENZIE:   Any year in which an  
15 educational program is determined by the Secretary  
16 to be low performing, the institution must provide  
17 a notification to --

18          MR. MARTIN:     -- students and  
19 prospective students.

20          MR. MCKENZIE:   So it should read  
21 eligible students?

22          MR. MARTIN:    Well, I'm not going to go  
23 -- we could certainly, I think we could certainly

1 entertain making it, making it eligible students.

2 We could bring that up for discussion.

3 I think the point made about that this  
4 didn't have to be disclosed to foreign students  
5 who would probably not even have any idea what  
6 they're looking at is --

7 MR. MARTIN: Maybe fast applicants?  
8 How about people that apply?

9 MR. MARTIN: Can I just point out that  
10 you can be a non-native English speaker and still  
11 be a citizen therefore eligible.

12 MR. MARTIN: Hold on.

13 PARTICIPANT: Yeah, I mean it's true  
14 that we do have a definition of student in GE which  
15 basically is Title IV recipients. But, but the  
16 problem point here is prospective students. So  
17 we have the issue.

18 We'll definitely, we'll definitely take  
19 that back.

20 PARTICIPANT: Yes. Or if the program  
21 requires a student to be fluent or pass a certain  
22 level in TOEFL, you know, be an English speaking  
23 student with a TOEFL score, maybe that would be

1 the determinant that would help you eliminate the  
2 number of options.

3 PARTICIPANT: I think that's  
4 reasonable. I mean, as Steve pointed out,  
5 obviously if a program requires proficiency in  
6 English in your testing, using TOEFL, to see if  
7 they have that proficiency and, in fact, do, then  
8 that would seem to obviate having to give them a  
9 foreign language disclosure.

10 MR. RAMIREZ: All right. Let me, let  
11 me get Jeff.

12 PARTICIPANT: My comment is, is it  
13 appropriate to have a series of notifications,  
14 warnings prior to really understanding, well, the  
15 comparative data across, you know, all programs?

16 And shouldn't it be based on some outlier or  
17 standard deviation when you compare a program to  
18 the same program across higher ed?

19 And, I mean I guess could -- I think  
20 there would be programs where you could wind up  
21 having the majority of students going into the  
22 program at any institution receiving some kind of  
23 a notification or warning to do something else,

1 or potentially do something else. And is it really  
2 appropriate to be steering people without even  
3 understanding what the rings are for any given  
4 program?

5 MR. MARTIN: I mean I would counter that  
6 the, I mean the current rule that's, this is what's  
7 being required under the current rule. The only  
8 difference here is that there are not, there are  
9 not program eligibility sanctions attached to this  
10 anymore. You're not under these proposed rules  
11 you're notifying of, the students of the low  
12 performing status vis-a-vis the GE rates, which  
13 is what you're currently doing. To that extent,  
14 we're not introducing anything new here, we're  
15 simply changing the current warning that you have  
16 to notification.

17 So I don't think we're requiring a  
18 school -- I mean, right now that's currently what  
19 you have to do. You're issuing those warnings;  
20 right?

21 PARTICIPANT: Right. But now this,  
22 this would apply to everybody; right?

23 MR. MARTIN: Yes. This would apply to

1 everybody.

2 PARTICIPANT: Yes.

3 MR. MARTIN: And it's no longer, no  
4 longer key to whether or not the program is in  
5 imminent, faces imminent loss of eligibility --

6 PARTICIPANT: Right.

7 MR. MARTIN: -- in the next year. So  
8 if you have low performing rates you make the  
9 disclosure.

10 PARTICIPANT: So this could be a really  
11 significant expansion of this kind of a structure;  
12 right?

13 MR. MARTIN: Well, it could, yes, it  
14 would be an expansion. It would be an expansion.

15 I don't think it's an expansion for those schools  
16 already subject to the rule.

17 PARTICIPANT: No, it's not. No.

18 MR. MARTIN: But to those who are not,  
19 currently it is.

20 PARTICIPANT: I agree, yeah. Yeah.

21 MR. RAMIREZ: All right. I have Chris  
22 and then Kirsten.

23 MR. MADAIO: Thank you. Chris Madaio.

1           I mean, on the foreign language, you  
2 know, my point would be simply because a student's  
3 first language is not English, although they could  
4 pass a test and be in a program that is taught in  
5 English, you know, we want to ensure that a student  
6 truly understands this.

7           So I think that as written, I mean, sure,  
8 foreign students perhaps can be written out. But  
9 I would caution against completely removing  
10 references to when practical provide alternatives  
11 for students who, for whom English is not their  
12 first language. I think that's still a pretty  
13 important thing, to ensure that students understand  
14 this metric.

15           As far as the requirement to notify  
16 whether or not the institution will make certain  
17 changes, I think that's a small change, but I think  
18 that's kind of important because I think the  
19 institution should be telling students if they are  
20 not making any changes. Because a student may well  
21 assume that, for instance, if they get -- if they  
22 don't get any information about changes being made  
23 the student may assume the changes are being made

1 because the school is not meeting the standards  
2 established by the U.S. Department of Education.

3 So, I think that the school should say  
4 if it's not making any changes, that it's not making  
5 any changes. And a student should be able to  
6 understand that and use that in his or her decision  
7 to attend the school.

8 I do think acknowledgments of the  
9 receipt of that for current students, or I think  
10 that's an important thing for students to ensure  
11 that they are actually getting it.

12 Obviously, you know, there can be lots  
13 of reasons why it's not received. A school  
14 improperly enters email addresses; right? Then  
15 a student wouldn't receive it, for no fault of the  
16 student. And the school would perhaps then learn  
17 that the student had not received it if they didn't  
18 get any acknowledgments back.

19 So I'm sure there's lots of ways that  
20 that can be done. But I do think acknowledgment  
21 of an important change, i.e., not meeting standards  
22 -- and we talk about how important a disclosure  
23 only rule is going to be, then we should really

1 go out of our way to make sure students are getting  
2 the disclosure.

3 And, of course, the last point I would  
4 make is on the pre-enrollments for prospective  
5 students I think it's really important that  
6 students are getting the disclosures at the, really  
7 at that seminal time of signing up for the school.

8 I mean, it's great to get it on the first touch  
9 or, essentially what it says under subsection new  
10 E, but I think having it right before the student  
11 enrolls or makes a financial commitment is a really  
12 important time.

13 And I guess I would just then ask Greg  
14 or the Department if there's any data on why that's  
15 being eliminated on when, if the studies have been  
16 done on when disclosure is best or why the decision  
17 is being made to eliminate disclosure at certain  
18 times?

19 MR. MARTIN: The decision to eliminate,  
20 well, change disclosure rules basically was around  
21 the complexity of them and the, and the redundancy  
22 required by it. So, we moved from that to just  
23 go to first contact, which would, hopefully, would

1 be before they would -- would necessarily I guess  
2 be before they signed enrollment, an enrollment  
3 agreement. It was just eliminating what we believe  
4 to be a rather burdensome amount of re-disclosure  
5 of, re-issuing I should say, of the warning, now  
6 notification.

7 So, no, it wasn't, it wasn't predicated  
8 on any, the decision was not predicated on any  
9 examination of data regarding when it would be more  
10 efficacious to issue the warning.

11 MR. MADAIO: Okay. Thank you for that.

12 My comment would be, you know, I think  
13 that certainly students are in different mindsets  
14 when they're shopping around looking at many  
15 different schools than when they're sitting down,  
16 ready to sign up for the school. I think it's  
17 really important that a little redundancy never  
18 hurt anybody for a, again, now disclosure only rule.

19 That truly is what it's going to be, which  
20 obviously I don't agree with, but, you know, having  
21 disclosure only but then not doing disclosure very  
22 well really doesn't make any sense.

23 MR. RAMIREZ: Kirsten.

1 MS. KEEFE: This is Kirsten.

2 So, actually my question related, I was  
3 going to ask for a point of clarification on that  
4 providing the disclosure just at the first contact.

5 So, if I'm a prospective student, I go onto a  
6 website. And if I have more information I actually  
7 might be asked to put in my information and then  
8 somebody will contact me.

9 So this could be, you know, I could just  
10 be doing a regular web search about a bunch of  
11 schools. I'm not necessarily that serious about  
12 looking at this school. But I put in my email  
13 address for them to reach out to me to give me more  
14 information about the programs and the tuition.

15 Is that the first point of contact that  
16 then they would be sending me, you know, this  
17 disclosure?

18 MR. MARTIN: We've said in the past  
19 that, well, for what, what is first contact, that  
20 it's just seeking information about a school isn't,  
21 isn't a contact, you know, just seeking information  
22 about the school would be the first. We would view  
23 it as being the first positive contact --

1 PARTICIPANT: Active.

2 MR. MARTIN: -- active contact that the  
3 school has with the -- But I guess you're asking,  
4 you know, could the school if it wanted to bill  
5 that as being, having been the first contact. They  
6 emailed us and we sent this out, therefore we  
7 complied with the rule; right?

8 MS. KEEFE: Well, yes. I mean, I guess  
9 if it's not defined further, that literally is the  
10 first point of contact; right? If they're going  
11 to reach back out to me to give me information.

12 So, you know, I'll just sort of follow  
13 up and agree with what Chris said that that is not  
14 a meaningful time. I mean, I would encourage  
15 providing that no-longer-called-warning at that  
16 point in time because I think it's important for  
17 me to know that up front if I'm starting to look  
18 around.

19 But I would also agree that it is  
20 certainly not a meaningful time to necessarily  
21 provide me, or the most meaningful time to provide  
22 that information to me. Because I'm not totally  
23 serious about this program and looking at the

1 details. I'm just looking for general  
2 information.

3 I think you absolutely have to require  
4 it to be, you know, provided again, especially  
5 before you're going to sign the dotted line and  
6 get a bunch of money that you're going to spend  
7 the next 15 to 20 years paying off potentially,  
8 if we're allowing that level of amortization.

9 MR. RAMIREZ: Yes, go ahead, Jeff.

10 MR. ARTHUR: I would just expect that  
11 the Department will promote, you know, in many ways  
12 the information available on the scorecard, of  
13 which this would be one element. And that when  
14 somebody completes a FAFSA, I wouldn't be surprised  
15 if they wouldn't, in the response that they received  
16 that here's a link for information to do your  
17 research.

18 And that, you know, I think it's going  
19 to be a well-promoted consumer information  
20 resource.

21 PARTICIPANT: I think that's a good  
22 thing. It's certainly good to have. I think part  
23 of our feeling here though, you know, is that there

1 is a benefit to having a student receive an  
2 individual personal email, as opposed to here's  
3 a link, it's available. I think all that's  
4 fantastic. It should be available everywhere.  
5 But in our way of thinking thus far, we wouldn't  
6 see that as, as a substitute for an actual, an actual  
7 email or written correspondence to the student  
8 saying here is the notification.

9 MR. ARTHUR: Okay, Kirsten.

10 PARTICIPANT: Can I just add, to repeat  
11 a comment that I made I think the last time around.  
12 I also don't think email is the most meaningful  
13 way to provide disclosures, especially when you're  
14 talking about a lot of people not having access  
15 to a desktop computer and having to look on their  
16 iPhones.

17 So, you know, everybody here knows how  
18 bad it is to try to look at a disclosure. So, you  
19 know, I know it's not currently in the rule. I  
20 don't think we're in a position to, you know, add  
21 that requirement. But I would encourage schools  
22 to provide a paper copy as well to folks.

23 MR. MARTIN: I think that that's, your

1 point's well taken. But I think in some cases,  
2 especially with distance education that becomes  
3 very problematic. So, although I do agree  
4 something hand delivered to you is probably better  
5 than an email.

6 I also think in some cases there's --  
7 everybody wants people to internalize, look at  
8 disclosures. And there's always this, I think this  
9 is how can we get people who would normally ignore  
10 everything that they see to take account of  
11 something. And that's not always an easy place  
12 to go, you know.

13 How they can get someone to email it.

14 Yes, people ignore emails.

15 People ignore things that are handed  
16 to them in person as well. So I don't know that  
17 we can ever ensure that somebody will read every  
18 disclosure. And especially young people.

19 I shouldn't -- my daughter always tells  
20 me don't, don't blame young people; older people  
21 do the same thing. And that's probably true.

22 But, yeah, I take your point. But I  
23 don't know that we could go to an absolute

1 requirement for hand delivery only.

2 PARTICIPANT: So, have we got off a  
3 little bit of a tangent here? Because there is  
4 a whole paper on disclosures. Is that -- are we  
5 better off discussing that in the disclosure  
6 section?

7 MR. MARTIN: This is not really  
8 disclosure, this is notification. Providing of  
9 a notification, which is technically while it is  
10 a disclosure per se, I guess, it's technically  
11 different.

12 MR. RAMIREZ: Okay, so let me ask, let  
13 me put you on the spot. What would be a good  
14 notification? What form I guess would be a good  
15 notification?

16 PARTICIPANT: I think regardless of how  
17 you notify a student I think you have to acknowledge  
18 that they actually received it. So that's, you  
19 know, if an email is a way to do that and they  
20 acknowledge, somehow acknowledge that they  
21 received it and they viewed it, I wouldn't  
22 necessarily be opposed to that. But I think just  
23 sending them something in the mail, or placing a

1 phone call, not hearing anything back I don't think  
2 is sufficient.

3 So I think we have to acknowledge that  
4 the student received the notification for it to  
5 be, for it to be complete.

6 MR. RAMIREZ: Okay. So no silver  
7 bullet. Possible multiple ways of notifying. The  
8 key there being acknowledgment.

9 PARTICIPANT: Acknowledge the receipt,  
10 yes.

11 MR. RAMIREZ: I have Jen next.

12 PARTICIPANT: So I did want to echo --  
13 I had another reason for my card up -- but I did  
14 want to echo what Jeff said about this sort of  
15 comparable data issue because it is kind of a weird  
16 notice if every -- not every program, but if most  
17 programs in the U.S. have an issue, you know, it  
18 is a little bit of an odd notification. So it would  
19 be helpful to see that data to understand this a  
20 little bit better.

21 But I also did want to just clarify,  
22 Greg, something that you said. Even for the GE  
23 programs this is an expanded disclosure. I'm not

1       arguing about, you know, whether to do it or not,  
2       but I do want it clear it is definitely expanded  
3       because the metric is now 8, 12. You know, the  
4       benchmark changed because you only give warnings  
5       for fail, or the year prior to losing eligibility.

6               And so there definitely are, you know,  
7       an added number of programs in the mix. And then  
8       when you go to ten size -- you know, n size of ten,  
9       you're also expanding. So there is, I just want  
10      to be clear, this is a change even for GE programs.

11      I'm not arguing that it's a bad one, I'm just  
12      saying, you know, I just want it clear this is  
13      definitely expanded disclosure requirements for  
14      even the GE programs.

15             MR. MARTIN:    Yeah.    I'd take that  
16      point.

17             PARTICIPANT:   Okay.

18             MR. MARTIN:    But, yes, while it's the  
19      same thing being disclosed, the changes we've made  
20      --

21             PARTICIPANT:   It's more expansive.

22             MR. MARTIN:    -- do involve -- it's a  
23      little more expansive.

1           On the other hand, I just want to, you  
2 know, as a -- just to put out there again that,  
3 yes, we have done that. I think we made those a  
4 little more, perhaps a little more robust. On the  
5 other hand, we've removed, in these proposals we've  
6 removed the program sanctions, so.

7           PARTICIPANT: Right.

8           MR. MARTIN: So there is a, there was  
9 a feeling on our part that we wanted to make sure  
10 that moving to this disclosure-only environment  
11 that we, you know, ensured that -- and I don't want  
12 to say these aren't, again, technically  
13 disclosures, but these notifications are  
14 meaningful and that some context is placed around  
15 them.

16           So that regardless of where we go and,  
17 you know, certainly what the wording will be, all  
18 this stuff, all these different things are on the  
19 table for discussion. But, you know, they have  
20 to be meaningful, they have to be more than just  
21 here are some figures around which we'll put no  
22 context.

23           PARTICIPANT: So, I do have an

1 additional question this time. And I'm a little  
2 worried about bringing it up but I'm going to  
3 anyway.

4 So, Chad, and Chad's the one who got  
5 me thinking about it, his referencing with regard  
6 to transfer students. But it occurs to me we've  
7 talked a lot about their changing majors and lots  
8 of different programs, and students think about  
9 lots of different programs. And so when you talk  
10 about notifying the student about a program, what  
11 program?

12 I mean, so, you know, all students about  
13 all programs at the institutions that have the  
14 issue? Or the students that are in the program  
15 that have that? So I'm not clear. Ditto on  
16 prospective students by the way, because they might  
17 say I'm interested in the following three programs.

18 So, like I said, I'm still worried about  
19 bringing it up but I feel like better to bring it  
20 up now than not, you know.

21 MR. MARTIN: We see all these as issues  
22 for discussion. I think the way the world, the  
23 way the world is currently written it would be

1       whatever -- proposed rather, it would be whatever  
2       program the student's intending to enroll in, you  
3       know, whatever program that is. If that program  
4       required a notification, then that student has to  
5       receive that notification.

6               If the student were transferring from  
7       one program into another and that required  
8       notification, the way the rule's currently  
9       proposed, that would require a notification as  
10      well.

11             However, as we said before, we put that  
12      out there for comment or discussion.

13             MR. RAMIREZ: Okay, thank you. I have  
14      Whitney then Danny.

15             MS. BARKLEY-DENNEY: Sorry, I think  
16      this is a conspiracy.

17             Okay, so I have a couple of questions.

18             The first is, and this is just my own ignorance  
19      of procedure, but one of the things that concerns  
20      me about this is it seems like for the purposes  
21      of simplification we're actually moving away and  
22      creating a lot of gray spaces where there can be  
23      a lot of variation in behavior, even from people

1 whose intention is to do exactly what the Department  
2 wants. And I think that that's always bad; right?

3 Like we need, we need this to be clarified.

4 So, what is the proposed enforcement  
5 mechanism or how will the Department be -- if we  
6 were to pass this language, for example, today,  
7 if we were all to agree on it, which we're not going  
8 to -- but what would be the way the Department would  
9 ensure that this is properly enforced and being  
10 properly used?

11 PARTICIPANT: So, things like this get  
12 checked on program reviews. Things like this get  
13 spot checked when schools apply to expand their  
14 Title IV participation to add new programs or new  
15 campuses. And it might be something that gets  
16 looked at on an as-needed basis if there were any  
17 student complaints made. And it would be looked  
18 at sometimes if the institution -- when the  
19 institution is being recertified.

20 MS. BARKLEY-DENNEY: Thank you very  
21 much.

22 And then I just wanted to reiterate what  
23 both Kirsten and Chris said. You know, I think

1       that they were with regards to redundancy, that  
2       most social science research will probably show  
3       that redundancy is necessary to some level in order  
4       to help people understand and make them remember  
5       a disclosure. And so it actually, I think, what  
6       we've done here is the opposite of that. In trying  
7       to reduce the redundancy, what we've done is making  
8       it less likely that a borrower is actually going  
9       to see and retain something.

10               I think, you know, the general rule of  
11       thumb is like politics, because you have to hear  
12       a name seven times before you remember it.  
13       Certainly I'm not suggesting we have to say it seven  
14       times, but more than once seems to be reasonable.

15               MR. RAMIREZ: Let me get Dan and then  
16       Jordan.

17               MR. ELKINS: Yes. Anybody can answer  
18       this that might know.

19               Just to help kind of paint the picture  
20       for Ahmad, Ahmad and I, when does first contact  
21       usually happen? Is that with an admissions  
22       officer? When would we see that take place?  
23       What's kind of the definition for that?

1 PARTICIPANT: There's no --

2 MS. FOWLER: It could be a program that  
3 they were in in the 8th grade and came to campus.

4 MR. ELKINS: Okay.

5 MR. RAMIREZ: Okay, but that's not --  
6 Pamela, that, you're saying that could be the first  
7 contact. But you don't believe that that would  
8 be what's intended here?

9 MS. FOWLER: Absolutely not, no.

10 MR. RAMIREZ: Okay. Mike. Mike.

11 MS. FOWLER: We run a lot of summer  
12 programs for students in the 7th and 8th grade they  
13 come on campus and stay for six weeks. That's a  
14 first contact.

15 They go into our potential database for  
16 prospective students.

17 MS. ROSS: May I?

18 MR. RAMIREZ: So, Thelma.

19 MS. ROSS: Thelma Ross. Chris, let's  
20 start with orientation maybe. If we're talking  
21 about a student that is contemplating coming to  
22 your -- to a campus, orientation could be a first  
23 point of real contact. It could be an open house.

1       And I'm just using these. It could be an open  
2 house; right?

3               It could, it could be a tour of some  
4 sort; right? It could. And so I think that there  
5 has to be something other than the broad first  
6 contact that we have here. But I'm not how -- I'm  
7 not sure how prescriptive we want it to be.

8               So, someone mentioned something earlier  
9 about being careful of what you asked for. So I'm  
10 just not sure how prescriptive I would want the  
11 Department to be on that. But I also wanted to  
12 be realistic for the student.

13               So if the student came to my campus or  
14 one of our campuses and said at orientation this  
15 is what I'm looking at, if that is a program that  
16 we know falls into this category, then that student  
17 then would have the opportunity to have that type  
18 of information about that program.

19               PARTICIPANT: During the orientation  
20 process; right?

21               MS. ROSS: Yes.

22               PARTICIPANT: Couldn't we just solve  
23 this by defining it "at application"? Would that

1 just solve it for everyone, including the consumer  
2 folks, that at the point of application the  
3 institution would have to notify. If you want it  
4 later, we can have that discussion.

5 You don't like that? Okay.

6 PARTICIPANT: Have you ever signed a  
7 mortgage? I mean, they give you a million pieces  
8 of paper. You're already committed at that point  
9 when you sign.

10 PARTICIPANT: Can I offer one?

11 MR. RAMIREZ: Just one second. Could  
12 you repeat that? I don't think I heard it.

13 PARTICIPANT: Sure. And it's no, it's  
14 not going to deter -- it's not going to make anyone  
15 think twice. It might make my wife think twice,  
16 but a lot of other people, no.

17 MR. RAMIREZ: Sandy, you had something  
18 on that?

19 MS. SARGE: Yeah. I'm wondering if I  
20 think when -- there's a time when it goes from I'm  
21 gathering information, I want to take a tour but  
22 I haven't made any decisions, to when I'm really  
23 starting to narrow down my choices. And maybe that

1 is at the point -- and, my financial aid people,  
2 forgive me in advance -- but maybe it's once there  
3 has been a discussion with the student that they  
4 want to meet with financial aid and now start to  
5 get some real information about it. Not that they  
6 would be the ones providing that information, but  
7 the rep or somebody would.

8 But at that point you're at least  
9 serious enough to start talking about the money  
10 but you're not yet necessarily committed. And  
11 every school does it differently, Chris. Some you  
12 do an application just so we have information.  
13 And then there's a long process and then you enroll.

14 And then there's people you meet, and  
15 you do a lot of stuff, and then you do an application  
16 when you're really serious.

17 So it's really going to be very --  
18 there's going to be a million different  
19 possibilities. So I'm wondering when is the point  
20 from a student's perspective that you're starting  
21 to narrow it down? And maybe that's what we need  
22 is when do you guys think your constituency would  
23 --

1 PARTICIPANT: Paying an enrollment  
2 deposit.

3 MS. SARGE: Yeah, maybe it's something  
4 like that, an enrollment deposit or something like  
5 that. You know, we need some feedback from your  
6 side, too. And maybe Ahmad's got some ideas.

7 MR. RAMIREZ: I saw a few tents pop up  
8 in response to Sandy's comment. I saw Thelma,  
9 Kelly, and Pam.

10 Did you have a response to -- Okay.  
11 All right, so let me get Thelma first and then Kelly.

12 MS. ROSS: Kelly was first. Go ahead.

13 MR. RAMIREZ: Okay. Go ahead, Kelly.

14 MS. MORRISSEY: Well, I just wanted to  
15 point out, at the time of having a financial aid  
16 conversation is really not appropriate. At many  
17 colleges the percentage of financial aid recipients  
18 would not be representative of all prospective  
19 students. So you're not really capturing all of  
20 your prospective students.

21 But I also think at the time of  
22 application may make sense before they make a  
23 financial commitment of any type, including an

1 application fee, which in some cases that's the  
2 point at which they're making a serious decision.

3 MR. RAMIREZ: Okay. Thelma then Pam.

4 MS. ROSS: And this is just going to  
5 be I concur.

6 MR. RAMIREZ: Okay, thank you.

7 MS. ROSS: Yeah. I don't need to  
8 restate it.

9 MR. RAMIREZ: Thank you.

10 MS. FOWLER: I concur as well. I get  
11 125,000 FAFSA's and over 60,000 applications for  
12 admission for a class of 6,000 every year. I don't  
13 talk to one-tenth of 1 percent of those people.

14 MR. RAMIREZ: Okay. All right.  
15 Danny, did you have any additional perspective,  
16 based on what you just heard?

17 MR. ELKINS: Yeah, I'll respond in just  
18 a second.

19 MR. RAMIREZ: Okay. All right, then  
20 pop it up when you're ready. I'll go on to the  
21 next person.

22 All right. So, Jordan.

23 MR. MATSUDAIRA: I wanted to echo

1 something that Jeff was bringing up earlier, just  
2 about using some of the other tools that we have.

3 And I'm just curious to hear the Department's  
4 perspective about -- and I guess I want to make  
5 the proposal that we consider in addition to the  
6 kind of notification and disclosure architecture  
7 that's proposed in the rule that we also -- that  
8 the Department take on a little bit more  
9 responsibility to put some of this information out  
10 there.

11 And it could do that, and it could do  
12 it in a way that would facilitate the kind of  
13 comparative information that Jeff was talking about  
14 by incorporating the data into the scorecard, by  
15 having that data automatically linked into the  
16 FAFSA on the web. A server where students go and  
17 list a number of schools that they're considering  
18 attending, and sending their financial aid  
19 information to.

20 So there's a lot the Department could  
21 do to push that information out, and push it out  
22 in a way that helps to give context for students.

23 And I think, you know, especially again in this

1 kind of disclosure regime that kind of information  
2 is really crucial for students to make the choice,  
3 and it could be presented in a standardized way.

4 The Department could put together all  
5 the disclosure kind of information and have  
6 templates that are automatically linked to, you  
7 know, hosted on the scorecard or whatever website  
8 you want. And that, you know, could also help  
9 reduce some of the burden on the institution's part  
10 in kind of populating these kinds of fields.

11 So, so I'd like to, you know, propose  
12 that the Department do more of that.

13 And also just wanted to ask, you know,  
14 I noticed that it might be a minor point, but there's  
15 a item here that's deleted about the Secretary doing  
16 consumer testing about how to make the information  
17 meaningful. I'm not going to be able to find it  
18 on the fly. But, you know, I would encourage the  
19 Department to, you know, think about how to make  
20 the disclosures meaningful.

21 MR. RAMIREZ: Greg, did you have a  
22 response to that or?

23 MR. MARTIN: We'll certainly, we'll

1       certainly -- I mean those suggestions about the  
2       Department being more practically involved with  
3       the disclosure process, we have considered those  
4       things in the past and there is no reason why we  
5       can't go back and revisit that.

6               With regard to consumer testing, we'll  
7       certainly consider that. I don't -- in this one  
8       we didn't, the obligating us to do consumer testing  
9       every year, there are budgetary constraints  
10      involved with that. But we'll definitely take that  
11      back.

12             I also want to bring everybody's  
13      attention to as we're considering, we've heard many  
14      discussions here about when this should be done,  
15      at application or whatever. But it's language that  
16      we struck out in these proposed rules. But those  
17      of you who are concerned about, you know, when  
18      students receive this, and at what point in the  
19      process they are, at the bottom of page 5 we're  
20      talking about the special warning requirements that  
21      are struck in this language.

22             But you can see that before enrolling  
23      a prospective student, before an institution

1 enrolls, registers, or enters into a financial  
2 commitment with a prospective student with respect  
3 to the program they have to provide the warning.

4           So I just would ask you to consider --  
5 I'm not saying this would be the way it would be  
6 -- but for those who are concerned about it being,  
7 about the warning -- I'm sorry, notification being  
8 issued closer to when the student makes a more real  
9 commitment to the school, I would posit that this  
10 language here is probably more specific than  
11 something about applications, because  
12 applications, you know, who knows whether you make  
13 an application to the school, who knows whether  
14 I'll go or not.

15           When I actually am talking about a  
16 financial commitment, that I would argue is  
17 certainly a firmer, a firmer deal. And if we  
18 continue looking at that language that was struck,  
19 they have to provide this -- they would not, under  
20 this former language would not enroll or register  
21 a prospective student earlier than three days after  
22 the institution provided the warning to the  
23 prospective student.

1           So if you, if people wanted to go back  
2 to it, have those kind of protections, I think  
3 consider that language there and see if that would  
4 not -- that wouldn't address your concerns.

5           MR. RAMIREZ: Dan, do you have a quick  
6 response on that?

7           MR. ELKINS: Daniel. Is it possible  
8 to do a consensus on bringing this back?

9           MR. RAMIREZ: Sure. Are you talking  
10 about keeping the first contact language the way  
11 it is but adding those two provisions in there?

12           Okay, Mark, go ahead.

13           MR. MCKENZIE: So, to Greg and the  
14 Department, I'd actually like to follow up on  
15 Jordan's comments because I think the Department  
16 is actually making a value judgment by making the  
17 debt-to-earnings the only metric in the entire  
18 higher education hemisphere that we're actually  
19 personally giving to every single prospective  
20 student.

21           And so, from my perspective, I believe  
22 prospective students are very interested in  
23 completion rates. And I'm in a borough where I

1 have two institutions that have below 3 percent  
2 completion rates, and no one is warning the students  
3 about that.

4 So, to Jordan's point, I actually think  
5 the Department would be setting a precedent on value  
6 that is maybe not appropriate. And I think we're  
7 already seeing this in higher ed. And so I'd ask  
8 you just to think about that and think about  
9 holistically what do students really want to know.

10 And I'll end with that.

11 PARTICIPANT: I just wanted to express  
12 support for what Jordan is saying with the  
13 scorecard, too. I think actually putting this  
14 information on the scorecard would reach a larger  
15 amount of students and parents and guidance  
16 counselors.

17 At my school we're finding that students  
18 are not making that first contact with our college  
19 until much later in the process because they don't  
20 want to do it with any of us because they're going  
21 to get all of our emails and our direct mails.  
22 And I think we should take that into consideration:  
23 if it's in a public space I think more students

1 will have this information.

2 MR. RAMIREZ: Okay. So, Daniel, I'm  
3 hearing different, two different approaches there.

4 Is that, is that correct?

5 MR. ELKINS: Mine is just more of a  
6 question of really asking the Department to rethink  
7 the information that is relevant to prospective  
8 students. It's a second issue of the form and  
9 timing of when they receive it.

10 So I'm a little more interested in the  
11 prior rather than the latter.

12 MR. RAMIREZ: So restate then what it  
13 is that you would like to thumb?

14 MR. ELKINS: I would like to thumb  
15 bringing back the crossed-out paragraph on the end  
16 of page 5 as a time of when to notify, with no  
17 expectation on how expansive those potential  
18 disclosures would be to Mark's point.

19 So it's just the timing.

20 MR. RAMIREZ: And the strike-outs that  
21 you're talking out are B and B(1); right?

22 PARTICIPANT: B.

23 PARTICIPANT: I think B(2).

1 PARTICIPANT: Very bottom of page five,  
2 Javier, Roman at (ii).

3 PARTICIPANT: Roman at (ii).

4 MR. MARTIN: Yeah, but I'll just  
5 clarify that. It would be D Roman at (ii); right?

6 PARTICIPANT: Right.

7 MR. MARTIN: Under where it says  
8 "special warning requirements."

9 MR. RAMIREZ: Okay.

10 PARTICIPANT: That is correct.

11 MR. MARTIN: The bottom of page 5 and  
12 then moving on to the top of page 6.

13 Steve and I also wanted to just, if we  
14 make this, I think it's a good idea to do this,  
15 but just to have you consider if, if, just  
16 hypothetically, if this language were reinstated  
17 could it be traded for the first contact?

18 Would the first contact be, just to  
19 consider, would the first contact be necessary if  
20 you reinstated this language which would require,  
21 remember, would require that they cannot enroll,  
22 register, enter into financial commitment with the  
23 prospective student any earlier than three business

1 days after the institution first provided the  
2 warning to the prospective student.

3 So that would tie it, that would bring  
4 it in pretty close.

5 And then the language below that, have  
6 it if more than 30 days have passed the, yeah, passed  
7 from the date the institution first provided the  
8 student warning to the prospective student, three  
9 business days after the institution provides  
10 another warning to the student.

11 So would that, would that obviate the  
12 need for first contact?

13 PARTICIPANT: So, in reference to this  
14 particular temperature check, I don't want to add  
15 in, you know, saying that there's not going to be  
16 duplication. I just want to at least have -- see  
17 if everyone can agree on this will be a touch point.

18 You know, a funny military analogy, you know, you  
19 tell them once, tell them what you told them, you  
20 know, and then tell them again.

21 You know, on our MRE, you know, in the  
22 packet to warm up the food it says "lean against  
23 a rock or something," because someone at some point

1       said, "Well, there's no rocks around. And since  
2       sergeant said --" Well, just lean it up against  
3       something.

4                So I think that, you know, multiple  
5       avenues are good. But for this particular  
6       temperature check I'm just talking about this one  
7       in isolation.

8                PARTICIPANT: And, actually, I would  
9       just say I think first contact is untenable for  
10      most public institutions. Most highly-selective  
11      institutions it's going to be an untenable phrase.  
12      You'd have to -- I'm sympathetic to Johnson's  
13      concerns to be effective that that language I think  
14      is apt to be untenable.

15              PARTICIPANT: So the question then is  
16      just Roman at (ii).

17              Let's see a show of thumbs if you would  
18      be agreeable to reinstating that strike-out. No,  
19      just solo, just by itself.

20              PARTICIPANT: Instead of?

21              PARTICIPANT: No, just that would be  
22      a next step that we would approach "instead of."  
23      This is just reinstating Roman at (ii).

1 (Show of thumbs.)

2 PARTICIPANT: So, I don't see any  
3 thumbs down on that. So that looks like there's  
4 some consensus around there, yeah.

5 So, so but do we want to roll on with  
6 that and have that discussion that instead of first  
7 contact, the possibility of including -- would it  
8 be the next two or three paragraphs, Greg?

9 PARTICIPANT: Would it, potentially  
10 could you do something along the lines where it  
11 would say at first contact or but no later than  
12 at this point? You know, something like that where  
13 you would -- you're going to make best efforts  
14 basically at -- we're trying to say as early as  
15 possible let them know, but absolutely it's got  
16 to be before they make, they step into any financial  
17 obligation with the school; right?

18 And so potentially maybe instead of  
19 narrowing it down so much, we make it where there  
20 is sort of a minimum bar, a low-end bar. But because  
21 I think there will be a lot of schools that will  
22 attempt to do it the first time they speak to them.

23 PARTICIPANT: I'll just point out to

1 clarify before you think -- when you think about  
2 this what you just talked about with respect to  
3 D Roman at (ii) there. What this does, what it,  
4 what the language forces is, it pulls the, it pulls  
5 the notification tightly to when the financial  
6 contract is entered into.

7 What it would not do is it would not  
8 permit you to give this, to give the warning or  
9 notification a lot earlier than you enter into the  
10 contract; right? So if you read what it says there,  
11 An institution may not enroll, register, or enter  
12 into a financial contact -- contract rather, with  
13 a prospective student with respect to the program  
14 any earlier than three days after the institution  
15 first provides the warning to the student.

16 But it doesn't stop, but it doesn't  
17 preclude additional early notification.

18 And then we have down there if more than  
19 30 days have passed from the date they first  
20 provided. So it, it keeps the, it keeps the time  
21 frame tight, you know. So I just want to point  
22 that out that that --

23 MR. RAMIREZ: So it may be redundant.

1       It may be redundant by adding the first contact  
2       if those additional paragraphs are added.

3               PARTICIPANT:     Well, I don't know.  
4       Yeah, it could be. You know, some people, you could  
5       argue that redundancy is not a bad thing. So, you  
6       know, you have to do it at first contact.

7               I do take what was pointed out about  
8       the fact that with bringing into play more  
9       traditional 4-year colleges, that type of thing,  
10       all these programs, the first, the first contact  
11       thing does become a little more dicey as to what,  
12       what that means, you know. So that that becomes  
13       very difficult. I think that is an issue.

14              MR. RAMIREZ:     Dan, did you have any  
15       additional perspectives on this based on what  
16       you've been hearing?

17              MR. ELKINS:     Yeah. I was, I was a  
18       public university student, so I can give my  
19       perspective.

20              I think that when I've requested formal  
21       information on a program or just about the  
22       university that I was looking at, the University  
23       of Michigan, I think that is an okay time for, as

1 far as first contact, or possibly even going to  
2 visit that university, if you do, do a visit with  
3 them and they can provide it when they give you  
4 a packet of information that they send you home  
5 with. I think that's fine for first contact.

6 I do think that it's important that they  
7 see it again when they finally have some kind of  
8 a financial obligation or they're committing to  
9 the university financially and they sign an  
10 enrollment contract. I think they need to see it  
11 again. So I would recommend that, that it is --  
12 that the student receives it two times at least.

13 MR. RAMIREZ: Okay. So that would be  
14 very similar to the language that Sandy was just  
15 talking about?

16 MR. ELKINS: Yeah.

17 MR. RAMIREZ: Okay. Ahmad, do you have  
18 a thought on that?

19 MR. SHAWWAL: Ahmad Shawwal. I am also  
20 very sympathetic to Johnson's concerns about  
21 redundancy. I think it's -- before I say that,  
22 somebody mentioned the FAP side. I feel like that  
23 would be a little -- if you look at a college

1 application timeline that might be a little bit  
2 too late, because by that time students have already  
3 applied to certain colleges.

4 And I feel like just notifying students  
5 after they have already applied and received their  
6 decisions is a little bit too late in the process,  
7 because by then you already have a limited set of  
8 choices of where you want to go. And, you know,  
9 possibly those schools may not have the type of  
10 disclosure that you're looking for.

11 I do agree with Chris and some other  
12 people around this table that if we could do this  
13 possibly in a way that students are notified maybe  
14 A) when they first apply to the institution, this  
15 would be through the common after whatever system  
16 when requesting an application; and then also again  
17 before they enter into an official financial  
18 agreement or enroll into that institution.

19 I think that's not too much to ask.  
20 That way students get that information beforehand.

21 And also before they're legally, you know, in some  
22 sort of a contract.

23 So that's all I have to say.

1 MR. RAMIREZ: Okay. Laura.

2 MS. METUNE: I feel like I've kind of  
3 lost the thread a little bit here. I did have a  
4 very specific question, and maybe I'll go to that  
5 first.

6 When we talk about the alternative  
7 languages, if the instruction is provided in  
8 something other than English does the disclosure  
9 have to be provided in that language?

10 MR. MARTIN: First of all, again, we're  
11 not talking about disclosures. These are  
12 notifications.

13 MS. METUNE: Okay, yeah.

14 MR. MARTIN: So I want to draw --

15 MS. METUNE: Sure, sure.

16 MR. MARTIN: -- a separation there.

17 The rule doesn't require, it doesn't  
18 come right out and say that, you know, absolutely  
19 every, every disclosure has to be in every language  
20 students, students might be fluent in.

21 What the, I think what the intent of  
22 it was was, you know, for instance if the school  
23 was enrolling a lot of students into a program whose

1 first language was Spanish, that those disclos --  
2 those notifications, now currently warnings, be  
3 provided in the, to the extent practicable, which  
4 is certainly very practicable to translate  
5 something in Spanish.

6 So I think that's why we put that  
7 language in there, not to have a hard and fast  
8 requirement that if somebody is coming from a part  
9 of the world where maybe it's not even a language,  
10 that the language they speak is a dialect of some  
11 other language, that it would be necessary to find  
12 somebody to translate that into that, into that  
13 student's dialect. That's not what we intended.

14 I think we wanted it to be something that was,  
15 you know, just to send a sense that we thought that  
16 where it was possible, or practical to do so, that  
17 the language of the student, if English is not his  
18 or her first language, should be taken into account  
19 with the warning.

20 But it's not, again, the way it's  
21 written a hard and fast requirement for a  
22 translation in every language.

23 MS. METUNE: So I might, I might just

1 encourage the Department to consider in California  
2 I remember that we had a couple of programs, they  
3 were beauty schools, where they were Title IV  
4 eligible, and the instruction was provided in one  
5 case in Mandarin, and in another case in Spanish.

6 And so it does seem that if the school is T-IV  
7 eligible, this is the language the students speak,  
8 and that's the language that instruction would be  
9 in, maybe we should make sure the notification is  
10 also in that language.

11 MR. MARTIN: That sounds reasonable.

12 MS. METUNE: And then the other thing  
13 I was -- I mean, I don't know, maybe this should  
14 come later, but since I have the mike I'll make  
15 it now.

16 This conversation about when you  
17 provide this information to a student I think has  
18 identified all of the challenges. We're trying  
19 to get the information to a student in a way that  
20 actually influences a change in their behavior.  
21 You know we right now email our students to let  
22 them know when they've been accepted and to tell  
23 them when the enrollment periods are. And we get

1 very few responses to those emails. Not a good  
2 way to do that.

3 We struggle with the capacity to do  
4 individual engagement with our students, helping  
5 them facilitate other programs they might be  
6 eligible for. We just don't have staffing in our  
7 institutions to be able to do that in a meaningful  
8 way.

9 The timing is so complicated when we  
10 have students coming to our campus, open access  
11 institutions, and enrolling the same day that they  
12 show up on campus. And we want to continue to offer  
13 that opportunity to students.

14 So, I mean all of those things really  
15 get me to point that it's not enough. If we really  
16 think that giving this information to a student  
17 is going to change institutional behavior, it  
18 won't.

19 And I think that even the department  
20 seems to recognize that, too, when you include a  
21 disclosure that says that institutions will have  
22 to disclose whether or not they intend to even make  
23 any changes to correct a failing program.

1           So that really gets me to the point that  
2           there does need to be meaningful sanctions  
3           associated with low performance. I know we're  
4           going to talk about that a little bit later when  
5           we get to that strike-out section. But I just  
6           thought I'd make those comments now.

7           And then I thought I would just ask the  
8           department, that yesterday you mentioned that there  
9           are other enforcement tools at your disposal, so  
10          can you just kind of walk me through what that would  
11          look like? You have an institution who's got  
12          several low-performing programs. They're  
13          providing these notifications. They've made it  
14          clear they have no intent to change their programs.

15          What would the department do in that case? How  
16          would we protect students?

17                 PARTICIPANT: I guess I'll take that  
18          one, barring other volunteers.

19          So there's a range of protections that  
20          can be done. First, there's just something that's  
21          kind of transparent to an institution, the  
22          department staff can have increased oversight on  
23          it. That sometimes happens in responses to the

1 complaints, there will be some checking done that  
2 may not even reach out to the institutions if some  
3 of the initial reviews don't turn up anything that  
4 warrants follow-up.

5           When you start talking about the funding  
6 from the institution, institutions that are in  
7 marginal financial condition can be put on  
8 providing heightened notice to the department of  
9 certain events that may suggest they're in greater  
10 financial peril. There's a lot of financial  
11 oversight monitoring. There's a lot of attention  
12 paid to the annual audited financial statement  
13 submissions and the annual compliance audits that  
14 come in for institutions to see if there's trends  
15 of problems. There's follow up work needed on  
16 certain areas if there's patterns of problems.

17           The Inspector General will sometimes  
18 do audits and coordinate some of that information  
19 with federal student aid staff.

20           When the department, and these are  
21 things I mentioned earlier, when the Department's  
22 looking at applications from an institution to  
23 expand its participation by adding programs or

1 adding locations there will be some additional  
2 oversight done then.

3 One of the first steps that can actually  
4 trigger additional work on behalf of the  
5 institution is institutions can receive a  
6 notification from the department saying they've  
7 got to obtain approval. If they're fully  
8 certified, they have to get advance approval before  
9 funding Title IV aid to students at a new location,  
10 in a new program. And that approval may or may  
11 not be granted, you know, depending on the problems  
12 that are identified there.

13 Institutions that are being watched  
14 more closely may have further restrictions placed  
15 on their funding, so they have to do heightened  
16 cash monitoring. One, where they provide monthly  
17 reporting to the department of the aid that's going  
18 to be drawn down, and the students for whom that  
19 aid is being drawn down. Or a more restrictive  
20 form, heightened cash monitoring.

21 Two, there is no three, but two, where  
22 the documents have to be reviewed by the Department  
23 before the funding is approved.

1           Other than that, then you get into  
2 actual sanctions where you, you seek to limit the  
3 institution's ability to enroll new students. And  
4 that's a restriction that can also be imposed  
5 through the new certification if there's a problem.

6           Can also be a condition that's  
7 temporarily required after a change of ownership,  
8 if the new owners are not -- don't have the  
9 demonstrated history of running Title IV programs  
10 successfully.

11           Now, and then you go into the more  
12 traditional things everyone thinks about, which  
13 is removing a program's eligibility or  
14 institution's eligibility.

15           MS. METUNE: Let me ask it just a  
16 slightly different way, which is when I read this,  
17 what I take from this is that the department doesn't  
18 really have an expectation or a bright line standard  
19 of what a student's earnings should be as compared  
20 to their debt. And that maybe there's some buy-in  
21 that a student should know this information when  
22 they're enrolling but the department doesn't really  
23 care. There's not really anything, any sanction

1 here associated with a college that produces lots  
2 of graduates with high levels of debt who are unable  
3 to pay back their loans.

4 So, when I ask about what are the other  
5 actions that the department may take, I mean that  
6 in the context of is the department going to care  
7 if students are unable to take -- are taking on  
8 more debt than they can ultimately pay back, if  
9 their debt-to-earnings ratios are so out of whack?

10 And if so, what -- as an institutional  
11 representative what I'd like in the current rule  
12 -- and I agree there are some things that can be  
13 improved -- is that I know what the expectations  
14 are of me. What this seems to set up is sort of  
15 this fuzzy area of maybe this isn't compliance,  
16 but really all we're doing is telling students,  
17 and you could even tell students you intend to make  
18 some changes.

19 So I'm just having a hard time figuring  
20 out what as an institution I am expected to do,  
21 and then what the -- what might happen by the  
22 department if I don't do any of the things to change  
23 my program?

1                   PARTICIPANT: So the proposal right now  
2 is an underperforming benchmark program or whatever  
3 language comes up to describe that. That's not  
4 a cause for it to lose eligibility in and of itself,  
5 it's something that we think students should take  
6 into consideration when they're making decisions  
7 about programs. Ideally they will have access to  
8 look at whether comparable programs offered by  
9 other institutions have similar outcomes, have  
10 better outcomes.

11                   It could be that they may find -- it  
12 could be that a program is only preparing students  
13 to go into earnings at a certain level, in which  
14 case it may be very important as to the relevant  
15 cost of that program, because that's going to have  
16 a whole lot to do with how much educational debt  
17 they're going to be able to repay, you know, over  
18 the expected period. It's a factor.

19                   But the department is going to look at  
20 it to see if it's also a factor for an institution  
21 that's distressed and is having other compliance  
22 problems. This in itself is not a compliance  
23 problem. We're taking the idea here that there

1       could be some very successful programs that put  
2       highly motivated students into fields there they're  
3       not earning a lot of money. Right? We've heard  
4       that at multiple sessions when we've negotiated  
5       this issue in years past. And that's, that's a  
6       real thing.

7               The first gainful employment  
8       regulations had a repayment rate exception that  
9       would have said, in spite of a horrible  
10      debt-to-earnings ratio, if a program had a very  
11      high repayment rate it would have been okay, it  
12      would have passed. Now that, that standard, that  
13      threshold was not adequately explained in the rule  
14      and so it was struck. And that's why it's not in  
15      the current gainful employment regulations.

16              But there, you know, there is some room  
17      here to look and see that there can be successful  
18      programs that have high debt-to-earnings rates.  
19      But it's also something we're going to look at to  
20      see if it's a signal of other problems with the  
21      institution.

22              MR. RAMIREZ: All right. So, we have  
23      a few more people in the queue here. Let's see

1 if we get through them before we take a break.

2 We have Johnson, Chad, Todd, Tony,  
3 Ahmed, and Jen. So, Johnson.

4 MR. TYLER: Hi. Johnson. So I just  
5 have to say I feel like we're doing a lot here by  
6 including the non-profits. Ahmad has reminded me,  
7 when you apply to college to a non-profit  
8 institution where you're receiving four years,  
9 you're applying to lots of schools. And I think  
10 gainful employment was, you know, to go back,  
11 gainful employment was brought up to deal with trade  
12 schools and the things that grew out of that.

13 And I feel like, you know, my, my clients  
14 apply to one school. It's the school that they  
15 heard about. It's the school that solicited them.

16 It's the school that the neighbor's sister went  
17 to and had a good experience with. It is not --  
18 and they're going to a trade. This is not I want  
19 to be a welder, I want to be a beautician, I want  
20 to do that sort of stuff.

21 I think all these interests are really  
22 going to make it difficult to create a rule that  
23 is designed to do a disclosure statement that makes

1 people informed about what they're going to do in  
2 terms of making decisions.

3 And I really think the problem that we  
4 were here to address had to do with gainful  
5 employment with respect to the non-degree granting  
6 schools. And I feel like we need to go back to  
7 that. That is the issue that we could tackle.

8 If we're going to try to fix all of  
9 education and try to have everyone make better  
10 decisions about this, I think it's a hard thing  
11 to do in a regulation with this many different  
12 interests.

13 MR. RAMIREZ: Thank you. Chad.

14 MR. MUNTZ: Thank you. Chad Muntz.

15 Thanks, Johnson. I think that pretty  
16 much said it. We have two different sectors going  
17 on here. And, again, I remind everyone we are  
18 admitted into a university, not a program, and all  
19 the conversation that I've heard is, is the  
20 institution doing something, not is the program?

21 So, is the institution the bad actor, not the  
22 program? But our metric is at the program level  
23 in this case.

1           And so when I look at disclosures, which  
2 I think are important, I think the college scorecard  
3 is a great opportunity to put these there. That's  
4 where students are looking first. That's what  
5 we've trained them to do.

6           But if we have 100 different programs  
7 and we have to disclose the debt-to-earning ratio  
8 for every single one of them, that's going to be  
9 a couple pages like this, and then acknowledge that  
10 they're receipt -- received by the student, either  
11 by email or by mail, some of our institutions that's  
12 like notifying a small city that they know that  
13 their water is going to be shut off, and verifying  
14 that everything is going to become debt.

15           The other conversations I've heard is  
16 along the lines of, like, a mortgage or a car.  
17 Well, that's a lot of one-on-one attention for a  
18 couple of hours as you go through all that paperwork  
19 to get those, every single disclosure, know all  
20 the schedules, understand every little piece of  
21 this. That's the kind of oversight that I think  
22 is what is asked for. And I think we can provide  
23 that level of information. But to have it hand

1 fed to 100,000 applicants is a lot to ask for, for  
2 one institution to verify.

3 And so I just, I throw that out there  
4 to think about how much do we want to disclose and  
5 inform people versus how much do we want to  
6 acknowledge and ensure, almost kind of a parental  
7 role here, to make sure that they actually did read  
8 it. And I understand the difference in sectors  
9 of which students are looking at. And I understand  
10 there might be different kinds of disclosure for  
11 different segments.

12 But this one-size-fits-all, I think  
13 Johnson said it perfectly, creates different  
14 burdens for different segments than might have been  
15 intended.

16 MR. RAMIREZ: Thank you. We have Todd,  
17 Jen, Jessica.

18 MR. TODD JONES: Well, obviously I'm  
19 going to echo Johnson's comments, you know, on the  
20 problems that are arising here. And I'm going to  
21 give you just a couple of nice, ripe examples to  
22 look at in this section, two different parts of  
23 it that are creating that problem that if you don't

1 change it, you know, the number of public comments  
2 you're going to get, the number of letters talking  
3 about the ridiculous practical application of some  
4 of these ideas is going to fall.

5 Let's start with the concept of first  
6 contact. In the state of Ohio last year, 68,365  
7 high school students took college classes. In  
8 baccalaureate classes, if you have a failing  
9 program -- most, most baccalaureate programs will  
10 have a common core for the first and second year.

11 It may not be a common core of classes but types  
12 of classes.

13 And so if you have a single program  
14 identified for a given year under that  
15 baccalaureate program, everyone who is taking that,  
16 think of it as a base, is theoretically a potential  
17 participant in the upper level program. There are  
18 some institutions which do not permit one to  
19 designate which program you are going into until  
20 your sophomore or even end of your sophomore year.

21 Well, obviously that's going to hit a  
22 lot of people, and meaning the whole of the  
23 institution is going to end up giving this notice

1 related to that program in a problematic way.

2 But let's back up to the high school  
3 problem. So, out of these 68,000 students who last  
4 year in the state of Ohio took a college class,  
5 for any of those who go to an institution that's  
6 noted here the notice would have to be provided.

7 Did you know, 1 percent of those, roughly 1  
8 percent, it's under, but it's roughly ,were 7th  
9 and 8th graders? Yet, if we set it up as a system  
10 where first notice is the notice because you're  
11 in contact, you're actually talking four, five,  
12 or more years until that student is actually  
13 enrolled.

14 Well, what a colossal waste of time at  
15 the 7th grade year and for having any effect when  
16 that student is actually reaching an age where these  
17 decisions need to be made because this is entrance  
18 into a program for those who are participating.

19 Let's take a small step further. Let's  
20 talk about the issue of contact. That's 68,000  
21 students who enroll. Of those, there are a whole  
22 host more that actually have first contact with  
23 collegiate participation. So, literally the

1 numbers are going to rise into several hundred  
2 thousand because there's a lot of students who  
3 receive contact from institutions about particular  
4 programs who don't ultimately enroll in those  
5 programs.

6 Now that's, that's a theoretical  
7 universe. Let's say it's only a small portion of  
8 the 68,000 are at such institutions, but they look  
9 at multiple institutions. Or, if you're shrinking  
10 the couple hundred thousand down to just tens of  
11 thousands, we're talking tens of thousands of high  
12 school students. And is the first thing we want  
13 to do as a matter of policy in this country to  
14 encourage distribution of material which on their  
15 face cause concern about whether to go to college?

16 I mean, one of the problems we have is  
17 convincing people, particularly in states like  
18 mine, that going to college is a good thing anymore.

19 There's still great welding jobs out there, and  
20 you don't have to have a college degree, you don't  
21 need extra education. We can have that separate  
22 debate. But is that what we want? Do we want to  
23 buttress that idea by flashing warnings in front

1 of parents of kids who are 13, 14, and 15 years  
2 old?

3 I mean, there's going to need to be more  
4 sophistication in what the cut line here is and  
5 how you're going to go about it. And what this  
6 means, and I guess it's a matter of the department  
7 chose to go down the rabbit hole of adding  
8 baccalaureate degree and masters and doctoral  
9 programs. And this is one of the implications of  
10 having chosen to do that.

11 Let me take you down a second hole.  
12 And that has to do with the transfer language.

13 MR. RAMIREZ: And the last one?

14 MR. TODD JONES: What's that?

15 MR. RAMIREZ: And the last one?

16 MR. TODD JONES: Well, look, I waited  
17 a half hour for a chance.

18 (Laughter.)

19 MR. TODD JONES: I didn't get a chance.  
20 Everyone else was added on.

21 MR. RAMIREZ: All right. All right,  
22 go ahead.

23 MR. TODD JONES: Go back to page 3,

1 talking about the issue of transfer, notifying  
2 students about transfer of program classes. In  
3 masters and doctoral programs you have an increase  
4 in the number of programs or classes that are  
5 individually tailored to students. So if you're  
6 in a masters program and it has a form of independent  
7 study, or you're in a doctoral program, or it has  
8 a cross-disciplinary piece of study, really if you  
9 have any program that is triggered at the master  
10 or doctoral level the process of going through and  
11 sorting that for that masters or doctoral program  
12 is going to be a complete mess.

13 And every institution is going to have  
14 to review it every single time and go through  
15 literally individual transcripts and individual  
16 curriculum agree -- research agreements between  
17 professors and students because that's what the  
18 class is.

19 And if you want to talk about the  
20 transferability of an independent study program  
21 to another program, you're going to be in a rather  
22 difficult position to have to account for that for  
23 every single class of every student who

1 participated in the program because every student  
2 is going to have some degree of that small  
3 variability, unless it's a completely packaged  
4 class where there is little discretion at all.

5 I'll take it a step further. We have  
6 an increasing number of cross-institutional hybrid  
7 joint degrees. In my state you can go to four of  
8 my colleges who have agreements with public and  
9 independent colleges for 6-year B.A. or B.S./J.D.s.

10 You get a law degree and an undergraduate degree  
11 in six years. Where are we going to start cutting  
12 the lines for these?

13 And if it's the J.D. program at one  
14 institution that is proving problematic, but you're  
15 still in the undergraduate program, are we going  
16 to be giving knowledge about transferability of  
17 those J.D. credits when you may or may not even  
18 be into that portion of the program? And how, how  
19 are you going to structure the obligation to give  
20 the information?

21 If, if -- no, I don't want to cite any  
22 particular college -- but if law school "A" is the  
23 college that has the problem and it has joint

1       agreements with undergraduate institutions "B" and  
2       "C," is it "A's" responsibility to notify students  
3       about the nature of these programs and the  
4       transferability of first year law classes, second  
5       year law classes? Or is it the responsibility of  
6       institutions "B" and "C" to now be giving that  
7       notice to students who have yet to actually step  
8       foot in the law school?

9               I don't have the answer to these  
10       questions. But it's the department that chose to  
11       go down the rabbit hole of drawing in all of these  
12       baccalaureate and masters and doctoral programs,  
13       and it's the department who's going to have to  
14       figure the way back out because on, on issues as  
15       particular as this.

16               So I can't offer you a solution --  
17       actually I can. We talked about that yesterday,  
18       it's that these programs are outside the scope of  
19       what we're talking. But that's your choice.

20               MR. RAMIREZ: Ok. Jessica.

21               MS. BARRY: This is in response to what  
22       Johnson said.

23               I think I want to come back and just

1 to kind of remind everyone that what I believe Jen  
2 said yesterday that proprietary colleges have  
3 changed a lot over the years. We have evolved.  
4 And while there are some schools where a student  
5 is applying to that school, and they're taking that  
6 program, that's really not realistic for all of  
7 our schools.

8 For my school, you know, students are  
9 looking at the arts. They're applying to probably  
10 three different schools, maybe one in Ohio, another  
11 one on the other side of the country. So this kind  
12 of one program/one application is not relevant to  
13 all of our schools.

14 And I think, you know, what we're  
15 hearing from all of you, especially from you, Chad,  
16 gainful employment for our sector has been very  
17 hard to enforce for all these reasons that you're  
18 stating. You know, it's really complicated with  
19 when do you tell a student? And, you know, even  
20 with a small institution like mine with 200  
21 students, we still are receiving two to three  
22 thousand leads a year. You know, so I, I feel your  
23 pain. It is a very complicated process to work

1 through.

2 MR. RAMIREZ: Thank you. Kirsten.

3 MS. KEEFE: Kirsten. So, this is a  
4 very minor, small point, especially considering  
5 some of the bigger issues at play. And I apologize  
6 if somebody already made it about the LEP, but it  
7 just occurred to me.

8 There are, I believe, schools that are  
9 providing programs, and certificate programs, and  
10 degree programs just in a language. So, I actually  
11 think that that piece should really be  
12 strengthened, that if a student is applying for  
13 to attend a school and attend a Spanish-speaking  
14 program to become a whatever, then the notice has  
15 to be provided in the language in which the course  
16 is going to be taught.

17 MR. RAMIREZ: Yeah, Jen then Whitney.

18 PARTICIPANT: I just wanted to go back,  
19 I wanted to go back to the issue of timing on the  
20 notifications. And so we've sort of had consensus  
21 around a time, I'm going to use the term a time  
22 of enrollment, but the language from before when  
23 we were discussing the first contact.

1           And I just want to point out, and maybe  
2           it's maybe everybody else realizes it, too, but  
3           I sort of brought myself back to it. We do, you  
4           do, the department does still require within 30  
5           days of learning, of an institution learning that  
6           it has a, whatever we're going to call it, low  
7           performing or whatever program, it does require  
8           that the template be updated to notify that with  
9           the disclosure. I mean, that is in Issue Paper  
10          6 and in Issue Paper 4.

11           MR. MARTIN: Correct.

12           PARTICIPANT: So I do want to just point  
13          out that in terms of redundancy -- and I get that  
14          it's not a direct communication to students -- but  
15          I did want to just put a level set so everybody,  
16          so we were, you know, sort of all on the same page  
17          in terms of how many forms of communication there  
18          are.

19                    It will be on the -- right? I mean,  
20          I'm reading that correctly. Right, Greg?

21           MR. MARTIN: You're correct, yes. We  
22          didn't change the language. We didn't change the  
23          language there, we just changed it from wording

1 notification to, yes, within 30 days of receiving  
2 notice from the Secretary you would have to update  
3 your template to include that notification.

4 PARTICIPANT: Okay. And, again, I  
5 just want everybody to be clear. I'm not  
6 suggesting that that replaces, like, a direct  
7 communication to students or anything. But I did  
8 want to point it out because there is a public-wide,  
9 you know, disclosure being made. So it's not just  
10 a disclosure to students and to prospective  
11 students. So there is an overall disclosure. So  
12 I just wanted to point that out.

13 So it would be, so as it stands under  
14 this, if it were, it would be the disclosure --  
15 and I am using the word "disclosure" now on purpose  
16 -- there would be the disclosure of the  
17 notification, if you will, on the template. And  
18 then in addition there would be, if the consensus  
19 approach is taken, there would then be at the time  
20 of enrollment those couple of pings before the  
21 student enrolled.

22 So I don't know if that helps people  
23 get to consensus at all but -- or not. And, again,

1 people might want redundancy on this contact. So  
2 I did want to just level set that.

3 MR. MARTIN: Would that help bring  
4 consensus to that, to that piece? Or is the  
5 redundancy that's being discussed vital?

6 PARTICIPANT: Can you repeat that?

7 MR. MARTIN: So, Jen, would you want  
8 to put, would you want to put a specific item that  
9 we could thumb? How would all that look together?

10 PARTICIPANT: Well, again, I sort of  
11 purposely did this in the form of a question because  
12 I'm not sure what my own view is. So I just want  
13 to preface that.

14 But it was more to level set because,  
15 like, we were so focused on when the notifications  
16 were going out to the student. But I did want to  
17 just bring everybody back home to the fact that  
18 in addition to the notification that would go out  
19 at the time of, I'm going to call it the time of  
20 enrollment, but at the time of enrollment, in  
21 addition to that there is a 30 day requirement that  
22 was within 30 days of the institution learning about  
23 the program's -- I don't even know -- results, that

1 that result be posted on the template.

2 So there is that added piece. So I  
3 don't know, I don't know if that -- so, I guess  
4 the proposed -- so I guess my question is with the  
5 addition, with the consensus that we had reached  
6 and the acknowledge -- I don't want to use the term  
7 acknowledgment -- with the acknowledgment here that  
8 the disclosure is also getting updated, you know,  
9 is that sufficient? Or are we saying, no, we still  
10 need an additional consumer -- So I'm not really  
11 ready to, I mean my own opinion I really was raising  
12 it in the form of a question to see if there were,  
13 what people's thoughts were on it.

14 I mean, we can thumb it and ask whether  
15 there's consensus around that. But I think we  
16 already did thumb that.

17 MR. RAMIREZ: Any comments, any  
18 thoughts on that?

19 (No response.)

20 MR. RAMIREZ: All right. I'm going to  
21 see if folks want to stretch their legs. All right,  
22 so let's do this, let's take a 20-minute break or  
23 a 19-minute break. We'll be back at 3:00.

1           And if you have an opportunity to throw  
2           some of your ideas that you want to make sure that  
3           at some point are considered, go ahead and put them  
4           in the section over there that it applies to.  
5           Thanks.

6                           (Whereupon, a recess was taken.)

7           MR. RAMIREZ:   Okay.   I know that we  
8           still have a couple other items.   Apart from the  
9           striking of the sanctions piece there is a couple  
10          other little pieces in there that we need to hit.

11                          But I think we're all seeing how quickly  
12          time goes by once we start getting into any topic  
13          at all.   And so I think that I'd like to use the  
14          last couple hours here to at least start the  
15          discussion on the elimination of the restrictions  
16          -- I'm sorry, the sanctions.

17                          So, Greg, is there anything that you  
18          want, any context that you want to add to that before  
19          we open the floor?

20                          MR. MARTIN:   No, not really.   I'd just  
21          refer people to that, that area on page 7 where  
22          it talks about under (b) restrictions, and you can  
23          see what was struck there.   As we discuss the

1 removal of, proposed removal of program sanctions  
2 I would encourage people to think about if you favor  
3 restoring some type of, some type of ramification  
4 for having rates that are whatever we're going to  
5 call them, is do you have any suggestions for what,  
6 what that might be, you know, other than what was  
7 here, obviously:

8           You know, restrictions on program  
9 growth, things like that; any ideas you might have  
10 about what types of ramifications there could be  
11 in lieu of what currently exists. I'm not going  
12 to commit the Department to doing that or not, but  
13 I would like to hear people's ideas about where,  
14 absent this, where we would go as opposed to just  
15 are no, what we proposed here are no program  
16 sanctions. What we had previously were the program  
17 sanctions, you see here. Is there anything else  
18 people would like to put on the table?

19           MR. RAMIREZ: Okay. I think that was  
20 pretty clear. So, thank you. I appreciate that.

21           So, Laura, your tent is up. Do you want  
22 to start, start us off?

23           MS. METUNE: Sure. I just wanted to,

1 hopefully, try and limit the scope of the  
2 conversation around the area where the Department  
3 currently has authority to implement sanctions.  
4 I just was hoping we could avoid sort of this  
5 theoretical conversation about if Congress changes  
6 where we have, the Department has authority to  
7 regulate gainful employment and sort of table that.

8 And maybe we could just focus some parts of the  
9 conversation on the existing authority that the  
10 Department has.

11 That was my request.

12 PARTICIPANT: Well, like us, but yes,  
13 currently we would only, as far as the sanctions  
14 we see here, we would not have the authority to  
15 extend the loss of program eligibility sanctions  
16 to all institutions, only GE, only GE -- I shouldn't  
17 say institutions -- to programs other than GE  
18 programs.

19 MR. RAMIREZ: Okay, great. That  
20 narrows the focus. So, yeah, you had something  
21 else, Laura?

22 MS. METUNE: Oh, and then I was just  
23 going to -- with the idea of throwing other things

1 on the table, I like the conversation that came  
2 up a little bit earlier -- and I think Jordan was  
3 the first person to mention it -- about having  
4 multiple ways that a college or program could show  
5 that it meets the quality assurance, like including  
6 repayment rates in addition to debt-to-earnings.

7 And then I was also going to say that  
8 I personally would be interested in engaging in  
9 a conversation around, within the scope of gainful  
10 employment, are there programs at proprietary  
11 institutions where it's not appropriate, where we  
12 could make a distinction between those types of  
13 programs?

14 So those are two things that I would  
15 be happy to engage in discussion around.

16 MR. RAMIREZ: Sandy, then Whitney, then  
17 Johnson, Jennifer.

18 MS. SARGE: So maybe -- this is Sandy  
19 -- as opposed to looking at a sanction, maybe the  
20 suggestion could be that if somebody is below the  
21 metric or below the benchmark that there would be  
22 a requirement of improvement or, you know,  
23 something that we would have to do. So rather than

1 it being something that would be viewed as a  
2 punishment, more look at it as an opportunity to  
3 improve and put something around that.

4 And I'm not sure if that falls under  
5 the Department of Ed or somewhere else. But I would  
6 look at it as an opportunity for improvement.

7 MR. RAMIREZ: Opportunity to improve  
8 or see it as punishment. Okay, Whitney.

9 MS. BARKLEY-DENNEY: So, on both of  
10 these point, Sandy, starting with you since you  
11 spoke last, I think I am amenable to the idea that  
12 there would be some sort of opportunity to improve,  
13 whether that's through, like, a change in the  
14 program participation agreement or all these other  
15 things that I don't really know that much about  
16 but just throwing out there, you know, I think that  
17 that's totally possible.

18 I think what I would want to see at the  
19 end of that, if there has been a time period in  
20 which the improvement hasn't happened then we have  
21 to talk about loss of eligibility. But I'm totally  
22 fine with the idea of ramping up to that instead  
23 of going straight to it.

1           The other thing I wanted to say is I  
2           totally agree with Laura. I like the idea of adding  
3           in something like a repayment rate as another  
4           metric. You know, when it was thrown out by the  
5           court several years ago it wasn't because they said  
6           repayment rates can never, ever work in this  
7           context. We just had to get to the right one.

8           And I think that we have more data  
9           available now, and understand repayment rates  
10          better, than we were positioned to in 2013 when  
11          we did this rule, and hopefully can come up with  
12          something.

13                   MR. RAMIREZ: Johnson.

14                   MR. TYLER: I'll be short. I agree  
15          with it. I think there should be a sanction after  
16          a time period to remediate. And the time period  
17          to remediate should be enough so that you're not  
18          using data of students who already grad -- who were  
19          enrolled and completed their courses before their  
20          remediation occurred.

21                   So I think there has to be a relatively  
22          short time period. But I also think you have to  
23          be able to, if you're going to measure results that

1 way, you have to be looking at a new cohort. I  
2 think the way it was proposed before was that we  
3 just kept looking back at old failing student  
4 outcomes even before the school was advised that  
5 they were failing.

6 MR. RAMIREZ: Jen.

7 MS. BLUM: So I just want to seek  
8 clarification -- and it's good that Steve's back  
9 -- from a legal standpoint question. So, Greg,  
10 you said that yes, yes, yes, if we're doing gainful  
11 employment the only -- you know, we'd have to limit,  
12 or in terms of an enforcement we'd have to limit  
13 it to gainful employment programs.

14 But per something Steve said earlier,  
15 you know, if we were to keep a disclosure -- right?  
16 -- so we have disclosures and we have disclosures  
17 forever, but the Department could take those  
18 disclosures under non-gainful situations and  
19 decide that, yeah, that one looks like we could  
20 do a program review.

21 I'm just saying. I'm not recommending  
22 it. But I'm just acknowledging that actually I  
23 don't this has to be a conversation if we're putting

1 back in an enforcement, I don't actually think it  
2 has to be just for GE programs. I think there is,  
3 I think there's legal authority to decide, the  
4 Department can decide any time it wants -- didn't  
5 you say a few minutes ago that if a program were  
6 sort of floundering for a period of time that could,  
7 in the context of an overall, not just because of  
8 that metric, but for lots of reasons you could  
9 decide to do a pro --

10 So I just want clarification that there  
11 are enforcement tools, and we could have a  
12 conversation -- I'm not suggesting it but I just  
13 want to be clear -- that there are tools to address  
14 low performing programs outside of gainful.

15 PARTICIPANT: So, one of the reasons  
16 that I went into as much detail as I did trying  
17 to outline all the different ranges of oversight,  
18 and oversight at some point becomes enforcement  
19 and can lead to sanctions, was just I understand,  
20 I think we all understand there are a range of things  
21 that can happen to institutions that become  
22 marginal, if a program with this failing metric  
23 is determined to be substandard, right?

1           And we can look at the kind of things  
2 Whitney's suggesting, which is alternative  
3 measures perhaps that could be considered if they  
4 could be justified.

5           I think if you're talking -- I think  
6 we all think that just premising the loss of  
7 eligibility solely on a debt-to-earnings metric  
8 is much more of a stretch for institutions that  
9 are not subject under the HEA to preparing students  
10 for gainful employment or recognized occupations.

11           So it's a different thought process for  
12 looking at what it means to have a weak  
13 debt-to-earnings measure here and how that plays  
14 out over time.

15           MR. RAMIREZ: So that's a good example  
16 of how we could quickly go down a rabbit hole.  
17 So I just would remind folks that not taking away  
18 from that debate at all but let's focus our  
19 discussion on what we know we currently have  
20 authority over. Right?

21           PARTICIPANT: But he is acknowledging  
22 he does have authority over a broader swath. So  
23 it is not a rabbit hole.

1           MR. RAMIREZ: I think that, I think that  
2 what I was saying, though, was that as far as the  
3 gainful employment goes, that is pretty clear.  
4 There may be steps that might lead to sanctions  
5 in the other one with other institutions. And what  
6 those steps are before you get to that point, I  
7 don't know if we want to go down there.

8           PARTICIPANT: So, in my mind there are  
9 two different frameworks to work from here. There  
10 is the keeping with the -- so in what's been  
11 presented here, and we've kept disclosure. And  
12 then in the event -- and, again, I don't have a  
13 position, I'm just trying to get the ball rolling  
14 on two different concepts that would include some  
15 form of enforcement. And, again, I'm not taking  
16 a position.

17           But if you have kept the disclosures  
18 and then we were to decide -- you, we, whatever  
19 -- that if the program had, you know, X for this  
20 period of time, you know, the Department, there  
21 are -- as Steve has outlined himself, there are  
22 all sorts of tools in the toolbox for the Department  
23 that could trigger the Department to decide to do

1 something.

2 Or -- so that's one frame, that's one  
3 regulatory framework. Or, and I guess I'm asking  
4 this in the form of a question to understand what  
5 we're working off of, or are we talking about then  
6 the disclosure piece that we just discussed, we're  
7 no longer talking about that but now we're going  
8 back to putting GE back in and we're only talking  
9 about those programs?

10 So that's what I -- I am truly doing  
11 this in a form of a question. And maybe it's a  
12 question back to Laura. You know, to whom are we  
13 adding it back in? And I don't think the answer  
14 is it has to be only GE programs. I think the  
15 Department does have the authority in certain other  
16 contexts. So I don't think it's a rabbit hole,  
17 I think it's actually in order to have that  
18 conversation. We need to understand what we're  
19 talking about and which programs we're applying  
20 it to.

21 MR. RAMIREZ: Okay, Laura.

22 MR. MARTIN: This is Greg to clarify.  
23 That we're looking, I think we need to look at

1       this within the context of how these proposed rules  
2       are written.  So, when we're thinking about what  
3       possible outcomes there could be for having less  
4       than satisfactory rates, or however we're going  
5       to characterize that, keeping in mind that what  
6       we have here, what we currently have, the loss of  
7       program eligibility based on, solely on D/E rates  
8       is something that we, as Steve pointed out, would  
9       be very difficult to extend beyond GE programs.  
10      That's our authority.

11                 But outside of that there are other,  
12      I think there are other things we can consider.  
13      I would leave you with that.

14                 MR. RAMIREZ:  All right.  So, it seems  
15      like, though, that we could take two, two tracks  
16      there; right?  So let's focus on one and then the  
17      other.  Right?

18                 So if exploring the possibility of, for  
19      instance, for programs outside of GE is something  
20      that this group wants to do, let's do that after  
21      we discuss this piece here.

22                 So, so what I'm hearing is that there  
23      may be a possibility for the Department to impose

1 some type of sanctions on underperforming programs  
2 that are not just GE programs. And what I'm trying  
3 to do is have the group focus their discussion on  
4 one piece at a time. And so, if that is something  
5 that this group says we would like to explore that,  
6 we could do that.

7 But I want to keep this discussion right  
8 now on what we do know as far as the GE programs.

9 And if there are going to be sanctions, what would  
10 those sanctions look like? Or how would we deal  
11 with underperforming programs, not necessarily  
12 sanctions? Right? How do we deal with  
13 underperforming programs and that are GE programs?

14 So, I'm trying to keep this conversation  
15 narrow so it doesn't balloon into a bunch of  
16 different conversations. If we need to get to the  
17 other conversation, we will, as far as other  
18 programs outside of GE.

19 PARTICIPANT: Well, the way the regs  
20 are currently written here we couldn't think of  
21 sanctions -- I don't want to call them sanctions.

22 We couldn't think of ramifications -- I like that  
23 word -- restrictions, ramifications without, you

1 know, the only way that we, the only way that we  
2 could consider what is currently here would be if  
3 those -- because they currently are sanctions --  
4 are applicable only to GE programs.

5 So that would be, that would be  
6 considering that would give you a bifurcated rule  
7 where, you know, there would be grades calculated  
8 for all programs, but only this segment would be  
9 subject to loss of program eligibility. That's  
10 the only way that could work here. Unless we come  
11 up with, think of other types of  
12 ramifications/restrictions that are not, not these  
13 program sanctions.

14 MR. RAMIREZ: Okay. Stephen, if you  
15 want to add something to that?

16 MR. CHEMA: Well, I mean other than just  
17 to explain why, as someone who represents both  
18 gainful -- institutions with gainful employment  
19 programs and those that have none, that I'm not  
20 in favor of sanctions, including loss of  
21 eligibility, at this time. Everything we've heard  
22 since we've, you know, come together is pointed  
23 towards there are some flaws, things that need to

1 be ironed out.

2           Some of us have acknowledged that school  
3 or programs could have below benchmark outcomes  
4 and still be good programs. We have discussed  
5 issues with arriving at proper earnings, how debt  
6 should be calculated. And how on Earth can we  
7 provide an equitable appeals process? We haven't  
8 solved any of those things.

9           And I think unless we come up with some  
10 very good proposals, it just doesn't make sense  
11 to get to loss of eligibility precisely for the  
12 reasons that Mr. Finley said. You know, this is  
13 not in and of itself a compliance issue, it is a  
14 red flag that can be waved, that should be waved,  
15 that the Department should and can look into. And  
16 there is a vast array.

17           Having this gives the Department  
18 another data point to help it with its compliance  
19 regime. I think that's enough.

20           MR. RAMIREZ: Jordan.

21           MR. MATSUDAIRA: Thank you. So, I  
22 heard a lot of people over the last few days, and  
23 especially in the first session that we had back

1 in December, express the view that they would be  
2 okay with sanctions if we could get the metrics  
3 right. And in that spirit, I want to echo some  
4 of what other people have suggested, which is trying  
5 to think about having other metrics that might solve  
6 some of the problems, some of the deficiencies that  
7 have been pointed out with regard to  
8 debt-to-earnings.

9 And I think if we think about the 2011  
10 structure of the rule, as kind of Whitney and Laura  
11 were alluding to, that have a retainment rate in  
12 it, and it was either/or, if a program was passing  
13 either a debt-to-earnings metric or a retainment  
14 metric then, then that, you know, could be an  
15 alternative structure that would kick in sanctions.

16 Now, again, I think we should think  
17 about, you know, what would be appropriate, not  
18 just, you know, what would be appropriate sanctions  
19 separately.

20 I want to say a little about what a  
21 repayment rate could look like. The repayment  
22 rate, as has been noted, was thrown out for being  
23 arbitrary, essentially because the Department

1 takes just a kind of a relative threshold in the  
2 distribution without pegging it to really some  
3 notion that it was bad in an absolute sense.

4 You know, I think we've kind of learned  
5 more about these things. And there are a lot of  
6 things that could suggest themselves. We could  
7 benchmark the repayment rate against a very  
8 conservative repayment schedule. Are you behind  
9 relative to a 20-year repayment schedule?

10 Are the majority of students in a  
11 program behind relative to a 20-year repayment  
12 schedule?

13 Are a majority of students either  
14 defaulting on their loans or in negative  
15 amortization on debt?

16 Some kind of very conservative measure  
17 like that as an alternative way of getting out of  
18 things. So, you know, why have both? The  
19 repayment rate allows programs that have, you know,  
20 perhaps mis-measured earnings and so on, but their  
21 graduates are going on to be able to repay their  
22 debt. So that kind of gets you out of that problem.

23 And then the other kind of concern that

1 I heard is we don't want to go just with repayment  
2 because the institution doesn't have a lot of direct  
3 levers to be able to alter that, whereas you can  
4 control debt to some extent, and so the  
5 debt-to-earnings metric gives you institutions a  
6 way of kind of controlling your destiny a little  
7 bit more.

8 So that's kind of an alternative  
9 structure that respond to a lot of concerns. I  
10 realize maybe not all of the data concerns that  
11 I've heard. But that seems a reasonable approach.

12 So that's kind of one set of things.

13 And then I wanted to just ask kind of  
14 two questions of the Department. So, one is on  
15 the data requests. See, I feel like today we've  
16 spun our wheels a little bit on items where, you  
17 know, I had made several data requests. And there  
18 are a lot of other people around the table who kind  
19 of made requests, so, of data items that the  
20 Department definitely has already and are not hard  
21 to produce. They can certainly be produced in a  
22 pretty finite amount of time.

23 So I just want to ask for an update on

1       when we can expect that data?  If the data's already  
2       been done and it's just waiting for approval, then  
3       it feels frustrating that we're here spending a  
4       lot of our time waiting for that data to become  
5       available.

6                       And then, lastly, I want to ask just  
7       for the Department's view on why the rule structure  
8       has been altered?

9                       And in particular I want to ask whether  
10      the Department's current view is -- thank you --  
11      whether the Department's current view is that  
12      disclosures alone are sufficient to pursue the  
13      goals or to achieve the goals that were described  
14      in the original rule, namely, to protect students  
15      from accumulating too much debt that they wouldn't  
16      be able to pay?

17                      Or is the rationale that, you know,  
18      reducing the administrative burden for  
19      institutions kind of justifies whatever kind of  
20      increase in the trouble that students might  
21      experience with borrowing would entail?

22                      MR. RAMIREZ:  Greg, do you want to  
23      handle that?

1           MR. MARTIN:       Regarding the data  
2 requests, you know, we've taken all those data  
3 requests. We're probably not going to be able to  
4 respond to all of them. Those that we were able  
5 to respond to we have the data. However, we have  
6 not been cleared to give it to you yet.

7           So we have indicated the need for that.

8       But, again, I can't -- I don't make those decisions  
9 and only the people clearing it do. So while I  
10 understand it might be frustrating not to have it  
11 right now, I don't know what else to tell you other  
12 than that. We'll have to wait till it has been  
13 cleared.

14           And at that, we'll give it to you as  
15 soon as possible. I'm not withholding from you  
16 anything that I currently have, you know, that's  
17 been cleared or anything. We're still waiting for  
18 that process to go through. So, when we get that  
19 approval I'll make sure we get the data to you post  
20 haste.

21           Also, regarding whether or not  
22 disclosures are consistent with what the intent  
23 of the rules were, they're -- I don't, we don't

1 consider that, we're not looking at the disclosures  
2 with respect to the prior rules. The disclosures  
3 that we've proposed here are consistent with the  
4 intent of this rule as it is before you. I'm not  
5 going to discuss their connection with either the  
6 current rule or the one previous to that. They  
7 certainly are consistent with what we have  
8 proposed.

9 MR. RAMIREZ: Okay, I have Laura, Mark,  
10 Bob, and Jen.

11 MS. METUNE: I think I want to defer.  
12 Can I defer?

13 MR. RAMIREZ: Yes.

14 MS. METUNE: Okay.

15 MR. RAMIREZ: Mark.

16 MR. MCKENZIE: Mark McKenzie. Thank  
17 you.

18 There are a lot, a lot of non-starters  
19 in this whole process. And in coming back to Greg's  
20 kind of question around this is, you know, are there  
21 possible solutions.

22 One of the things that I think Tony had  
23 mentioned earlier, actually I think there's an

1 entire accreditation framework that is available,  
2 not that accreditors, that I want to put that burden  
3 on them. But when, when there's a triggering  
4 event, even like heightened cash monitoring one,  
5 the Department notifies the accreditor. The  
6 accreditor, you know, has to start taking notice.

7 And that kicks in a whole process on  
8 the accreditation side. So I think whether -- I  
9 don't think you have to call it a sanction. You  
10 don't have to call it a ramification, it's a, it's  
11 a process piece on the accreditation side that  
12 there's notification this particular threshold has  
13 not been met.

14 And I can tell you from my perspective  
15 as the specialty accreditor that we're probably  
16 in the best position of anybody to identify what's  
17 going on with a particular institution when it comes  
18 to particular thresholds. So the process that  
19 would unwind for us is we've notified the  
20 institution, or actually the institution is  
21 supposed to notify us also within 30 days. That  
22 would automatically trigger a review, some type  
23 of monitoring report: okay, what happened?



1        accreditors.     The challenge would be for big  
2        regional accreditors and, if this includes all  
3        programs, it may be much more challenging for those  
4        institutions.

5                        So I'll just put that out as an option.

6                        MR. RAMIREZ:    Thank you.    Bob.

7                        MR. JONES:    Well, Mark has made a point  
8        that I was going to make.    I will take his last  
9        comment and say as one of the larger accreditors  
10       -- and I sit on the accrediting commission -- it  
11       is exactly what should happen.    We are at a juncture  
12       where it is important -- and I say this to the  
13       Department -- to begin to articulate clearly the  
14       role of the accreditors in this process moving  
15       forward.

16                        We can't keep going with two separate  
17        regulations, two separate outcomes and sanctions  
18        and things when, at the same time, I've got a fully  
19        approved accredited program doing great.    This is  
20        not working in the public's eye.    It's not working  
21        in the congressional eye.    It is important.

22                        And I think the answer to the earlier  
23        question is while the Department may have certain

1 constraints, the accreditor does not in terms of  
2 engaging in this issue and holding the programs  
3 accountable.

4 Last comment I would make is, it's very  
5 important, and I urge the Department to take a  
6 careful, careful look. The section that we've just  
7 removed is entirely focused on program but we keep  
8 confusing it with school. And we need to become  
9 very clear about which is which and what the actions  
10 are, especially if we broaden it into the standard  
11 university system.

12 Thank you.

13 MR. RAMIREZ: Thank you. Jeff.

14 MR. ARTHUR: Yeah, I would suggest that  
15 disclosures and labels, whatever the labels are,  
16 that notifications really are a sanction. And I  
17 don't think we should underestimate the competitive  
18 nature of institutions of higher education.

19 If we raise a flag on a programmatic  
20 debt level, I mean that's going to get attention.

21 It will cause institutions to move the dial. And  
22 I think, you know, we make a statement about there's  
23 1.3 trillion in student debt; that's a problem.

1                   Okay, what do you do about it?

2                   Well, that doesn't really move the dial  
3 just by declaring that. This disclosure at a  
4 program level can get it to a point where it can  
5 be managed. And when we have something to target  
6 we can improve these numbers. Just like  
7 institutions that make more effort in improving  
8 graduation rates when we highlight them. We  
9 highlight them for certain ethnicities. We  
10 improve them. We work on that.

11                   If we see a default rate, repayment  
12 rate, we work on improving those things. We will  
13 improve the debt per students with these  
14 disclosures. And especially through the  
15 accreditation process, too.

16                   I agree with the statements from the  
17 two gentlemen in that regard that accreditors  
18 measure outcomes. They look at graduation rates.

19                   They look at employment rates. This is another  
20 measurement that they could hold their institutions  
21 accountable to.

22                   MR. RAMIREZ: Thank you. Whitney.

23                   MS. BARKLEY-DENNEY: So I'm going to

1 disagree with the last two things said. And I'll  
2 start with you, Jeff.

3 I totally respect and understand where  
4 you're coming from when it comes to disclosures  
5 working for your institution as a sanction. But  
6 not all borrowers are the same. And some borrowers  
7 are going into this with a greater level of  
8 understanding of what that means and more of an  
9 ability to shop around; other borrowers are not.

10 In some ways -- and please understand  
11 I am not comparing anybody at this table to a payday  
12 lender -- but in some way it is like the disclosures  
13 you see in payday lenders. There are some  
14 consumers who see that this is a 400 percent  
15 interest rate; run away. There are other consumers  
16 who see that and say I need this money, and they  
17 take it.

18 And so that's why disclosures are not  
19 necessarily something that is going to be a sanction  
20 for all consumers at every level of education, at  
21 every level of income, and at every level of need.

22 And I also just wanted to say I'm very  
23 interested in this idea of the accreditors taking

1 a more active role. My concern, and just via  
2 because of my experience in this world,  
3 particularly as a former legal services attorney,  
4 is not, again, with any creditor at this table,  
5 but we all know that there are accreditors out there  
6 who aren't necessarily doing what they're supposed  
7 to be when it comes to overseeing and improving  
8 the programs that they are overseeing.

9 And I'm thinking particularly of some  
10 programmatic accreditors in the allied health field  
11 that I have approached or seen through the years  
12 who aren't, you know, ensuring these fixes are  
13 happening or are just taking the word of the  
14 institution when it comes to job placement. And  
15 so those are some things that I would be concerned  
16 about if we were to turn this over entirely to the  
17 accreditors.

18 MR. RAMIREZ: Yeah, go ahead.

19 PARTICIPANT: I just wanted to make it  
20 clear that my point was that institutions will pay  
21 attention to those metrics and work to improve them.

22 Not all students will pay attention to them, but  
23 the institutions certainly will.

1 MR. RAMIREZ: Okay. Laura.

2 MS. METUNE: Okay, I'm ready now.

3 So, I similarly wanted to -- I'm  
4 interested in the idea of the role of the  
5 accreditor. And I do think it's a valuable role.

6 And I don't want to minimize the role that they  
7 can play in improving education quality and student  
8 outcomes.

9 I want to push back a little bit on the  
10 idea that it's sufficient. In California we've  
11 had -- you know, many states experienced the closure  
12 of Corinthian and the harm that that caused for  
13 students. And one of the things that we faced in  
14 our state was that at the time that our state-level  
15 oversight entity was trying to investigate an  
16 institution that's in good standing with their  
17 accreditor and in good standing with the Department  
18 of Education, that can create some state-level  
19 barriers for taking enforcement actions against  
20 a problematic institution.

21 So I agree with the idea of trying to  
22 streamline and better coordinate the various, you  
23 know, 3-legged stool. But I am really concerned

1 with the idea that that's sufficient, unless we  
2 make some changes to expectations in those levels  
3 of oversight.

4 I also wanted to push back on this idea  
5 that there shouldn't be a loss of Title IV  
6 eligibility. I know it's extreme. And which is  
7 why that should be after there are clear standards  
8 in place, and there's appropriate timelines, and  
9 there's appeals.

10 One thing that we've learned at the  
11 state level is that it's really important to have  
12 meaningful incentives in place to change behavior.

13 Sometimes for public institutions that includes  
14 things like performance-based funding or other  
15 state-level reporting requirements where we're  
16 being held accountable for our outcomes.

17 And I just kind of wanted to end with  
18 this question of why in the world we would think  
19 it's okay for us to take away a student's Title  
20 IV for not meeting satisfactory progress  
21 requirements but not an institution's Title IV.

22 That's all.

23 MR. RAMIREZ: All right. So, I have

1 Johnson. Mark is -- Tony, is Mark's tent still  
2 up?

3 MR. MIRANDO: No.

4 MR. RAMIREZ: Okay. And then David.  
5 Johnson.

6 MR. TYLER: I believe in the last six  
7 years there's been a lot of public shaming involving  
8 very large, for-profit institutions that cater to  
9 low income people who largely come from  
10 educationally-deprived backgrounds, who do not  
11 read disclosure statements. And those companies  
12 have not changed -- did not change their practices.

13 There were Senate hearings. There were Frontline  
14 reports on them. They continued the way they were  
15 going until they were put out of business.

16 So the idea that -- I agree that a lot  
17 of institutions will be very responsive to bad  
18 ratings, debt to income ratio, that sort of stuff,  
19 but that's not going to help the people who don't  
20 care -- the institutions, it's not going to  
21 influence the institutions that don't care about  
22 it. And sanctions will.

23 Interestingly, a New York Times

1 reporter looked at the list of 2,000 programs that  
2 were in the zone or the fail area and tried to figure  
3 out who they were and what was going on, and found  
4 that 600 of them had already closed down because  
5 they knew that trying to make that metric was  
6 problematic and they'd been caught, you know, in  
7 that problem.

8 A lot of those institutions when I look  
9 at what my clients' experience and the situations  
10 they're in, they're still coming to legal services  
11 years later after going to these schools, they're  
12 on that list.

13 And I would say that -- to the statement  
14 there are a lot of good for-profit actors: there  
15 are. 80, I think it's 85 percent did fine on  
16 gainful employment. Okay? So, we're not talking  
17 about that. We're talking about, you know, moving,  
18 creating a consequence that will either make  
19 programs better, decrease tuitions, whatever.

20 MR. RAMIREZ: Okay, thank you. David.

21 MR. SILVERMAN: Thanks. Jeff, I think  
22 you made an excellent point. If we had to notify  
23 potential incoming students that we failed or

1 classified as not acceptable, to me is definitely  
2 100 percent a sanction, especially for reaching  
3 a goal like 8.0 as opposed to 7.99. This will  
4 affect students attending our college, any other  
5 college. So, thank you for saying that. To me  
6 it's definitely a sanction.

7 MR. RAMIREZ: Okay, thank you.

8 John.

9 MR. KAMIN: Okay. I'm just going to  
10 get on my soapbox for the 60,000 foot level as I  
11 see it, since this really is the crux of the issue.

12 Now, the American Legion's membership voted on  
13 a resolution in favor of the intent and spirit of  
14 the gainful employment rule in 2017 over our  
15 convention. Now, that, the language provides us  
16 a lot of flexibility, as the largest veterans  
17 organization in the country, to look at rulemaking  
18 and afford compatible understanding regulation  
19 with industry and academic standards. That's why  
20 we really appreciate being asked to participate.

21 But by the Department's own admission,  
22 with this proposal changing the purpose and intent  
23 to remove accountability from the framework, that

1 is not an area that we can abide by.

2 So I'd just say simply, anecdotally,  
3 for us if the rule passes without sanctions it is  
4 compelled to remain a policy priority for the  
5 American Legion. And that's just us.

6 For consumer advocacy groups, passing  
7 the proposed rule without sanction, it's a late  
8 Christmas gift for their fundraising and  
9 development teams who can usually build outrage  
10 off of it. And that's hard to do, because gainful  
11 employment is not like borrow defense, which is  
12 very delicate and is very easy to get people upset.

13 Nobody really understands gainful employment.  
14 But, you know what, when you tell them you're  
15 getting rid of all sanctions, you got their  
16 attention. That's the way it's -- I can just see  
17 it playing out when it goes on without sanctions  
18 like that.

19 And what would naturally seem to follow  
20 is that in 2020, 2024, 2028 the pendulum is going  
21 to swing the other way even farther. I think all  
22 of us probably understand this with the idea that  
23 it doesn't take an MPA to see that that type of

1        oscillation over regulations is not effective  
2        governance. It's not good for students, not good  
3        for schools, and it's not good for taxpayers when  
4        we're constantly having this fight on both sides.

5                And the irony here is that I think that  
6        every stakeholder, every negotiator at this table  
7        has been excellent when it comes to standing up  
8        for your stakeholder, your school, and also being  
9        flexible and intellectual when it comes to looking  
10       at potential compromises.

11               But the proposed rule is not indicative  
12       of what we talked about the first session. You  
13       would not be able to tell that we would even be  
14       having this dialog based on what was written. And  
15       I think there are ways we can move forward. I think  
16       that going back to 2011 had a lot of interesting  
17       ideas how that can alleviate some of the concerns,  
18       especially with tips.

19               Accreditors, I think even looking at  
20       the actions, like, with Charlotte School of Law  
21       and how accreditors and the Bar really got on them  
22       first, I think there might be some lessons we can  
23       learn from them and compatibility they can have

1 moving forward.

2 But to make it clear, I mean this is  
3 not -- without sanctions that's where we're going  
4 to end up. It's we can't drop it. And that's the  
5 crux of it on our end.

6 MR. RAMIREZ: Thank you. Mark.

7 MR. MCKENZIE: So I appreciate that.  
8 And I've always been one who, if I felt a rule was  
9 right, would be okay with sanctions. My consistent  
10 position with the Department has been there remain  
11 too many high quality programs that get caught up  
12 in the sanctions. And if they can solve that, we  
13 can look at it.

14 But I still would ask our members to  
15 recognize that there are many programs serving low  
16 income borrowers where the evidence is clear the  
17 borrowers are suffering with too much debt and not  
18 enough earnings. And those programs, this rule  
19 does not reach them, even if they're gainful.

20 So I just want to remind everyone  
21 gainful could have been completion rates, which  
22 is a big deal, and it would have affected a whole  
23 different sector.

1           Gainful currently reaches no gainful  
2 program that has default rates higher than  
3 graduation rates in anywhere other than the  
4 for-profit sector. And there are many of them.  
5 And so, you know, this is my principal objection,  
6 and this is what we've heard, if the Department  
7 can figure these things out to truly get to identify  
8 programs that aren't performing I think it would  
9 be easier to move forward. But it's proven to be  
10 very difficult with the pressure on the Department.

11           MR. KAMIN: I would just say I  
12 appreciate that, Jeff. And even when it comes --  
13 there's not an inherent objection, I think, to the  
14 idea that transparency could be something that  
15 solves everything. I think it's difficult to take  
16 that seriously when you look at the web traffic  
17 for the college scoreboard and on face value see  
18 that. It's just not going to hit everybody.

19           When you deny schools the opportunity  
20 to appeal whatever those rulings are it doesn't  
21 -- we're not seeing enough serious evidence to  
22 disrupt the point that in terms of protecting those  
23 lower income borrowers this is the only proposal

1 we've seen that seems to have the legs.

2 And to your points, I think that's  
3 exactly what we should be discussing in terms of  
4 where those deficiencies are.

5 MR. McKENZIE: I would ask -- this is  
6 a follow-up -- maybe the members look at a report  
7 by the Education Trust called Tough Love which  
8 basically -- and I'd ask the Department to look  
9 at it -- which basically suggests a simpler model  
10 than debt-to-earnings.

11 It says, if the Department only focused  
12 on the institutions with the lowest completion  
13 rates and the highest default rates in each sector,  
14 however they decided to measure it, the Department  
15 would be able to aid the most students the most  
16 effectively, with simple existing data.

17 And if you wanted to add one more metric  
18 to that, looking at programs where borrowers  
19 default in a higher rate than they graduate, and  
20 I would just add one other thing. I am generally  
21 not a proponent of the loss of all Title IV aid.

22 I generally believe the appropriate penalty is  
23 loss of loan eligibility because that then turns

1 the program into it looks then exactly like any  
2 other public program.

3 And there are people who have been doing  
4 the research if private institutions, non-profit  
5 and for-profit receive the subsidies some public  
6 institutions did, there would not be the need for  
7 the debt.

8 So I'm asking the group to revisit, it's  
9 called Education Trust. I believe it's called  
10 Tough Love. And it has a very interesting approach  
11 that's simpler, and I honestly think may have a  
12 more beneficial effect.

13 MR. RAMIREZ: Mark, is that something  
14 that you could forward to us and then we could send  
15 to everyone?

16 MR. MCKENZIE: Sure.

17 MR. RAMIREZ: Okay. Sandy.

18 MS. SARGE: So, I think what I'd like  
19 to pose to the audience, maybe in particular those  
20 that are saying that they definitely want -- that  
21 sanctions should be on the table, if we -- we haven't  
22 even, we haven't even talked about -- and maybe  
23 it's because it's the white elephant -- but we

1 haven't talked about GE programs versus all  
2 programs.

3 So, let's say for sake of transparency  
4 to students that we're going to keep the all  
5 programs would have to report, then what sanctions  
6 make sense? Don't go down the rabbit hole of these  
7 are only GE ones. Right now what's on the table  
8 is all programs. So then what sanctions make  
9 sense?

10 PARTICIPANT: You can't have sanctions  
11 to the non-GE programs, so just take it off the  
12 table. It's not permissible.

13 MR. RAMIREZ: Yes, so that's what we're  
14 trying to focus on to the GE and then go from there.  
15 And even though this program does cover, the  
16 proposal is to cover all institutions, that doesn't  
17 necessarily mean that all institutions would  
18 receive a -- I don't want to say penalty, right  
19 -- but they would receive some type of corrective  
20 behavior.

21 PARTICIPANT: Can I just say, I mean  
22 to use a metaphor though, I mean, if we're applying  
23 to all sectors -- and I'm probably going off on

1 a limb here -- but supposing I have a vaccine to  
2 pneumonia but when I introduce that vaccine to a  
3 patient it causes some side effects that are pretty  
4 severe. I think the first order of business is  
5 diagnosing the side effects for that, for patient  
6 zero, rather than giving that vaccine to ten other  
7 people and then trying to find out the solution  
8 for potentially ten other different kinds of side  
9 effects.

10 So if there are faults, the time to  
11 diagnose those faults are within this one sector  
12 before categorically applying it outward, if that's  
13 the contention.

14 MR. RAMIREZ: All right. So, any other  
15 ideas then? Whitney, you have something?

16 MS. BARKLEY-DENNEY: I was wondering  
17 if we could take a temperature check on adding  
18 repayment rates back in or figuring out a way to  
19 add repayment rates back in. Would that make sense  
20 to everybody? And maybe focus the conversation  
21 again on, you know, what we could do to strengthen  
22 this, these rules.

23 MR. RAMIREZ: Yeah, Pamela, go ahead.

1 MS. FOWLER: Okay, it's official, I'm  
2 confused.

3 I'm confused with what is it we're  
4 trying to do here. I have heard things like  
5 debt-to-earnings doesn't work; repayment doesn't  
6 work; default rates we all know what the issue is  
7 with default rates. And then I've heard Mark just  
8 said good programs get caught up in this. Well,  
9 what measure says they're good?

10 And if that's easy, then lets look at  
11 that in addition to some of these other things.  
12 Because I don't think we should throw everything  
13 out. Because some of these things have to be good  
14 for certain programs. And maybe we don't look at  
15 one thing or two things, we look at several things.

16 PARTICIPANT: And I agree with that.

17 MS. FOWLER: And then if you fail one  
18 of several, something happens. If you fail two  
19 of several, if you fail several of several --

20 PARTICIPANT: Yeah. What the  
21 Department had trouble responding to was there was  
22 multiple requests for some kind of quality  
23 exception when there was a failing program. And

1 just to be clear, there are full institutions that  
2 under the first rule the Department promulgated  
3 had 100 percent passing. And then two or three  
4 years later when the repayment rate went from 12  
5 to 8, had 80 percent failing.

6 In my mind, that's the definition of  
7 arbitrary. When that happened we approached the  
8 Department with various exceptions, you know,  
9 whether it was high repayment rates, high  
10 graduation rates, no consumer complaints, whatever  
11 it may be. But they didn't take hold in the last  
12 administration. And, you know, I spent the last  
13 seven years essentially petitioning them just to  
14 recognize those programs so that the totally poor  
15 performing programs could be identified and the  
16 institutions that weren't intended to be caught  
17 up in it got caught up in it.

18 But you're back to -- and I'll end with  
19 this -- the Department chose to publish a very  
20 large, very complicated rule that each way you go  
21 something else comes up, as we're seeing. And so  
22 there is some reason to simplify because of the  
23 complexity of the whole thing.

1           So that is my answer to you. If the  
2 table can find and can agree with some quality  
3 exception, I'm happy to have the discussion.

4           MR. RAMIREZ: Whitney.

5           MS. BARKLEY-DENNEY: So I feel like  
6 we're trying to do that. And we just keep getting  
7 bogged down.

8           And so I really appreciate, Pamela, your  
9 suggestion and would, you know, be happy to put  
10 something up to work it out more. But my concern  
11 is it's almost 4:00 o'clock on day two of this,  
12 and we are continuing to have sort of this almost  
13 philosophical discussion about whether or not it's  
14 even possible without getting down to brass tacks  
15 and trying to put pen to paper and say can we  
16 actually do that.

17           So, my proposal is that we move into  
18 trying to actually do that.

19           MR. RAMIREZ: So, what would the  
20 components be?

21           MS. BARKLEY-DENNEY: So, I'd just, like  
22 I said, I think repayment, you know, we could check  
23 and see the temperature on several different modes

1 of figuring this out, whether it's  
2 debt-to-earnings, whether it's repayment, you  
3 know, whether it's other ideas for how to scale  
4 it up. But I think we need to start putting those  
5 ideas on the table and seeing how much buy-in there  
6 is around the table, and then trying to work them  
7 out more.

8 MR. RAMIREZ: Yes, Sandy then Johnson.

9 MS. SARGE: So I, I think that's a great  
10 idea. And I've got to be honest, I hate throwing  
11 ideas out there and every single time it's a no,  
12 no, no, no, no. So I'm working on my -- ah, thank  
13 you -- you know, I'm working on my coat of armor.

14 But, you know, for 100 reasons I'm not  
15 a proponent of the composite score. But there,  
16 but there is something about a blended, weighted,  
17 it is a composite of various scores that we could  
18 potentially look at, an outcome based. So you  
19 would have maybe three things we all say are  
20 critical elements. We measure them and we weight  
21 them, and then it gives us a blended sort of score  
22 in which you would say no one becomes the killer.

23 So, if completion rate -- and I agree

1 with you, Mark -- I mean if you're not, if you're  
2 not completing students and they're taking on debt  
3 and not finishing a degree, then that's something  
4 we should all be concerned about. I think debt,  
5 the average debt that a student takes out on a  
6 program is something that's important. I'm not,  
7 I'm not -- I'm a proponent of pulling the numerator  
8 and denominator apart and as opposed to having it  
9 in a ratio.

10 But if we come up with two or three or  
11 four things that we think are all important metrics  
12 that we should be striving to attain, and then even  
13 if we did 25 percent on each of them or figure out  
14 something that's, you know, weight them based on  
15 reliability. Like, we're all concerned about the  
16 earnings component. So weight debt-to-earnings  
17 a little bit lower to take into consideration the  
18 variability in the earnings.

19 Weight completion rate higher because  
20 it's something that's easily measurable.

21 You know, I'm throwing stuff out. But  
22 if we did something like that, would that be  
23 palatable as a measure?

1 MR. RAMIREZ: So --

2 MS. SARGE: Somebody just tell me yes.

3 MR. RAMIREZ: Does anyone have any  
4 comments on the idea of a composite score? Is that  
5 something worth exploring? Johnson?

6 MR. TYLER: I had two thoughts. One  
7 was I like the idea and I'd like to explore it.  
8 There's a lot of details in that.

9 I think we have to get buy-in to the  
10 idea that there's a sanction first. Because there  
11 are two parts to this question. I think it's easier  
12 to be engaged and get people involved in how, what  
13 triggers a sanction or a consequence, or whatever  
14 you want to call it. And who that's applying to,  
15 also. Is this applying to gainful employment or  
16 everyone in the universe?

17 I think we have to get that down first  
18 before we can deal with the other part.

19 PARTICIPANT: I think we did have that  
20 the last time because we said things like if we  
21 could find a measure that we believed wasn't fuzzy  
22 and that we all could get around, then nobody was  
23 -- I felt like the majority of the room was at least

1 neutral on keeping sanctions on the table.

2 PARTICIPANT: Could I just frame why  
3 the sanctions are impossible to resolve without  
4 some comparative data? I'm just going to throw  
5 it out to you so you can hear it.

6 So, there are some fields where there's  
7 only one or two proprietary degree-granting  
8 institutions. And in these fields  
9 debt-to-earnings look like they're very high across  
10 all sectors.

11 So now, assuming there's some  
12 disclosure across the sectors, and assuming,  
13 whether it's 8 or 12, the proprietary institution  
14 fails and is now losing the current -- the current  
15 sanctions are all Title IV, you then have all the  
16 not-for-profits and publics who have either worse  
17 or the same offering a program that the Department  
18 of Education has pronounced so inferior it has to  
19 close. And it's going to lead to, number one,  
20 irrational higher ed policy but, number two,  
21 litigation, results we haven't thought about.

22 It's just we're not in a tenable  
23 position with the identical degree programs not

1 having the information out there.

2 PARTICIPANT: But if we could address  
3 Sandy's idea maybe there's a different component,  
4 like a repayment rate that overrides the debt to  
5 income. Or maybe there's something like that, or  
6 completion rate, or something.

7 The question is is there going to be  
8 a sanction for the -- because I'm hearing Sandy  
9 say people agree that there are some bad apples  
10 that aren't, shouldn't be getting Title IV money.

11 Can we agree to that so we can then try to figure  
12 out how to identify those people?

13 PARTICIPANT: But it's, in other words  
14 it is not, again, this is not a bad apples rule,  
15 this is a bad outcomes rule. And on bad outcomes,  
16 again, if the Department publishes the data it's  
17 going to cause great -- I'm going to say it like  
18 this -- introspection across all of higher ed.  
19 That's how I'm going to say it.

20 Because the data's out there for us to  
21 look at on this debt-to-earnings metric, it is  
22 problematic outside of the one sector. And so we  
23 have to, you know, think through the impact of the

1 federal government saying the program is so poor  
2 it's closing, and the identical programs are out  
3 there with worse outcomes. And that's for consumer  
4 people to really look at.

5 And so that is a -- and this is where  
6 they were going with this proposal. This proposal  
7 at least is the first step to address that concern  
8 that the public would get to see what data looks  
9 like in identical programs across all sectors.  
10 And then you can have a debate about sanctions.

11 PARTICIPANT: I think we're having a  
12 discussion of whether we have an agreement about  
13 sanctions. And the answer is no; right?

14 PARTICIPANT: Oh, yeah.

15 PARTICIPANT: In other words,  
16 theoretically, theoretically the answer would be  
17 yes. Again, if the Department had come into this  
18 session with debt-to-earnings published, and we  
19 were able to look at that and we saw for-profit  
20 sector 15 percent fail; not-for-profit sector 2  
21 percent fail; public's it's 1 percent; we're only  
22 going to do the sanctions in the for-profit sector,  
23 maybe we'd have a discussion because you'd at least

1 see fairness and a logic to it.

2 But without that there it's very tough  
3 for us to feel comfortable with the sanctions.

4 MR. RAMIREZ: Let me get to Jen, Kelly,  
5 Whitney, and Tim.

6 PARTICIPANT: I'm sort of changing  
7 something. I mean, I'm going back to Whitney's  
8 mention, I hope that's okay, on loan repayment.  
9 And before I sort of opine on loan repayment I have  
10 a question for the Department. And I acknowledge  
11 right off the bat that it comes up in Issue 6, I  
12 believe. But I'm going to raise it here because  
13 loan repayment has surfaced.

14 So, I took note that in Issue Paper 6  
15 the Department, I think, punts the loan repayment  
16 metric to a future Federal Register notice of some  
17 form. Am I correct in my recollection on that  
18 before I --

19 MR. MARTIN: Can you tell me what you're  
20 referencing in Paper 6?

21 PARTICIPANT: I think there is a  
22 reference to -- I have to find it.

23 PARTICIPANT: Page 2.

1           PARTICIPANT: Thank you. On page 2 --  
2 oh yeah, thank you -- so, page 2, paragraph 6, top  
3 of the page, sort of top of the page.

4           Loan repayment rate for any one of the  
5 following groups of students who entered repayment,  
6 to be calculated using a method specified by the  
7 Secretary in a notice published in the Federal  
8 Register.

9           And I don't mean -- I'm not going to  
10 go down a rabbit hole -- but there is a reason the  
11 Department seems to be indicating that there's  
12 going to be a loan repayment rate conversation in  
13 a future --

14          MR. MARTIN: Yeah. We'll --

15          PARTICIPANT: --- that was for  
16 disclosure purposes. And now Whitney and others  
17 --

18          MR. MARTIN: Right.

19          PARTICIPANT: -- have put it on the  
20 table for discussion here.

21           And I just wanted to understand what  
22 the Department's thinking was in this context so  
23 I can understand whether loan repayment rate is

1 really a viable conversation on the sanctions  
2 issue.

3 MR. MARTIN: We're not at that paper  
4 yet. But this is Greg, for the record.

5 When you look at the disclosure, that's  
6 under disclosure requirements. And it says that  
7 --

8 PARTICIPANT: What page are you on,  
9 Greg?

10 MR. MARTIN: This is on page, this is  
11 on Issue Paper 6, page 1, where it talks about  
12 disclosure template. And it simply, this is simply  
13 identifying the information to be included on the  
14 template that will be included in the Federal  
15 Register, which is what we currently do. Remember  
16 most of these rates look pretty similar.

17 And that information may include, but  
18 not limited to. It gives us the -- it lists, it  
19 lists the number of disclosures.

20 PARTICIPANT: It gives you the ability  
21 to --

22 MR. MARTIN: Yes.

23 PARTICIPANT: I got it.



1 -- it was not, in these proposed rules it's not  
2 related to, it's not related to sanctions. It was  
3 only ever a disclosure item.

4 It's still a potential disclosure item,  
5 but we are not going to be, in these rules we will  
6 not be obligating the Secretary to calculate a  
7 repayment rate.

8 MR. RAMIREZ: Let me get to Kelly,  
9 Whitney, then Tim.

10 PARTICIPANT: I should point out,  
11 though, that it doesn't preclude you from putting  
12 that on the table, the fact it's not in this reg.

13 That issue paper in that portion of the proposed  
14 rule does not include repayment rate as a sanction  
15 or a ramification or something like that. But that  
16 doesn't preclude our discussing it.

17 PARTICIPANT: Has the Department since  
18 two thousand and whatever year that the case came  
19 out, 2012, given any thought to what the rational  
20 basis would be for a rate?

21 It would be a very complex -- I'm not  
22 saying, you know, I'm not -- I'm just saying on  
23 day two of a second session to get into a

1 conversation about loan rates. So just to answer  
2 Whitney, I think it's just a really tough  
3 conversation to come up with what that methodology  
4 would be that would then pass a rational basis test,  
5 which is what it would have to pass.

6 MR. MARTIN: I think that remains an  
7 open question. If any of you -- I mean, there have  
8 been a number of methodologies for repayment rates  
9 over the past couple years.

10 PARTICIPANT: Well, that's actually my  
11 point, too, is there are so many different versions  
12 of loan repayment rate, and some of which we, even  
13 the Department has, that we have multiples of  
14 different rates, that I'm not sure from a consumer  
15 disclosure standpoint. I mean we, again, we'd be  
16 adding like, I think, the fourth or fifth loan  
17 repayment rate to the mix, or something.

18 So I guess I would hesitate unless we  
19 were to, you know, the Department were to sort of  
20 get uniform on, yes, this is the rate that we're  
21 living with on loan repayment rate for absolutely  
22 everything.

23 MR. RAMIREZ: Yeah, go ahead, Whitney.

1 MS. BARKLEY-DENNEY: Yeah. So, I  
2 mean, I guess I don't quite understand the  
3 objections. Because that's what we're here to do.  
4 We're here to do hard work. The Department didn't  
5 pick us because we're just going to, like, go  
6 through and say, "Disclosure. Sounds great.  
7 Okay, we're fine. Or we want to change this B to  
8 an A." We are here to figure this out if we can.  
9 Maybe we can't.

10 Maybe we can't figure it out, and maybe  
11 we throw our hands up at the end of it. But I guess  
12 I don't understand saying, well, we would support  
13 sanctions, except for it's really hard and we don't  
14 really think we can get to it without sitting down  
15 and trying.

16 We have another week. We have three  
17 more days. And I, personally, am pretty bored  
18 going through and talking about, you know, whether  
19 this thing on the margin matters. Because what's  
20 going to matter for borrowers and what's going to  
21 matter for institutions is having real things, with  
22 teeth, that aren't just disclosures.

23 And like I said, if we don't get to it

1 I won't hold it against anybody here at this table,  
2 but it needs to be discussed, it needs to be fleshed  
3 out. Instead of just saying it's impossible, we  
4 need to prove it's impossible.

5 MR. RAMIREZ: Let me get, let me get  
6 a mod and then -- oh, I'm sorry, Kelly. I thought  
7 you put it down.

8 Go ahead, Kelly, you're next.

9 MS. MORRISSEY: So I echo exactly what  
10 Whitney just articulated in terms of our ability  
11 to figure it out. But I think in my mind and in  
12 speaking with some of my colleagues around the  
13 table, I think that we should really be making some  
14 data-driven decisions.

15 And to Mark's point, I think there are  
16 lessons to be learned from the multiple years of  
17 data that we have all disclosed, and our inability  
18 to review really, what that tells us all and in  
19 what direction we should head in.

20 So, I really echo Mark's request to look  
21 at this data and look at what we can do in order  
22 to turn the corner here. I mean, I am struggling  
23 to understand what types of multiple measures that

1 are meaningful across sectors where we all have  
2 programs that have different missions. We have  
3 some programs that are designed to immediately  
4 employ students. We have others that are transfer  
5 programs and, by their very nature they have low  
6 completion rates.

7 In the community college sector we have  
8 a 13 to 14 percent participation rate in loan  
9 borrowing. So how is a repayment rate even  
10 meaningful in that regard?

11 So, all of these facts rolled up  
12 together in an effort for us to arrive at what a  
13 single measure would be that would be meaningful,  
14 is what I'm struggling with at this time.

15 MR. RAMIREZ: All right. Let's do  
16 this, let's take a one-function break.

17 (Whereupon, a brief recess was taken.)

18 MR. RAMIREZ: Okay, let's pull it back  
19 in. Sorry about that, it was a long two minutes.  
20 Let's go ahead and get started.

21 Thank you all for your patience. That  
22 was actually a few function break.

23 But the reason I called that break is

1 because it's very evident, right, the frustration  
2 within the room. And so as a facilitator I'm trying  
3 to think of how do we, how do we harness all this?

4 Because we've got some great minds here;  
5 right? And even maybe without the data that you  
6 would love to have, I'm guessing that folks can  
7 make very well-informed, educated estimates,  
8 right, of what may work and what may not work.  
9 But at least for discussion purposes; right?

10 And I think that in order for that to  
11 work, though, we have to be looking at the same  
12 thing. And so I was trying to see if there was  
13 a way that if we were to capture some of this can  
14 we project it up onto the monitors there so we could  
15 all look at the same thing. And as you could  
16 probably guess, it's not that easy.

17 But I'm going to be working with  
18 somebody tomorrow in the morning to do that so that  
19 we could at least capture some of these ideas.  
20 Because quite a few ideas were thrown out. And  
21 I want to start capturing them so we could look  
22 at it and say what is truly doable or not doable,  
23 or what do we need more information on. And I think

1 if we could do that, I think that would help focus  
2 the conversation.

3 But speaking of tomorrow, folks are  
4 monitoring what's going on with the potential  
5 weather. And we're hearing that it's likely that  
6 we might get some, some ugly weather. So it was  
7 suggested that we just modify the start time for  
8 tomorrow at 10:00 o'clock.

9 If we get a notice that it's greater  
10 than an hour delay, we'll send out an email to all  
11 of you letting you know of anything later than that.

12 But regardless, we'll do a 10:00 o'clock start  
13 tomorrow.

14 And then, so what I want to do is end  
15 it for today. We have -- I want to do the comments.

16 But I want you all to think about a couple things.

17 One is, what would be potential metrics  
18 that we could use, understanding that there is no  
19 silver bullet; right? There is no silver bullet  
20 that's going to be either the metrics to determine  
21 whether somebody is underperforming, or what the  
22 remedy might be. Right? Or, you know, what would  
23 happen if those schools are underperforming.

1           So, think about both; right? What  
2 would be the metrics to show that? And then, what  
3 would be some potential options to deal with that,  
4 to change that behavior, to correct those outcomes.

5       Right? I'm trying to avoid penalties; right?  
6 That's a word I'm trying to -- or sanctions, I'm  
7 trying to avoid that.

8           It might be, but is there something else  
9 as well that we could consider? And so I want you  
10 to think about that. And that's what we'll start  
11 on tomorrow.

12           But a couple of tents went up. I think  
13 I saw, Whitney, you just put your tent up right  
14 now. Go ahead, Whitney.

15           MS. BARKLEY-DENNEY: I was just going  
16 to throw out there -- we don't have to decide on  
17 it today, but something to think about would  
18 possibly be going into a large caucus tomorrow to  
19 get into these things.

20           I am loath to suggest it because I  
21 obviously believe very much in the openness of these  
22 meetings. But I think that people might feel more  
23 comfortable putting metrics on the table and being,

1       you know, more amenable if this were, if this  
2       particular part of it and fleshing it out were a  
3       caucus.

4                So, I just wanted to throw that out  
5       there. We don't have to vote on it now, but just  
6       something to think about overnight before we come  
7       in tomorrow.

8                MR. RAMIREZ: Yeah. No, that's a great  
9       idea. And I would like to see what type of ideas  
10      we as a group could generate, and then possibly  
11      break down to some smaller groups if need be.  
12      Right? So I think that's a great idea.

13               Before we -- Laura, did you have  
14      something as well?

15               MS. METUNE: I was going to make a  
16      similar comment about caucusing. But I also just  
17      -- so, yes, thanks for that suggestion -- I also  
18      just wanted to mention that I handed out at the  
19      beginning of the day a memo on Issue Paper 8. I  
20      did that today because I wanted folks to have a  
21      chance to read it before we discuss it. So I won't  
22      go into it.

23                But if we do by chance get to Number

1       8 tomorrow, I hope that you will have had a chance  
2       to take a look at what I provided. Thank you.

3               MR. RAMIREZ: Okay. So a couple of  
4       homework assignments for everybody.

5               Ahmad and Tim, before we took the break  
6       both of you had your tents up. Do you still want  
7       to make your comments?

8               MR. POWERS: Do it tomorrow.

9               MR. RAMIREZ: Okay, perfect. Thank  
10      you.

11              Ahmad?

12              MR. SHAWWAL: Ahmad. In the spirit of  
13      making some sort of progress, I was curious if we  
14      could get a temperature check on some of the ideas  
15      Pamela and Sandy had mentioned, this sort of  
16      combinatory metric that would necessitate  
17      sanctions.

18              And, Mark, I'm sympathetic to some of  
19      the things that you have said. And you have  
20      referenced some data a few times. Given that we  
21      don't have access to this data yet, it's just really  
22      difficult at this point to see those things through  
23      that very same lens. And I feel like people here

1 would be open to changing their minds, but based  
2 on what we have access to now I would like to see  
3 some sort of temperature check on more than one  
4 metric that would necessitate sanctions.

5 Thank you.

6 MR. RAMIREZ: All right. I think that,  
7 I think that we will do that because I think I am  
8 also hearing that there's some understanding --  
9 and I pause short of saying agreement -- but  
10 understanding that there is no silver bullet here.

11 There is no one metric that's going to be able  
12 to say that this is a poor performer. Right?

13 So I think it's probably going to end  
14 up having to be some type of blend. And so what  
15 I'd like to do is find out what are some of those  
16 potential metrics. And that's what I want to do  
17 tomorrow.

18 So, if I could, I'd like to see what's  
19 out there first and then see if we could narrow  
20 it down from there. Okay?

21 And in the meantime, what I would do  
22 is I would ask both Sandy and Pamela if we do get  
23 to that point, can you get a nice couple of sentences

1 to make it clear on what that thumb would be. Okay?

2 Jordan?

3 MR. MATSUDAIRA: I wanted to just make  
4 a suggestion along those lines that maybe everybody  
5 email you a list of metrics that could be used or  
6 they'd be interested in using. And then perhaps  
7 somebody could consolidate and distribute.

8 MR. RAMIREZ: We could consolidate and  
9 project it up onto the screen. So, yeah, if folks  
10 want to send me those.

11 PARTICIPANT: Yeah, things that people  
12 have already set out.

13 MR. RAMIREZ: Yeah. So, put some up  
14 there. And if there are metrics under Number 4,  
15 we will start capturing those. But if there are  
16 any others, you can send them to us tonight and  
17 we'll have that ready for you in the morning. Okay?

18 Yeah, you can send them to my email,  
19 jramirez.

20 PARTICIPANT: Spell it.

21 MR. RAMIREZ: R-A-M-I-R-E-Z @fmcs,  
22 Frank, Mary, Charlie, Sam, fmcs.gov.

23 And I hope that wasn't being -- yeah,

1 a lot of emails.

2 All right, I already have 2,000 unread.

3 Okay, so any comments, any additional  
4 comments from the negotiators or alternates?

5 (No response.)

6 MR. RAMIREZ: Okay. Any public  
7 comments? Come on up. We've got a mike up here  
8 for you. State your name.

9 MR. HUBBARD: Hey, good afternoon. My  
10 name is Will Hubbard, and I'm a Marine Corps  
11 veteran; Vice President of Student Veterans of  
12 America; and also a fellow negotiator, rulemaking  
13 negotiator.

14 As a primary negotiator for the  
15 military-connected students in the bar defense  
16 negotiations I am bothered by the Department  
17 working to eliminate strong student protections  
18 on gainful employment or education programs, I  
19 guess as we're calling them.

20 On the one hand we're fighting to  
21 restore students, yet we're here dismantling  
22 legitimate protection. At Student Veterans of  
23 America we are driven by outcomes and data. There

1 is no data to support the idea that a  
2 disclosure-only framework is effective at  
3 dissuading bad actors, demonstrated patterns of  
4 bad behavior, and altering their actions.

5 While the Department wants to keep all  
6 education programs under the same umbrella, the  
7 Higher Education Act specifically separates out  
8 gainful employment programs. This makes it clear  
9 that Congress intended these programs to be treated  
10 differently in light of their differing purpose  
11 and outcomes.

12 The Department has repeatedly said that  
13 the potential loss of program eligibility under  
14 the gainful employment rule is not the only way  
15 to make a problematic program. But the Department  
16 has also consistently struggled to name other  
17 robust tools available in its arsenal.

18 Program reviews and certification  
19 requirements cannot be solely responsible for  
20 protecting students. Moving towards a framework  
21 where schools no longer pass or fail, but instead  
22 are acceptable or low performing, does not protect  
23 students.

1           Moving toward a framework where low --  
2           and low performing as to what is the question  
3           really. Actually, as Chris Gannon pointed out  
4           yesterday, students who do poorly in class do not  
5           receive a mark of low performance; they fail, plain  
6           and simple.

7           Words matter. If we want to protect  
8           students and inform consumers, we need to be clear  
9           about program outcomes. What can a student expect  
10          for earnings? What can a student expect in terms  
11          of debt? Students are the ones who are expected  
12          to have the answers in class, yet schools are all  
13          too quick to keep secrets from students with regard  
14          to true costs, expected salaries, and so much more.

15                 Students                 deserve                 better.  
16           Simplification is an idea I have seen throughout  
17           the Neg Reg, as well as discussions for  
18           reauthorization of the Higher Education Act on the  
19           Hill. However, student protection should not take  
20           a backseat to simplification. The amortization  
21           of 15 years, regardless of a program length, is  
22           one example of simplification being the wrong  
23           solution. It should not take a student 15 years

1 to pay off a debt for a one-year certificate.

2 Students pursue a variety of education  
3 paths, and amortization periods should reflect  
4 these differences.

5 As Jordan highlighted yesterday, there  
6 are some categories of programs that are  
7 sufficiently low quality that students should not  
8 borrow from the government to pay for it, period.

9 If we're truly concerned with protecting students  
10 and also protecting taxpayers, then it is  
11 imperative that the Department get this rule right.

12 Thank you for your time.

13 MR. RAMIREZ: Okay. Thank you,  
14 Hubbard. And thank you for your service.

15 All right, any other public comment?

16 (No response.)

17 MR. RAMIREZ: Okay, then I just want  
18 to remind you all again, a 10:00 o'clock start  
19 tomorrow unless you get an email from us that it's  
20 later than 10:00. Okay. Unless it's later, yeah.

21 Okay.

22 Thank you, everyone, for your hard work  
23 today.

1                   And, I'm sorry, Tony had one more  
2                   comment.

3                   MR. MIRANDO: Yeah. Is that then the  
4                   assumption that we're staying an hour later or no,  
5                   just a normal leave time?

6                   MR. RAMIREZ: The anticipation was no.  
7                   But I have nowhere else to go. So --

8                   MR. MIRANDO: No. And I wasn't  
9                   offering to stay an extra hour.

10                  MR. RAMIREZ: Oh.

11                  MR. MIRANDO: You know, I'm just trying  
12                  to figure out my time schedule as well. So I just  
13                  wanted to be clear.

14                  MR. RAMIREZ: You know what, that's a  
15                  good question for the group. What would be the  
16                  expectation of the group, would you like to stay  
17                  an extra hour or do we end at the normal stop time?

18                  (Group conversation.)

19                  MR. RAMIREZ: Okay, I'm hearing, I'm  
20                  hearing a desire to play it by ear.

21                  So we'll shoot for 5:00 o'clock. If  
22                  we're making progress, then we'll, we'll go on.  
23                  Okay?

1 All right, thank you all.

2 (Whereupon, the above-entitled matter  
3 went off the record at 6:27 p.m.)

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